

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

CITIBANK (SOUTH DAKOTA) N.A., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JULIAN J. SANTIAGO, )  
 )  
 Defendant. )

C.A. No.: CPU4-11-005562

Date Submitted: February 3, 2012  
Date Decided: February 23, 2012

Holly M. Whitney, Esquire  
Mattleman, Weinroth & Miller, P.C.  
200 Continental Drive, Suite 215  
Newark, Delaware 19713  
*Attorney for Plaintiff*

Ronald G. Poliquin, Esquire  
Law Firm of Ronald G. Poliquin, P.A.  
375 W. North Street  
Dover, Delaware 19901  
*Attorney for Defendant*

**ORDER ON DEFENDANT'S MOTION TO DISMISS**

Plaintiff, Citibank South Dakota, N.A. ("Citibank") on September 27, 2011, brought a debt action against Julian J. Santiago ("Santiago") for \$11,566.05, alleging breach of a credit card agreement. On December 15, 2011, Santiago filed the instant motion to dismiss the complaint pursuant to CCP Civil Rule 12(b)(6); alleging the following: failure to state a claim – breach of contract; failure to state a claim for account stated; failure to state a claim – credit card account; and failure to state a claim – unjust enrichment. On December 29, 2011, Citibank filed a response to Santiago's motion, arguing that the complaint is not subject to dismissal because Citibank pled all the elements to support its breach of contract by alleging: (1) an agreement existed between the parties because Citibank sent Santiago a credit card and Santiago used this card; (2) Santiago failed to make payments as required by the terms of this agreement; and (3) as a result, Citibank suffered

damages. On January 3, 2011, the Court heard oral argument on the motions. During oral argument, Santiago withdrew the credit card account claim and proceeded on the other allegations. At the conclusion of the hearing, the Court ordered the parties to file briefs in support of their respective positions and set forth a schedule requiring the final brief to be filed on February 3, 2012. The parties did not submit post-argument briefs, therefore, the Court's decision is based upon the Motion, the Response, and Oral argument.

### **Discussion**

When considering a motion to dismiss under CCP Civil Rule 12(b)(6), the Court must assume all well-pleaded facts in the complaint are true.<sup>1</sup> The complaint should not be dismissed unless "the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible to proof."<sup>2</sup> Santiago's motion to dismiss argues that the Complaint fails to state a claim upon which relief can be granted for: (1) breach of contract; (2) account stated; (3) credit card account; and (4) unjust enrichment. In its response, Citibank acknowledged that it did not plead a cause of action for unjust enrichment. Also during oral argument, Defendant conceded the complaint set forth claims based upon a credit card account, and withdrew that argument. Accordingly, the Court need only consider Defendant's arguments for failure to state a claim for breach of contract and account stated.

In order to plead a claim for breach of contract, the plaintiff must allege the following: (1) a contract exists between the parties; (2) the defendant breached the terms of the contract; and (3) as a result, the plaintiff suffered damages.<sup>3</sup> Santiago argues Citibank has failed to state a claim upon which relief can be granted for breach of contract because Citibank did not attach a copy of the alleged contract to the Complaint. This argument is without merit. The rules of pleading requires

---

<sup>1</sup> *Battista v. Chrysler Corp.*, 454 A.2d 286, 287 (Del. Super. 1982).

<sup>2</sup> *Id.* (citations omitted).

<sup>3</sup> *VLIW Tech., LLC v. Hewlett-Packard Co. STMicroelectronics, Inc.*, 840 A.2d 606, 612 (Del. 2003).

that each claim be set forth in short and plain statement showing that the pleader is entitled to relief. Administrative Directive # 2011-1, effective July 1, 2011, requires in all “consumer loan or credit card debt collections”, a copy of the original contract or other documentary evidence of the original debt shall be attached to the complaint. In those proceedings, documentary evidence of the debt by the original creditor was attached to the complaint pursuant to CCP Civil Rule 12(b)(6). Attached is a copy of a billing statement which reflects the balance due and the account number when the defendant defaulted and a copy of the terms and conditions of the account. Additionally, Citibank attached an affidavit of its records custodian attesting to the accuracy of the two documents. These are sufficient to comply with the Administrative Directive.

Further, the Complaint alleges: (1) that a contract existed between the parties for a specific account ending in #2726; (2) that Santiago breached the terms of this contract by failing to make payments when due; and (3) as a result, Citibank suffered damages in the amount of \$10,514.59. In other words, Citibank alleged that a credit card agreement existed between the parties, Santiago breached the agreement, and it sustained damages as a result. These facts are sufficient to set forth a claim upon which relief can be granted for breach of contract.

In order to set forth a claim for account stated, the plaintiff must allege the following: (1) an account existed between the parties; (2) the defendant stated or admitted to owing a specific sum on the account to the plaintiff; and (3) the defendant made this admission after the original account or debt was created.<sup>4</sup> Santiago argues that Citibank failed to state a claim upon which relief can be granted for account stated because Citibank failed to attach with the complaint a copy of each statement of account evidencing how the alleged balance on the account arose from the time the account was opened until the time of the alleged breach.

---

<sup>4</sup> *Chrysler Corp. v. Airtemp Corp.*, 426 A.2d 845 (Del. Super. 1980).

The pleading is not clear regarding a claim for account stated. Citibank merely alleges that Santiago under “the account” was required to make prompt and regular payments. Account is a common law form of action by which a claim may be pursued.<sup>5</sup> It is defined as an unsettled claim or demand by one person against another based upon a transaction creating a debt and creditor relation between the parties which is usually but not necessarily represented by an *ex parte* record kept by one or both of them. *Chrysler* at 846. It is held that an agreement constituting an account stated must be subsequent to the creation of the debt. It must be an agreement by the debtor that the debtor owes a certain sum and there must be a valid underlying indebtedness upon which the account stated rests. As such, the pleading must set forth accounts evidencing the underlying indebtedness.

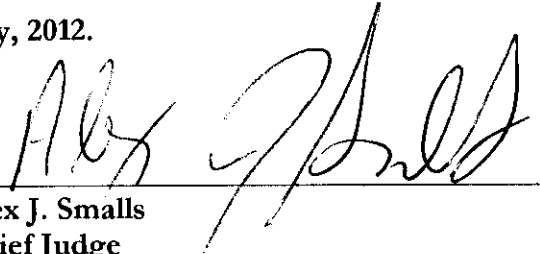
The pleading in those proceedings does not set forth the elements to establish a claim for account stated. In order to plead a claim for account stated, the complaint must provide facts that the defendant stated or admitted to owing a specific sum on the account to the plaintiff. The complaint in this action contains no such averment, or factual allegation even remotely close to meeting this requirement. In its response to the motion to dismiss, Citibank did not address this argument, but merely states that the complaint states a claim for account stated, without further support. When read in its entirety, the claim for account stated failed to set forth a claim for which relief can be granted, and as such must be dismissed.

Therefore, it is hereby ORDERED that Santiago’s motion to dismiss is denied as to Citibank’s claim for breach of contract; but GRANTED with respect to Citibank’s claim for account stated and unjust enrichment. The defendant is required to file a responsive pleading within ten (10) days hereof.

---

<sup>5</sup> 2 *Wolley on Delaware Practice* 1460, p. 985.

**IT IS SO ORDERED** this 23<sup>rd</sup> day of February, 2012.

  
\_\_\_\_\_  
**Alex J. Smalls**  
**Chief Judge**

cc: Civil Clerk

Citibank-OP Feb 2012

**ADMINISTRATIVE DIRECTIVE  
OF THE  
CHIEF JUDGE OF THE COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**

**NO. 2011-1**

**CONSUMER DEBT COLLECTION ACTIONS**

This 16<sup>th</sup> day of March, 2011,

**WHEREAS**, pursuant to *10 Del. C. §1302(d)*, the authority being vested in the Chief Judge as the administrative head of the Court during the term of his appointment; and

**WHEREAS**, Court of Common Pleas Civil Rule 8, "General Rules of Pleading," sets forth the basic requirements of pleading required by Delaware law; and

**WHEREAS**, Court of Common Pleas Civil Rule 11, "Signing of Pleadings, Motions, and other Papers: Representations to Court, Sanctions," requires certification by counsel that every pleading, motion or other paper filed meets the standards set by the Court; and

**WHEREAS**, consumer debt collection actions filed with the Court continue to grow at an exponential rate, straining the court system and imposing an increased burden upon judicial resources; and

**WHEREAS**, the Court seeks to better manage consumer debt collection litigation to improve efficiency and fairness to litigants; and

**WHEREAS**, the Court finds it prudent and consistent with sound public policy and due process to adopt and implement standardized procedural guidelines in consumer debt collection actions to ensure fairness to all litigants and improve efficiency in the administration of justice.

**NOW, THEREFORE, IT IS DIRECTED** that:

1. **Pleading Requirements For Complaints In Consumer Loan or Credit Card Debt Collection Actions:** In any cause of action initiated in a consumer loan or credit card debt collection action, the following information shall be set forth with specificity by the plaintiff/creditor:

- a. the caption shall name both the original creditor and the current assignee;
- b. the name of the original creditor and the last four digits of the original account number of the debt;

- c. the name of the current owner of the debt;
- d. the full chain of the assignment of the debt, if the action is not filed by the original creditor; and
- e. the amount claimed as currently owed, broken down by principal due at the time of default, interest, fees and other charges.

2. **Complaint in Consumer Loan or Credit Card Debt Collection Litigation Shall Be Accompanied by Certain Documents:** In any cause of action initiated by a plaintiff/creditor in a consumer or credit card debt collection action, the following materials shall be attached to the complaint by the plaintiff/creditor:

- a. a copy of the original contract or other documentary evidence of the original debt; and
- b. a copy of the assignment or other documentary evidence establishing that the plaintiff/creditor is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain at least the last four digits of the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

3. **Motions to Compel Discovery:** In any motion filed pursuant to Court of Common Pleas Civil Rule 37(a), the moving party must certify pursuant to Rule 37(e)(1) regarding efforts to reach an agreement before applying to the Court for relief. All parties are expected to consult with one another in good faith to resolve any discovery dispute prior to filing discovery-related motions.

4. **Judgment.** If it appears that a plaintiff has failed to comply with this Administrative Directive, the Court may, on motion or *sua sponte*, deny the entry of judgment, or withdraw entry thereof.

5. **Trial:** The Court will be guided by the following considerations:

- a. If the plaintiff/creditor is not prepared for trial on the assigned trial date, but the defendant/debtor appears and is prepared for trial to proceed, the Court may:
  - i. dismiss the action with or without prejudice;
  - ii. take other action such as continuing the matter, or enter such order(s) as justice requires, including awarding costs to defendant/debtor.
- b. If the defendant/debtor either fails to appear or is not ready to proceed to trial on the assigned trial date, but the plaintiff/creditor does appear and is prepared to proceed to trial, the Court may:

- i. grant judgment by default pursuant to the Court's procedure outlined herein; or
  - ii. take other action such as continuing the matter, or enter such order(s) as justice requires, including awarding costs to the plaintiff/creditor.
- c. If no party appears on the assigned trial date or both parties appear and neither is prepared for trial, the Court may:
- i. dismiss the action with or without prejudice; or
  - ii. take other action such as continuing the matter, or enter such order(s) as justice requires.

6. **Attorneys' Fees:** Pursuant to Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct, attorneys' fees must be reasonable.

7. This Administrative Directive shall apply to all civil consumer debt actions within its scope filed on or after July 1, 2011.

BY THE CHIEF JUDGE:

S// Alex J. Smalls

Alex J. Smalls  
 Chief Judge  
 Court of Common Pleas

cc: Judge John K. Welch  
 Judge Rosemary B. Beauregard  
 Judge Kenneth S. Clark, Jr.  
 Judge Charles W. Welch, III  
 Judge Joseph F. Flickinger, III  
 Judge Andrea L. Rocanelli  
 Judge Anne H. Reigle  
 Judge Eric M. Davis  
 Commissioner Joseph W. Maybee  
 Commissioner Mary M. McDonough  
 Carole B. Kirshner – Court Administrator  
 Deborah Mowbray – Clerk of Court  
 Teresa Lindale – Clerk of Court, Kent County  
 Wanda Smith – Clerk of Court, Sussex County