

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

**BANK OF AMERICA, N.A.,  
Plaintiff**

**vs.**

**KENDALL A. RAMOS,  
Defendant**

:  
: **NO. CV-21-0743**  
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:  
: **CIVIL ACTION –**  
: **Preliminary Objections**

**OPINION AND ORDER**

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

**I. Factual and Procedural Background**

This credit card debt collection action arises out of Defendant’s alleged failure to make full payment of the amount of \$8,008.17 owed on a credit card account. *See Complaint at Paragraph 5.* In its seven (7) paragraph Complaint, Plaintiff alleges that Defendant opened a credit card account issued by Plaintiff in February 2016, that Defendant subsequently used the account, that Defendant has failed to pay the balance due, and that the last payment was made in August 2019. *See Complaint at Paragraphs 2-7.* Attached to the Complaint is a monthly statement from February 7, 2020 through March 6, 2020 showing a balance of \$8,008.17.

Plaintiff’s Complaint was filed on July 28, 2021 and Defendant filed Preliminary Objections on October 27, 2021. Plaintiff filed a Brief in Opposition to the Preliminary Objections and argument was held on December 16, 2021. At the time the Court scheduled this matter for argument, the Court specifically stated that the Defendant was required to distinguish the facts in this case from those

set forth in *Portfolio Recovery Associates, LLC v. Templin*, No. CV-19-740 (Lycoming Co. Oct. 17, 2019).

## II. Discussion

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 or inclusion of scandalous or impertinent matter;

(3) insufficient specificity in a pleading;

(4) legal insufficiency of a pleading (demurrer) . . .

Pa.R.C.P. 1028(a)(2), (3), and (4).

It is well settled that Pennsylvania is a fact pleading state, meaning that pleadings must put the opponent on notice of the issues and formulate those issues by summarizing the facts essential to the claim. *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa.Super. 2020); see also Pa.R.C.P. 1019(a).

Rule 1019 of the Pennsylvania Rules of Civil Procedure specify that a pleader must attach a copy of the writing upon which a claim is based and that “[a]verments of time, place and items of special damage shall be specifically stated.” Pa.R.C.P. 1019(f); Pa.R.C.P. 1019(i) (“When 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).

“When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as well as all inferences reasonably

deducible therefrom . . . . 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).

Specifically regarding credit card debt disputes, the Superior Court has held that a plaintiff’s complaint was sufficient and put the defendant on notice of its claims when it alleged the following: that defendant was subject to the terms and conditions of a card member agreement which was attached to the complaint; that defendants failed to make monthly payments and attached “numerous” account summaries depicting the balance due and payments made for approximately seven (7) years; and that a copy of the application submitted by plaintiffs was unavailable due to the age of the contract. *Discover Bank v. Stucka*, 33 A.3d 82, 87 (Pa.Super. 2011). However, the Court also held that plaintiff was not required to attach a signed document. *Id.*

Additionally, the *Templin* Court, *supra*, held that plaintiff “sufficiently summarized the material facts necessary to enable Defendant to prepare her defense” when plaintiff averred that it “issued the original credit account to Defendant at Defendant’s request; that Defendant made use of the credit account and is in default of the credit agreement; that the amount due is \$8,079.27, and; that despite requests from the Plaintiff, Defendant has failed to pay the overdue amount.” *Id.* at 2-3. These allegations, coupled with the fact that plaintiff attached a template version of the account agreement and the billing records reflecting the balance requested, put defendant on notice of the claims. *Id.* at 2.

Here, Defendant first argues that Plaintiff failed to attach to its Complaint Defendant's credit card application, card member agreement between Plaintiff and Defendant, or any other signed, written agreement. Next, Defendant argues that Plaintiff's Complaint lacks specificity because it fails to include information such as dates and amounts of charges, payments, and any interest charges. The Court agrees with the Defendant. Plaintiff has pled that Defendant was subject to a cardholder agreement, that Defendant breached that agreement, and set forth the exact dollar amount requested. However, Plaintiff has failed to attach a copy of Defendant's application and a copy of the cardholder agreement,<sup>1</sup> or alternatively allege that they are not available. Additionally, Plaintiff attached to its Complaint only one statement covering one month even though it alleges that the account was opened, and presumably being used, since February 2016. The statement attached only accounts for \$154.68 of the total amount due. Pursuant to the above Rules and case law, Plaintiff must attach a copy of monthly statements showing *how* \$8,008.17 came to be due including alleged charges and payments.

### **III. Conclusion**

Therefore, for the reasons set forth above, Defendant's Preliminary Objections are sustained. Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint pursuant to the above.

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<sup>1</sup> However, Plaintiff is not required to attach a signed agreement.

**ORDER**

**AND NOW**, this 18<sup>th</sup> day of **January, 2022**, upon consideration of Defendant's Preliminary Objections and Plaintiff's response thereto, and for the reasons set forth above, Defendant's Preliminary Objections are **SUSTAINED**.

Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint pursuant to the above.

BY THE COURT,

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Hon. Ryan M. Tira, Judge

RMT/ads

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