

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

PORTFOLIO RECOVERY ASSOCIATES, LLC,	:	
Plaintiffs	:	NO. CV-21-0530
	:	
vs.	:	
	:	
ROGER FUNK,	:	CIVIL ACTION –
Defendant	:	Preliminary Objections

OPINION AND ORDER

Before the Court are Defendant’s Preliminary Objections to Plaintiff’s Amended Complaint. For the reasons set forth below, the Preliminary Objections are overruled.

This credit card debt collection action arises out of Defendant’s alleged failure to make full payment of the amount of \$2,298.01 owed on his credit card account. *See Complaint at Paragraphs 5-7.* Plaintiff’s initial Complaint was filed on June 8, 2021 whereupon Defendant filed Preliminary Objections on June 30, 2021. This Court sustained those objections to the extent that Plaintiff failed to show a link between the Bill of Sale attached to its initial Complaint to the Defendant’s credit card account. All other objections, which related to lack of specificity, were overruled. Plaintiff filed an Amended Complaint on October 14, 2021 purportedly correcting the prior issue regarding the Bill of Sale. However, Defendant filed Preliminary Objections to Plaintiff’s Amended Complaint raising two additional objections.

First, Defendant argues that the verification attached to Plaintiff’s Amended Complaint is improper because it is signed by the attorney handling the matter who is “authorized to make [the] verification on behalf of the Plaintiff.” The verification states that one signed by an appropriate representative of the Plaintiff

could not be obtained within the time for filing the Complaint. Next, Defendant argues that Plaintiff's Amended Complaint fails to explicitly state that its cause of action is couched in a breach of contract claim. Plaintiff responded to Defendant's Preliminary Objections and argument was held January 11, 2022.

Pursuant to the Rules of Civil Procedure, "[p]reliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(2) failure of a pleading to conform to law or rule of court . . . ;

(4) legal insufficiency of a pleading (demurrer)

Pa.R.C.P. 1028(a)(2) and (4).

It is well settled that Pennsylvania is a fact pleading state and that when a Court is considering preliminary objections, all material facts set forth in the complaint, as well as reasonable inferences therefrom, are admitted as true. *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa.Super. 2020); *Richmond v. McHale*, 35 A.3d 779, 783 (Pa.Super. 2012). "If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections." *Richmond v. McHale*, 35 A.3d 779, 783 (Pa.Super. 2012). Additionally, all pleadings which contain averments of fact not appearing of record must be verified by a person with "personal knowledge or information and belief" of such facts. Pa.R.C.P. 1024(a).

Regarding the verification issue, at the time of argument, Counsel for Plaintiff indicated that an amended verification was filed November 16, 2021. However, Counsel for Defendant does not have a copy of that verification and there is no praecipe to substitute contained in the Court's file. Within twenty (20) days of the date of this Order, Plaintiff shall file the appropriate documentation to

substitute its verification and forward a copy of the amended verification to Defendant's Counsel. Thereafter, Defendant may object to the amended verification within the time limits prescribed by the Rules of Civil Procedure. This objection is overruled as moot.

Also at the time of argument, and as set forth in its written Response to Preliminary Objections, Counsel for Plaintiff acknowledged that the cause of action is a breach of contract, and that it has sufficiently pled such. Plaintiff alleges in its Amended Complaint, among other things, that Defendant entered into an agreement with Plaintiff, that Defendant obtained and used credit, and that Defendant failed to make full payment such that he owes a balance in excess of \$2,000.¹ Therefore, based on Plaintiff's acknowledgment and the allegations as set forth in the Amended Complaint, this objection is overruled.

¹ "In a claim for breach of contract, the plaintiff must allege that 'there was a contract, the defendant breached it, and plaintiff[] suffered damages from the breach.'" *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa.Super. 2011), citing *McShea v. City of Philadelphia*, 995 A.2d 334, 340 (Pa. 2010).

ORDER

AND NOW, this 18th day of **January, 2022**, upon consideration of Defendant's Preliminary Objections to Plaintiff's Amended Complaint and Plaintiff's response thereto, and for the reasons set forth above, the Preliminary Objections are **OVERRULED**. Based upon Plaintiff's Counsel's statements, within twenty (20) days of the date of this Order, Plaintiff shall file the appropriate documentation to substitute its verification and forward a copy of the amended verification to Defendant's Counsel. Thereafter, Defendant may object to the amended verification within the time limits prescribed by the Rules of Civil Procedure.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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