

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA

DISCOVER BANK,	:	
Plaintiff,	:	No. CV 23-00,101
	:	
vs.	:	CIVIL ACTION – LAW
	:	
KEITH A. ADAMS,	:	
Defendant.	:	

**ORDER**

AND NOW, this 3<sup>rd</sup> day of November, 2023, upon consideration of Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint, it is hereby ORDERED and DIRECTED that the Preliminary Objections are DENIED, for the reasons explained below.

***I. BACKGROUND.***

This is a credit card collection case that Plaintiff Discover Bank commenced by Complaint filed January 23, 2023 against Defendant Keith A. Adams. On May 31, 2023, subsequent to preliminary objections, Plaintiff filed its Second Amended Complaint, which is the operative complaint at this time.

The Second Amended Complaint asserts causes of action for Breach of Contract (Count I) and Account Stated (Count II). It alleges, *inter alia*, that Plaintiff mailed a credit card and cardmember agreement to Defendant in response to Defendant's application for card membership;<sup>1</sup> that the agreement contained conditions under which Defendant or others could use the credit card issued by Plaintiff;<sup>2</sup> that Defendant accepted the terms of the cardmember agreement by using the credit card for various purchases and/or transactions;<sup>3</sup> that Plaintiff kept accurate

---

<sup>1</sup> Second Amended Complaint, ¶ 7.

<sup>2</sup> *Id.*, ¶ 8.

<sup>3</sup> *Id.*, ¶¶ 9-10.

records of the credits and debits to the account;<sup>4</sup> that Plaintiff sent Defendant monthly statements that accurately set forth charges against the card and payments made;<sup>5</sup> that Defendant was obligated to pay in accordance with the terms of his agreement with Plaintiff;<sup>6</sup> that Defendant did not reject or dispute the information contained in the statements;<sup>7</sup> that Defendant made periodic payments on the account or retained statements without payment;<sup>8</sup> that Defendant ceased making payments after approximately January 6, 2022;<sup>9</sup> that Defendant breached the terms of the agreement by his failure to pay;<sup>10</sup> that the amount due and owing to Plaintiff at the time of filing was \$12,159.09;<sup>11</sup> that Plaintiff has demanded payment of the amount due;<sup>12</sup> and that Defendant has refused to pay the same to Plaintiff.<sup>13</sup>

On June 14, 2023, Defendant preliminarily objected to Plaintiff's Second Amended Complaint<sup>14</sup> pursuant to Rule 1028(a)(2),<sup>15</sup> Pennsylvania Rules of civil Procedure, alleging that Plaintiff's Second Amended Complaint failures to conform to law or rule of court. Specifically, Defendant complains that (1) "Plaintiff has attached an agreement titled 'Cardmember Agreement' as Exhibit A, but it does not include specific or material terms, including fees or interest that will be charged,"<sup>16</sup> (2) that "[t]he writing attached references separate writings that includes some of the material terms, but those separate writings are not attached,"<sup>17</sup> and (3) that "[t]he

---

<sup>4</sup> *Id.*, ¶ 19.

<sup>5</sup> *Id.*, ¶¶ 11, 20.

<sup>6</sup> *Id.*, ¶ 12.

<sup>7</sup> *Id.*, ¶ 21.

<sup>8</sup> *Id.*, ¶¶ 13, 22.

<sup>9</sup> *Id.*, ¶¶ 13, 23.

<sup>10</sup> *Id.*, ¶¶ 14, 16.

<sup>11</sup> *Id.*, ¶¶ 15, 25.

<sup>12</sup> *Id.*, ¶ 24.

<sup>13</sup> *Id.*, ¶¶ 16, 24.

<sup>14</sup> Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint, filed June 14, 2023.

<sup>15</sup> Pa. R. Civ. P. 1028(a)(2) ("Preliminary objections may be filed by any party to any pleading ... [for] failure of a pleading to conform to law or rule of court...").

<sup>16</sup> Defendant's Preliminary Objections, ¶ 3.

<sup>17</sup> *Id.*, ¶ 4.

writing references a separate writing that Plaintiff has failed to attach.”<sup>18</sup> Thus, Defendant contends, Plaintiff’s Second Amendment fails to comply with Rule 1019(i),<sup>19</sup> which requires that a writing that forms the basis of a complaint must be attached to it.

The Court heard argument on the Preliminary Objections on August 11, 2023, and the matter is now ripe for resolution.

## **II. LAW AND ANALYSIS.**

When ruling on preliminary objections, a court accepts as true all well-pleaded averments within the challenged pleading, as well as any reasonable inferences which may be drawn from them;<sup>20</sup> however, the court need not accept conclusions of law, argumentative allegations or opinions.<sup>21</sup> Inquiry into the sufficiency of a complaint begins with Rule 1019(a), Pennsylvania Rules of Civil Procedure, which provides that “[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form.”<sup>22</sup> “‘Material facts’ are ‘ultimate facts,’ *i.e.*, those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged.”<sup>23</sup> While “the line between pleading facts and evidence is not always bright[,]” two conditions “must always be met: [t]he pleadings must adequately explain the nature

---

<sup>18</sup> *Id.*, ¶ 5.

<sup>19</sup> Pa. R. Civ. P. 1019(i) (“When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing”).

<sup>20</sup> *Preiser v. Rosenzweig*, 614 A.2d 303, 305 (Pa. Super. 1992).

<sup>21</sup> *Erie County League of Women Voters v. Commw., Dep’t of Environmental Resources*, 525 A.2d 1290, 1291 (Pa. Commw. 1987) (citing *Ohio Casualty Group of Insurance Cos. v. Argonaut Insurance Co.*, 500 A.2d 191 (Pa. Commw. 1985)).

<sup>22</sup> Pa. R. Civ. P. 1019(a).

<sup>23</sup> *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974) (citing *United Refrigerator Co. v. Applebaum*, 189 A.2d 253 (Pa. 1963); *Smith v. Allegheny County*, 155 A.2d 615 (Pa. 1959)). “[T]he complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense.” *Unified Sportsmen of Pa. v. Pa. Game Comm’n*, 950 A.2d 1120, 1134 (Pa. Commw. 2008)).

of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge.”<sup>24</sup>

When a pleading fails to satisfy the necessary requirements, the adverse party may move to strike the pleading or move for a more specific pleading. Such motions may be granted when the pleading fails to conform to law or rule of court or when it is otherwise so insufficient that the adverse party cannot understand the claims it sets forth.<sup>25</sup> When presented with a motion to strike or a motion for a more specific pleading, the court may exercise “broad discretion in determining the amount of detail that must be averred.”<sup>26</sup>

Consistent with these general principals, the Rules of Civil Procedure mandate that when any claim or defense is based upon a writing, the pleader must attach a copy of the writing, or the material part thereof, to the pleading.<sup>27</sup> Where, as here, a complaint is based on failure of a debtor to pay the balance due on a credit card account, the defendant may properly assert in preliminary objections that the plaintiff failed to produce a cardholder agreement and statement of account.<sup>28</sup> Here, the Plaintiff attached a written Discover Cardmember Agreement<sup>29</sup> and statement of account<sup>30</sup> to its Second Amend Complaint. Plaintiff alleges that Defendant’s credit card was subject to the terms and conditions of that Cardmember

---

<sup>24</sup> *Bata v. Cent.-Penn Nat. Bank of Philadelphia*, 224 A.2d 174, 179 (Pa. 1966). When determining whether a claim has been pled with the requisite specificity, a court does not analyze the specificity of a particular paragraph or allegation; rather, it views the allegations in the context of the pleading as a whole. See *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 589 (Pa. Super. 2002) (en banc).

<sup>25</sup> *Connor v. Allegheny General Hospital*, 461 A.2d 600, 602-03 (Pa. 1983).

<sup>26</sup> *United Refrigerator Co. v. Applebaum*, *supra*, 189 A.2d at 255.

<sup>27</sup> Pa. R. Civ. P. 1019(i); see, *supra*, n. 19.

<sup>28</sup> See *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003).

<sup>29</sup> Second Amended Complaint, Exh. A.

<sup>30</sup> Exhibit B to the Second Amended Complaint consists of numerous credit card statements from Plaintiff to Defendant from April 2016 through June, 2022. See Second Amended Complaint, Exh. B.



Agreement, and that a copy of it was received by Defendant. It alleges that Defendant agreed to those terms by using the credit card and by making periodic payments on the account. It further alleges that it kept true and accurate records of the account and periodically provided the same to Defendant, who made no objection. Further the Plaintiff alleges that Defendant has refused to make payment in accordance with the agreement, is in breach thereof, and has continued to refuse payment despite Plaintiff's demands for the same.

A complaint "must apprise the defendant of the nature and extent of the plaintiff's claim so that the defendant has notice of what the plaintiff intends to prove at trial and may prepare to meet such proof with his own evidence."<sup>31</sup> To plead a claim for breach of contract, a plaintiff must allege that "there was a contract, the defendant breached it, and plaintiff[ ] suffered damages from the breach."<sup>32</sup> To plead a claim for account stated, the plaintiff must allege that there has been a running account, that it has been provided to and accepted by the defendant, either expressly or by implication, and that a balance remains due.<sup>33</sup>

The Court finds that the Plaintiff's Second Amended Complaint sets forth sufficient allegations to provide the Defendant with notice of the Plaintiff's claims and the grounds on which they rest and to permit Defendant to prepare his defense. Furthermore, Plaintiff's allegations, if ultimately proven, would permit recovery.<sup>34</sup> As such, the Court finds that the Second Amended Complaint sufficiently complies with applicable rules of pleading.

---

<sup>31</sup> *Weiss v. Equibank*, 460 A.2d 271, 274-75 (Pa. Super. 1983).

<sup>32</sup> *McShea v. City of Philadelphia*, 995 A.2d 334, 340 (Pa. 2010).

<sup>33</sup> See, e.g., *Robbins v. Weinstein*, 17 A.2d 629, 633 (Pa. Super. 1941).

<sup>34</sup> See *Hess v. Fox Rothschild, LLP*, 925 A.2d 798, 805-06 (Pa. Super. 2007) (when ruling on preliminary objections, the court must determine whether the allegations of the pleading, if ultimately proven, would permit recovery).

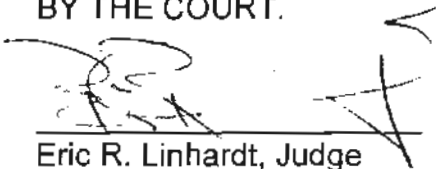
**III. CONCLUSION.**

Therefore, for the reasons explained above, it is ORDERED and DIRECTED as follows:

1. Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint are **DENIED**.
2. Defendant shall file an Answer to the Second Amended Complaint within twenty (20) days after entry of this Order.

IT IS SO ORDERED.

BY THE COURT.



Eric R. Linhardt, Judge

ERL/bel

cc: Andrew Condiles, Esq., *Weltman, Weinberg & Reis Co., L.P.A.*  
170 S. Independence Mall W, Suite 874W, Philadelphia, PA 19106-3334  
Kristian Villegas, Esq.  
Gary Weber, Esq. (Lycoming Reporter)