

IN THE COURT OF COMMON PLEAS OF MIFFLIN COUNTY, PENNSYLVANIA

CACH, LLC,
Plaintiff

v.

TODD J. CRAIG,
Defendant

CP-44-CV-1825-09

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OPINION and ORDER

AND NOW, this 15th day of December, 2010, after oral argument on September 1, 2010, and in consideration of Defendant's Preliminary Objections to Plaintiff's Second Amended Complaint and Plaintiff's responses thereto, it is hereby **ORDERED** and **DECREED** that said Preliminary Objections are **SUSTAINED** and the complaint is **DISMISSED**. Plaintiff may file an amended complaint with the necessary documents and specific averments **within twenty (20) days** of this order. If plaintiff fails to file the necessary documents and specific averments **within twenty (20) days**, the complaint will be dismissed with prejudice.

DISCUSSION

Plaintiff filed a Complaint in Civil Action against Defendant on November 30, 2009, followed by Defendant's Preliminary Objections alleging there was no contract between the parties and an insufficient complaint. Plaintiff filed an Amended Complaint on March 26, 2010, followed again by Defendant's Preliminary Objections alleging the same arguments. Subsequently, Plaintiff filed a Second Amended Complaint demanding damages on May 14, 2010, followed by Defendant's current Preliminary Objections pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(3) and (4) alleging legal

insufficiency and insufficient specificity. Specifically, Defendant alleges Plaintiff failed to attach a copy of the written contract or explain its absence, sufficiently state the terms and conditions of the alleged contract, attach purported assignments, and provide all the specific transaction details in conformity with Pennsylvania Rule of Civil Procedure 1019.

As to Defendant's claim that Plaintiff has failed to sufficiently establish the assignment from the original creditor to Plaintiff, Rule 1019(i) states:

[w]hen 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.

Pa. R. Civ. P. 1019(i). Pennsylvania courts have outlined specific pleading requirements that an assignee of contract rights must comply with to show that he or she has the right to bring the suit. The plaintiff must "specifically trace the history of the assignment." *Hillbrook Apts., Inc. v. NYCE Crete Co.*, 352 A.2d 148, 153 (Pa. Super. Ct. 1975); *Produce Factors Corp. v. Brown*, 179 A.2d 919, 921 (Pa. Super. Ct. 1962). The purpose of this requirement is to protect the defendant from becoming liable to the assignor and the assignee if a court determines the assignment was invalid. *Hillbrook Apts.*, 352 A.2d at 153 (citing *Brown v. Esposito*, 42 A.2d 93, 94 (Pa. Super. Ct. 1945)). However, the assignee does not have to set out the assignment verbatim or attach a copy of it as an exhibit to the complaint. *Produce Factors Corp.*, 179 A.2d at 922 (citing *Brown*, 42 A.2d at 94). An assignee complies with this requirement when he or she states "the fact and date of the assignment and the parties thereto." See e.g. *Manor Bldg. Corp. v. Manor Complex Assocs. Ltd.*, 645 A.2d 843, 848 (Pa. Super. Ct. 1994); *Produce Factors Corp.*, 179 A.2d at 922 (citing *Brown*, 42 A.2d at 94).

In this case, Plaintiff has failed to trace the history of the assignment in its Second Amended Complaint. Although Plaintiff need not attach a copy of the assignment, Plaintiff does not satisfy the minimal requirement of stating the fact of, date, and parties to the assignment. Namely, Plaintiff only avers it “purchased this account and presently owns and holds this account.” (Am. Compl. ¶ 10). This statement does not provide Defendant with the specificity necessary for him to trace the history of the assignment to ensure the assignment was not invalid or one of multiple assignments. Plaintiff does attach an Affidavit from a representative of the original creditor, but because it does not specify when the account was assigned to Plaintiff or the prior or current terms, it does not satisfy Pennsylvania’s specific pleading requirements. *See Remit Corp. v Miller*, 5 Pa. D. & C. 5th 43 (C.P. Centre Co. 2008)(an Affidavit while appearing on its face to meet Pa. R. C. P. 1019(i) requirements, does not satisfy Pa. R. C. P. 1019(i) when it does not clearly establish the assignment rights or terms of the original or final agreement). Thus, Plaintiff fails to comply with Pennsylvania Rule of Civil Procedure 1019(i) as to this claim.

Plaintiff also fails to attach the original contract or any contract and documentation sufficiently showing the terms and conditions of the contract. In fact, Plaintiff only includes an account statement from February, 2008, and October, 2008. Moreover, these statements are between Defendant and the original creditor, not Plaintiff, and do not list any transactions. Although Plaintiff claims this is sufficient to substantiate its claim, this is in error.

First, the attached statements are contrary to Rule 1019(f), which requires specifically stated averments of time, place, and items composing special damages. Pa. R. C. P. 1019(f). Additionally, “a defendant is entitled to know the dates on which individual transactions were made, the amounts therefore

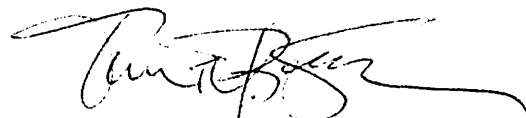
and the items purchased to be able to answer intelligently and determine what items he can admit and what he must contest.” *Remit Corp.*, 5 Pa. D. & C. 5th at 48 (quoting *Marine Bank v. Orlando*, 25 Pa. D. & C. 3d 264, 268 (C.P. Erie 1982); *see also Capital One Bank v. Clevestine*, 7 Pa. D. & C. 5th 153 (C.P. Centre 2009)(holding that attaching billing statement is sufficient to satisfy Pennsylvania pleading requirements if statements “illustrate how it has arrived at the amount that it claims is due.”). Here, two general credit card statements between Defendant and the original creditor, along with an affidavit lacking in specifics and alleging a debt less than the damages sought, does not give Defendant knowledge of the transactions, the dates, or the amounts necessary to admit or contest the allegations.

Plaintiff’s failure to attach or establish sufficient evidence of the assignment, the original contract, cardholder agreement, and sufficient statements of the account are analogous to our Superior Court case *Atlantic Credit & Finance, Inc. v. Guiliana*, 829 A.2d 340 (Pa. Super. Ct. 2003). In that case, the plaintiff failed to prove evidence of the assignment, produce a cardholder agreement, and statements of accounts between the assignor and the defendant. *Id.* at 345. The Superior Court found that these deficiencies established a meritorious defense, and the preliminary objections were sustained. *Id.* Thus, Plaintiff fails to comply with Pennsylvania Rules of Civil Procedure 1019(i) and (f) as to these claims.

CONCLUSION

Having found Defendant’s claims warrant relief, the Preliminary Objections are hereby **SUSTAINED.**

BY THE COURT:



TIMOTHY S. SEARER
PRESIDENT JUDGE