

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SYNCHRONY BANK,	:	DOCKET NO.15-01,712
Plaintiff / Appellee,	:	CIVIL ACTION – LAW
vs.	:	
	:	<b>144 MDA 2016</b>
HEATHER PETERS,	:	
Defendant / Appellant	:	APPEAL / 1925(a)

**OPINION AND ORDER**  
**Issued Pursuant to Pennsylvania Rule of Appellate Procedure 1925(a)**

This Court issues the following Opinion and Order pursuant to P.R.A.P. 1925(a). This matter arises from an appeal of an order granting summary judgment to Appellee, Synchrony Bank, on December 22, 2015.<sup>1</sup> Summary judgment was entered after Appellee failed to appear for argument and failed to file any response to the motion for summary judgment. On February 8, 2016, Peters filed a Concise Statement of Matters Complained of on Appeal (“Concise Statement”) pro se. In her Concise Statement, Ms. Peters, asserted the following errors.

1. Right to cross examine writings not afforded to appellant pursuant to Pa. R.E. 612(a).
2. Witnesses not made available to appellant for cross-examination pursuant to Pa. R.E. 614(a).
3. Inadmissible hearsay allowed at the lower court level pursuant to Pa. R.E.. 801(a)(b)(c).
4. Inadmissible hearsay allowed at the lower court level pursuant to Pa. R.E. 802.
5. Requirement of authentication and identification of evidence pursuant to Pa. R.E. 901(a) not followed at the lower court level.
6. Appellant’s right to the confrontation clause under article 1 section 9 of the Pennsylvania Constitution has not been afforded at the lower court.
7. Appellant’s right to the confrontation clause under amendment six of the United States Constitution has not been afforded at the lower court.
8. There was insufficient material for the lower court to enter summary judgment pursuant to Pennsylvania Rules of Civil Procedure 1035.2.

**FACTUAL BACKGROUND**

The background of this case follows. On July 15, 2015, Ms. Peters filed a notice of appeal to the Common Pleas Court from a district justice judgment in the amount of \$1,672.91.

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<sup>1</sup> The Order was docketed on December 24, 2015.

A rule was entered upon Synchrony Bank to file a complaint within twenty days. On July 31, 2015, Synchrony Bank filed a complaint to collect a debt for credit card charges for purchases of goods and services in the amount of \$1,569.41 plus costs. On September 8, 2015, Ms. Peters filed an answer to the complaint. On September 24, 2015, Synchrony Bank filed an amended complaint. On October 21, 2015, Ms. Peters filed an answer to the amended complaint. In both her answer and her answer to the amended complaint, Ms. Peters generally denied all paragraphs in the complaint, except as to her name and address. Those general denials stated the following.

DENIED. After reasonable investigation, defendant is without sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph five of plaintiff's complaint. Answer, filed September 8, 2015, ¶¶ 1, 3-10; Answer to Amended Complaint in Civil Action, filed October 21, 2015, ¶¶ 1-2; 4-19.

On September 24, 2015, Synchrony Bank served interrogatories and requests for admissions upon Ms. Peters. On October 21, 2015, Ms. Peters filed answers to requests for admissions and interrogatories. Those answers were not verified and were all general denials, substantially similar to the answers to the complaints.

On November 6, 2015, Synchrony Bank filed a motion for summary judgment. In its motion for summary judgment and supporting memorandum, Synchrony Bank sought judgment as a matter of law because Ms. Peters admitted the allegations of the complaint by providing only general denials or requests for proof pursuant to Pa. R.C.P. 1029. Synchrony Bank also sought summary judgment because Ms. Peters failed to verify her answers to the Bank's request for admissions, which had the effect of admitting them pursuant to Pa. R.C.P. 4014(b). Lastly, Synchrony Bank sought summary judgment because it proved a default on the record of an account stated arising from Plaintiff's failure to object or protest billing statements she received.

On November 17, 2016, the Court issued an Order scheduling argument on the Bank's motion for summary judgment and requiring that Ms. Peters file a brief and response to the

motion within 30 days. Ms. Peters did not file a response to the motion for summary judgment. Ms. Peters did not file a brief. Ms. Peters did not appear for argument. On December 22, 2016, after the Ms. Peters failed to appear for argument or file a response to the motion, the Court granted summary judgment to the Appellee, Synchrony Bank, in the amount of \$1,569.41.

## **DISCUSSION**

Pa. R.C.P. No. 1035.3(d) provides that “[s]ummary judgment may be entered against a party who does not respond.” Although it is not mandatory, Rule 1035.3(d) permits the Court to enter summary judgment for failure to respond. *See, Devine v. Hutt*, 2004 PA Super 460, 863 A.2d 1160 (Pa. Super. 2004), *citing, Thomas v. Elash*, 2001 PA Super 214, 781 A.2d 170, 177 (Pa. Super. 2001). “[A]rguments not raised initially before the trial court in opposition to summary judgment cannot be raised for the first time on appeal. *Devine, supra*. (further citations omitted).

In the present case, summary judgment was appropriate because Ms. Peters failed to respond to the motion. Ms. Peters did not file a response to the motion for summary judgment, did not file a brief as required, and did not appear for the argument on the motion for summary judgment. Summary judgment was also appropriate because Ms. Peter failed to sufficiently aver, much less produce evidence, that there was any dispute as to any issue of material fact. Instead, her responses had the lawful effect of admitting the allegations in the complaint and requests for admissions. *See, Pa. R.C.P. 1029; Pa. R.C.P. 4014(b)*. As a result, it was appropriate for the Court to grant summary judgment to the Bank.

Finally, the issues raised by Ms. Peters in her Concise Statement were waived because they were not raised before the trial court. *See, e.g., Devine, supra*.<sup>2</sup> Nothing was raised before the trial court in response to the motion for summary judgment. The matters in the

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<sup>2</sup> “Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.” Pa. R.A.P. 302.

Concise Statement appear to relate to evidentiary issues that could possibly arise at trial. A trial would be afforded after a motion for summary judgment only if evidence had been adduced as to a dispute of material fact as to any defense. As there was no response to the motion, there was no evidence that a dispute of material fact existed.

For these reasons, and those provided in its Order entered on December 22, 2015, this Court respectfully requests that the summary judgment against Appellant Heather Peters be affirmed.

BY THE COURT,

April 6, 2016  
Date

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Richard A. Gray, J.

cc: Gregg L. Morris, Esq. – Counsel for Plaintiff/Appellee  
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