

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FIA CARD SERVICES N.A.,
FKA MBNA America Bank,
N.A.,

Plaintiff

vs.

JEFFREY M. KIRASIC,

Defendant

CIVIL DIVISION

NO. AR06-009360

OPINION AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

Counsel for Plaintiff:

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Counsel for Defendant:

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OPINION AND ORDER OF COURT

WETTICK, A.J.

The preliminary objections of defendant questioning the sufficiency of plaintiff's second amended complaint to recover credit card balances are the subject of this Opinion and Order of Court.

Card Services' original complaint alleges that defendant was issued an open-end credit account that was created through a written contract accepted by defendant when he signed and utilized the credit card account.¹ Card Services attached to the complaint a five-page writing which it identified as a true and correct copy of the credit card agreement governing this account. The complaint alleges that defendant received monthly statements which accurately stated all purchases and payments made during the month, interest charges imposed on the unpaid balance, and the amount due. As of November 9, 2006, the remaining balance is \$22,061.86.

Defendant filed preliminary objections based on my ruling in *Worldwide Asset Purchasing, LLC v. Stern*, 153 P.L.J. 111 (2004). In that case, the credit card companies filed complaints very similar to the original complaint filed in this case. I ruled that the complaints failed to comply with the requirements of Pa.R.C.P. No. 1019, that the plaintiff set forth the material facts upon which the cause of action is based, and

¹Plaintiff is FIA Card Services, N.A., formerly known as MBNA America Bank, N.A.

that the writings be attached when a claim is based on a writing. I stated that whenever a claim involves one period of time in which the initial terms and conditions of the credit card agreement apply and later periods of time in which amended terms and conditions apply, the complaint must attach both the original and amended terms and conditions with the dates for which they were applicable.

I also stated that the complaint cannot seek recovery of a specific amount of money that is allegedly due without including any documentation or allegations supporting recovery of this amount. Under Rule 1019, a complaint must include the amounts of the charges that are part of the claim, the dates of the charges, credits for payments, dates and amounts of interest charges, and dates and amounts of other charges. The complaint must contain sufficient documentation and allegations to permit a defendant to calculate the total amount of damages that are allegedly due by reading the documents attached to the complaint and the allegations within the complaint.

I sustained defendants' preliminary objections to the original complaint filed in the present case, because it did not satisfy the pleading requirements described in *Worldwide Asset Purchasing*.

In the present case, Card Services filed an amended complaint which attached the monthly statements upon which it based its claim for \$22,061.86 but did not attach any writings showing the terms and conditions of the amended credit card agreements applicable to defendant during the relevant times. Consequently, I sustained defendant's preliminary objections to the amended complaint with leave to amend.

Plaintiff filed a second amended complaint which stated at paragraph 11 that plaintiff is unable to attach a copy of the applicable writings governing interest rates and fees. Defendant filed essentially the same preliminary objections to the second

amended complaint that he had filed to the original and first amended complaint; he sought dismissal of the complaint because plaintiff was incapable of providing the writings upon which plaintiff bases its claims.

However, plaintiff's second complaint was not a carbon copy of its prior complaints. Instead, plaintiff sought payment only for the amount of the cash advances and purchases identified in the invoices attached to the complaint, less payments defendant made to plaintiff as set forth in the invoice.

Plaintiff has attached to its second amended complaint the November 2004 statement showing a balance of \$0.00 for the beginning of the billing cycle. Plaintiff has also attached to this complaint the statements from November 2004 through August 2006. Plaintiff alleges that the total amount of the cash advances or purchases shown on these statements, less the total amount of payments shown on these statements, is \$16,251.99. In this lawsuit, this is the only money plaintiff seeks to recover.

In *Worldwide Asset Purchasing*, I stated that under the pleading requirements of Pa.R.C.P. No. 1019, the complaint must contain sufficient documents and allegations to permit a defendant to calculate the total amount of damages that are sought by reading the documents attached to the complaint and the allegations within the complaint. Plaintiff's second amended complaint satisfies this requirement.

While plaintiff cannot produce the writings that govern defendant's obligations during the period in question, it is not disputed that the credit card that is the subject of this litigation was issued to defendant in 1990. A fact-finder may assume that any writing governing defendant's obligations to plaintiff from 1990 to August 2006 would include the obligation to pay the cash advances and the purchases shown on the invoices. Writings that plaintiff cannot produce would be relevant only to establish the

finance charges, late fees, over limit fees, and the like that plaintiff may have been permitted to impose. However, the claim raised in the second amended complaint does not include any of these items. Consequently, the writings that plaintiff attached to the second amended complaint support the claim that plaintiff is raising.

In summary, in consumer credit transactions, the Pennsylvania Rules of Civil Procedure require a credit cardholder seeking to recover money allegedly due to attach to the complaint the writings which support the claim which the credit cardholder is making. Invoices showing cash advances or purchases support a claim for payment of these items.

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ORDER OF COURT

On this 7 day of November, 2007, it is hereby ORDERED that defendant's preliminary objections to plaintiff's second amended complaint are overruled.

BY THE COURT:



WETTICK, A.J.