

<sup>10</sup> The term *debt* is defined to cover only consumer debt. 15 U.S.C. §1692a(5).

<sup>11</sup> A subsequent 2006 amendment to the FDCPA provides that §1692g, requiring specific information to be provided within five days after the initial communication, does not apply to a formal pleading.

<sup>12</sup> My ruling in the present case governs similar preliminary objections to similar complaints filed in *Nowicki v. Bureaus Investment Group Portfolio No. 11, LLC*, AR10-006592; *Celli v. SquareTwo Financial Corp. f/k/a CACH, LLC*, AR10-007358; and *Commonwealth Financial Systems v. Williams* (counterclaim), AR10-005411.

**Citibank (South Dakota) N.A. v.  
Paul A. Mszyco**

*Preliminary Objections—Pa. R.C.P. 1024(c)—Sufficiency of Verification of a Non-party*

No. AR 10-004428. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.  
Wettick, J.—March 15, 2011.

**OPINION AND ORDER OF COURT**

Defendant's preliminary objections requesting that I strike plaintiff's Verification to Amended Complaint are the subject of this Opinion and Order of Court. The Verification reads as follows:

Verification

Sherry Smith is an employee of Citicorp Credit Services, Inc., (USA) which is by contract the service provider for plaintiff Citibank (South Dakota), N.A. retained to perform services including but not primarily limited to collecting delinquent debt. I am authorized to make this verification as attorney-in-fact for plaintiff under powers of attorney from plaintiff to Citicorp Credit Services, Inc. (USA) and to me. The foregoing averments of fact in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to the authorities.

Date: 11-3-10

Signature

Pa.R.C.P. No. 1024(c) is the relevant provision within the Pennsylvania Rules of Civil Procedure. It reads as follows:

(c) The verification shall be made by one or more of the parties filing the pleading unless all the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading. In such cases, the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by a party.

Defendant correctly states that the Verification upon which plaintiff relies does not comply with Rule 1024(c).

According to the Verification, Sherry Smith is not an employee of the plaintiff. The first sentence of Rule 1024(c) requires that the verification be made by one or more of the parties filing the pleading.

There is an exception where every party lacks sufficient knowledge or information. In this situation, Rule 1024(c) requires the person making the verification to state the reason why the verification is not made by a party. Ms. Smith's Verification does not comply with Rule 1024(c) because it does not state that all of the parties lack knowledge or information or offer any other reason for the failure of a party to make the verification.

Furthermore, Ms. Smith's Verification does not comply with the requirements of the second sentence of Rule 1024(c) that she set forth the source of her information as to matters not stated upon her own knowledge. Compliance requires, for example, that she include within the Verification a statement that she has sufficient information to make the Verification and a description of the source of her information.

Plaintiff correctly states that substantial compliance is the appropriate standard in determining whether a verification has complied with the rules. See *Monroe Contract Corp. v. Harrison Square, Inc.*, 405 A.2d 954 (Pa. Super. 1979). However, the core of Rule 1024(c) consists of the requirements that a party verify the pleading unless all parties lack sufficient knowledge or information and belief and that a nonparty who makes the verification state that he or she has sufficient information to make the verification and describe the source of the information. If these requirements may be ignored, there are few requirements that remain.<sup>1</sup> See *Rupel v. Bluestein*, 421 A.2d 406, 414 (Pa. Super. 1980) ("This insistence upon *at least* a properly verified complaint may seem 'technical,' but no apology need be made for that. The rules are clear, and the requirements easily satisfied.")

Plaintiff relies on the provision within the Verification that she is "authorized to make this verification as attorney-in-fact for plaintiff under powers of attorney from plaintiff to Citicorp Credit Services, Inc. (USA) and to me." However, this provision does not make Sherry Smith a party and Rule 1024(c) requires that a verification be made by a party. The requirements of Rule 1024 would become meaningless if a party could circumvent these requirements simply by authorizing a third person to make the verification in a lawsuit brought by that party.

1 As defendant states in his Brief in Support at 6: "In light of the well-known epidemic of 'robo-signing' arising out of the current . . . mortgage foreclosure crises, the Court must be vigilant to ensure that all pleadings are verified in the manner required by Pa.R.C.P. No. 1024(c)."

**ORDER OF COURT**

On this 15th day of March, 2011, upon consideration of defendant's preliminary objections, it is hereby ORDERED that the November 3, 2010 Verification of Sherry Smith is stricken and that an amended verification may be filed within thirty (30) days.

In accordance with a ruling made from the Bench, it is also ORDERED that Count II—Account Stated, is stricken.

BY THE COURT:

/s/Wettick, J.