

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CACH LLC@830934

Plaintiff,

v.

HALLIE GIBSON,

Defendant.

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C.A. No.: CPU4-12-000182

ORDER

AND NOW THIS 24th day of April, 2012, the Court having considered the pleadings, written submissions and oral argument by the parties for the following motions: (1) Defendant's Motion to Comply With Administrative Directive 2011-1; (2) Defendant's Demand for Strict Proof; (3) Defendant's Motion to Dismiss for Lack of Standing; (4) Defendant's Motion to Strike Affidavit; (5) Defendant's Motion to Strike Credit Card Statement; and (6) Defendant's Motion to Dismiss, it appears to the Court that:

1. Plaintiff filed three separate civil debt actions against this Defendant: (1) CPU4-12-000182 (filed January 13, 2012); (2) CPU4-12-000617 (filed February 16, 2012); and (3) CPU4-12-000856 (filed February 21, 2012), all of which are pending in this Court. All of the actions appear to arise out of delinquent credit card accounts with original creditor Bank of America, the rights to which were purchased by Plaintiff. Defendant filed an Answer for each of the respective actions.

2. Specifically, in CPU4-12-000182, Defendant filed several motions which the Court heard on Friday, April 13, 2012: (a) Motion to Comply with Administrative Directive 2011-1; (b) Demand for Strict Proof; (c) Motion to Dismiss for Lack of Standing; (d) Motion to Strike Affidavit; (e) Motion to Strike Credit Card Statement; and (f) Motion to Dismiss for Failure to State a Claim Upon Which Relief May Be Granted.

3. In a parallel action, CPU4-12-000617, Defendant filed the following motions: (a) Motion to Dismiss for Failure to Comply with Administrative Directive 2011-1; (b) Motion to Strike the Affidavit of Debt and Chain of Title Chart; (c) Motion to Strike the Credit Card Statement and Untitled Document; and (d) Motion to Dismiss per Rule 12(b)(6), all of which were noticed for Friday, April 20, 2012. She did not file a Demand for Strict Proof or a Motion to Dismiss for Lack of Standing, as she did in this action, CPU4-12-000182. No motions are pending in the third action, CPU4-12-000856.

4. For purposes of consistency and efficiency, the Court heard argument and issued rulings upon the pending motions for CPU4-12-000182 and CPU4-000617 on Friday, April 13, 2012. The Court's rulings for motions pertaining to civil action CPU4-12-000182 are memorialized herein. The Court's decision memorializing the rulings issued April 13, 2012 on motions pending in civil action CPU4-12-000617 will be issued by separate order and docketed accordingly.

I. Defendant's Motion to Comply with Administrative Directive 2011-1

1. Defendant argued that the Complaint filed in CPU4-12-000182 failed to comply with this Court's Administrative Directive. As such, she contends the Complaint should be dismissed outright, or alternatively, Plaintiff should be required to file an

Amended Complaint that complies with the Directive within 30 days. Plaintiff responded that Defendant's motion should be denied as no valid legal basis exists under this Court's Directive and/or the Court of Common Pleas Civil Rule of Procedure to request such relief. This Court agrees.

2. Per paragraph (4) of the Administrative Directive, if a debt collection plaintiff fails to comply with the administrative directive, the Court may either deny the entry of judgment or withdraw a judgment previously entered. Stated differently, compelling performance with the Administrative Directive is not the appropriate remedy for non-compliance. Rather, the appropriate remedy is to deny a dispositive motion made by a plaintiff, such as motion for judgment on the pleadings, motion for summary judgment and/or motion for judgment after trial based upon the movant's non-compliance. Here, Plaintiff has not filed any case dispositive motions. Thus, the remedy that Defendant seeks for any alleged non-compliance is not available at this time.

3. The Court's ruling in no way precludes Defendant from raising any alleged non-compliance at a later stage of the litigation. Plaintiff is encouraged to cure any deficiencies in its pleadings that may presently exist to ensure compliance with this Court's Administrative Directive.

Accordingly, Defendant's Motion to Comply with Administrative Directive 2011-1 is hereby DENIED.

II. Defendant's Demand for Strict Proof

1. Defendant filed this motion to demand that Plaintiff provide Defendant with evidence establishing that Plaintiff is the proper party in interest to pursue this

action, including the original contract and documentation as to chain of assignment. Even though Defendant captioned the motion as a Demand for Strict Proof, the Court will treat the motion as a Motion to Compel.

2. On March 19, 2012, Defendant filed a notice of discovery upon Plaintiff which included Interrogatories, a Request for Production of Documents and Requests for Admission. Plaintiff further represented that it is still in the process of formulating its responses to Defendant's discovery. Responses are not due until April 18, 2012. Thus, Defendant's motion is premature.

Accordingly, Defendant's Demand for Strict Proof is hereby DENIED.

III. Defendant's Motion to Dismiss for Lack of Standing

1. Defendant moved to dismiss the complaint arguing that Plaintiff lacks standing to sue due to the absence of privity as between the parties. Defendant further avers that Plaintiff failed to establish that it is a licensed debt collector in Delaware. Thus, Plaintiff's claim should be dismissed for failure to state a claim.

2. In response, Plaintiff contends that Defendant had accounts with Bank of America and Bank of America is the original creditor. Defendant defaulted on those accounts, and Defendant's delinquent accounts were sold to this Plaintiff. Defendant's consent to the assignment is not required, nor is a license to be a debt collector required to file a Complaint. Assuming the facts of the Complaint are true, Plaintiff argues it has standing to sue based upon the assignment and the motion should be denied.

3. For purposes of judging a motion to dismiss a complaint for failure to state a claim made pursuant to CCP Civ. R. 12(b)(6), all well-pleaded allegations must be

accepted as true.¹ The test for sufficiency is a broad one; that is, whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.² If a plaintiff may recover, the motion must be denied.³ As discussed at the hearing, applying this standard to the facts at bar, the Court finds that the Complaint sets forth sufficient allegations to survive this motion. A reasonably conceivable set of circumstances exists by which this Plaintiff would be entitled to recover.

Accordingly, Defendant's Motion to Dismiss for Lack of Standing is DENIED.

IV. Defendant's Motion to Strike Affidavit of Debt and Chain of Title Chart

1. Defendant moved to strike the Affidavit and Chain of Title Chart challenging the authenticity of the Affidavit and the affirmations contained therein. Defendant argued that the Affidavit also refers to numerous documents which Plaintiff failed to attach to the Affidavit in violation of Court of Common Pleas Civil Rule 56(e).

2. By its response, Plaintiff argues that Defendant's motion should be denied because no legal basis exists under this Court's rules to file such a motion to strike. Moreover, even if such a rule did exist, it is premature at this stage of the litigation.

3. Court of Common Pleas Civil Rule 56(e) governs affidavits filed for considerations of Motions for Summary Judgment. The Affidavit was not filed with a motion for summary judgment; rather, it was filed with the Complaint. Thus, this Court

¹ *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978); *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

² *Spence*, 396 A.2d at 968 (citation omitted).

³ *Id.*

finds that the challenge is premature. Defendant may dispute the authenticity of the statements in the Affidavit at a later time in the proceeding. Plaintiff is permitted to provide the proper Affidavit if a Motion for Summary Judgment is filed, or may attempt to lay a proper foundation for the documents at trial.

Accordingly, Defendant's Motion to Strike Affidavit of Debt and Chain of Title Chart is hereby DENIED as premature.

V. Defendant's Motion to Dismiss Complaint

1. Defendant moved to dismiss the Complaint arguing that it fails to state a claim upon which relief may be granted for breach of contract. Defendant avers that the facts contained in the Complaint are not true. No evidence exists to show that a contract existed as between these parties. As no contractual basis exists upon which Plaintiff may seek relief, the action must be dismissed.

2. Plaintiff responds that Defendant's motion should be denied as the complaint does state a claim upon which relief may be granted under Delaware law. Moreover, after sufficient discovery, Plaintiff is confident that it will meet its burden to prove Defendant's liability in this case and the damages alleged.

3. As stated *infra*, in considering motions to dismiss filed pursuant to Court of Common Pleas Civil Rule 12(b)(6), the Court must assume all well-pleaded facts in the complaint are true.⁴ The complaint should not be dismissed unless "the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances

⁴ *Battista*, 454 A.2d at 287.

susceptible to proof.”⁵ To set forth a prima facie case for breach of contract, Plaintiff must first allege that a contract existed. Second, Plaintiff must aver that Defendant breached an obligation imposed by the contract. Finally, Plaintiff must allege that it sustained damages as a result of Plaintiff’s alleged breach.

5. Applying this standard to the facts at bar, this Court finds that the Complaint sets forth sufficient allegations as to breach of contract to survive this motion. Plaintiff alleges a contract exists between CACH LLC and Defendant by way of an assignment of rights from Bank of America to CACH LLC. Plaintiff further alleges that Defendant breached the contract by defaulting on payments. Finally, Plaintiff alleges that damages were sustained, including interest. No attorney fees are sought. Accordingly, Plaintiff has set forth sufficient allegations to withstand Defendant’s motion at this stage of the litigation.

Accordingly, Defendant’s Motion to Dismiss for Failure to State A Claim Upon Which Relief May Be Granted pursuant to Court of Common Pleas Civil Rule 12(b)(6) is hereby DENIED.

VI. Motion to Strike Credit Card Statement and Untitled Document

1. Defendant filed this Motion arguing the credit card statement and an untitled document attached to the Complaint should be stricken. She contends that neither document is certified or authenticated. She also states that no Affidavit was attached to the Complaint verifying the authenticity of either document, nor was any

⁵ *Id.* (citations omitted).

proper foundation laid as to the admissibility pursuant to Delaware Rule of Evidence 803(6), the "Business Records" exception.

2. By its response, Plaintiff argues that Defendant's motion should be denied as premature. Plaintiff further argues that Defendant as a *pro se* is held to the same standard as an attorney in this litigation. Because Plaintiff contends there is no legal basis in law or fact to maintain this motion and it is filed to harass and/or needlessly increase litigation costs, Plaintiff counter-moved for Rule 11 sanctions against Defendant.

3. As discussed at the hearing, the Court finds that the issue of admissibility of the questioned documents is an issue reserved for trial. Plaintiff may use witness testimony at trial to lay the proper foundation regarding the admissibility of the subject credit card statements. Thus, any question as to the admissibility of either document is premature.

Accordingly, Defendant's Motion to Strike Credit Card Statement and Untitled Document is DENIED as premature. It is further ordered that Plaintiff's counter-motion for Rule 11 sanctions is DENIED.

WHEREFORE, upon consideration of the pleadings, written submissions and oral argument, the Court hereby ORDERS that:

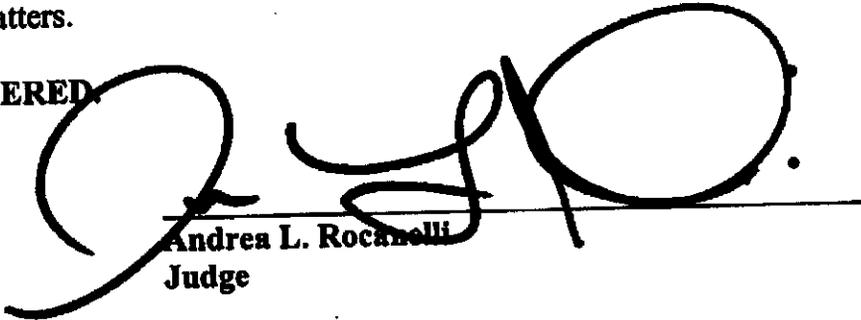
- a. Defendant's Motion to Comply with Administrative Directive 2011-1 is **DENIED**.
- b. Defendant's Demand for Strict Proof is **DENIED**.
- c. Defendant's Motion to Dismiss for Lack of Standing is **DENIED**.

- d. Defendant's Motion to Strike Affidavit of Debt and Chain of Title is **DENIED**.
- e. Defendant's Motion to Dismiss Complaint For Failure To State A Claim Upon Which Relief May be Granted is **DENIED**.
- f. Defendant's Motion to Strike Credit Card Statement and Untitled Document is **DENIED**.
- g. Plaintiff's Motion for Rule 11 Sanctions is **DENIED**.

IT IS FURTHER ORDERED THAT as per agreement of the parties on the record at the hearing April 13, 2012, the parties are to communicate only via electronic mail delivery as to any issue related to litigation in any of the three pending matters. Plaintiff's e-mail address is pis@delcollections.com. Defendant's e-mail address is gibsonnicole@verizon.net.

IT IS FURTHER ORDERED THAT this Judicial Officer will not retain jurisdiction in these matters.

IT IS SO ORDERED.



Andrea L. Rocanelli
Judge