

# Adams County Legal Journal


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NOTICE

On the 25th day of July 2017, at 1:00 p.m., a hearing will be held in Courtroom No. 4 of the Adams County Courthouse, to determine whether the Gettysburg Area School District shall sell an unimproved lot with an area of approximately .21 acre located on Wall Alley in the Borough of Gettysburg, Pennsylvania, 17325, to the Gettysburg Presbyterian Church for the purchase price of \$15,700.00, upon terms and conditions set forth in an Agreement of Sale dated May 1, 2017. Any person who wishes to oppose the sale must attend the hearing and be heard.

Robert L. McQuaide, Solicitor  
717-337-1360

7/7, 7/14, 7/21

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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on May 12, 2017, a petition for name change was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of Petitioner, Adrianna Lynn Preston to Adrianna Lynn Weaver. The Court has affixed the 21st day of July, 2017 at 10:30 A.M. in courtroom #4, third floor of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the Petitioner should not be granted.

7/21

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## BARCLAYS BANK DELAWARE V. MELANIE BRODHEAD

1. Plaintiff set forth an account stated cause of action. An account stated claim can be set forth without requiring a written agreement to be attached to the complaint, so long as a current statement is attached, which shows a balance due on the account.

2. An account stated is an account in writing, examined, and accepted by both parties, which acceptance need not be expressly so, but may be implied from the circumstances. To plead a cause of action for an account stated, plaintiff must sufficiently plead the following elements: (1) there has been a running account, (2) a balance remains due, (3) the account has been rendered upon the defendant, and (4) the defendant has assented to the account.

3. Retention without objection by one party for an unreasonably long time of a statement of account rendered by the other party is a manifestation of assent to the amount shown as an accurate computation of the amount due.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 2017-SU-450, BARCLAYS BANK  
DELAWARE V. MELANIE BRODHEAD.

Frederic I. Weinberg, Esq., Attorney for Plaintiff

Melanie S. Brodhead, Esq., Defendant

Wagner, J., June 28, 2017

### OPINION

Before this Court for disposition are Preliminary Objections filed by Melanie Brodhead (“Defendant”). For the reasons set forth herein, said Preliminary Objections are overruled in part and sustained in part.

### BACKGROUND

On April 27, 2017, Barclays Bank Delaware (“Plaintiff”) filed a civil complaint against Defendant which averred that Plaintiff issued a credit card account to Defendant and Defendant received, accepted, and used the account by making purchases of goods and/or services, balance transfers, and/or cash advances. Plaintiff averred the account is in default due to Defendant’s failure to make timely payments. Plaintiff averred that the account was opened on August 15, 2015. Attached to Plaintiff’s complaint was an account statement with a statement end date of April 12, 2017 and an accrued balance of \$3,734.41. Plaintiff’s civil complaint alleged a cause of action under an account stated theory.

On May 26, 2017, Defendant filed Preliminary Objections to Plaintiff’s Complaint and Defendant’s Brief in Support of Preliminary

Objections to Plaintiff's Complaint. Defendant's Preliminary Objections alleged: (1) failure of pleading to conform to law or rule of court in violation of Pa. R.C.P. §1019 and Pa. R.C.P. 1028(a)(2) because Plaintiff's complaint did not indicate whether the credit card application was either oral or written, and no written application was attached to the complaint; and (2) insufficient specificity in a pleading in violation of Pa. R.C.P. 1019(a) and Pa. R.C.P. 1028(a)(3) for failure to attach a detailed statement of the items purchased, dates of purchase, price paid for each item, or any evidence to show Defendant ever used the account.

On May 31, 2017, this Court entered an Order of Court directing disposition of Defendant's Preliminary Objections in accordance with Pa. R.C.P. 1028 and Adams County Local Civil Rule 1028(c). Defendant filed a timely brief on June 7, 2017.

### LEGAL STANDARD

Preliminary objections are limited to the grounds listed in Pa. R.Civ.P. 1028(a). It is well established that in ruling on preliminary objections, this Court must accept as true all well-pleaded allegations of material fact as well as all inferences reasonably deductible from those facts. **Ballroom, LLC v. Commonwealth**, 984 A.2d 582, 586 (Pa. Commw. Ct. 2009). Preliminary Objections will be sustained where the case is clear and free from doubt. **Rambo v. Greene**, 906 A.2d 1232, 1235 (Pa. Super. 2006).

### DISCUSSION

Defendant's first Preliminary Objection contends that Plaintiff has failed to comply with Pa. R.C.P. 1019 by failing to allege if the alleged account was based on an oral or written agreement and by not providing any corroborating evidence or writing to establish the validity of the claim. Rule 1019(h)(i) provides that "[w]hen any claim...is based upon an agreement, the pleading shall state specifically if the agreement is oral or written" and if written, "[t]he pleader shall attach a copy of the writing, or the material part thereof", or explain why it is not accessible. Defendant's first objection would be much more persuasive had the complaint alleged a breach of contract cause of action. However, Plaintiff set forth an account stated cause of action. An account stated claim can be set forth without requiring a written agreement to be attached to the complaint, so long as a

current statement is attached which shows a balance due on the account. Here, Plaintiff satisfied that requirement by attaching the April 12, 2017 statement.

Defendant's second Preliminary Objection challenged the specificity in the pleading in violation of Pa. R.C.P. 1019(a) and Pa. R.C.P. 1028(a)(3) for failure to attach a detailed statement of the items purchased, dates of purchase, price paid for each item, or any evidence to show Defendant ever used the account.

An account stated is an "account in writing, examined and accepted by both parties, which acceptance need not be expressly so, but may be implied from the circumstances." **Robbins v. Weinstein**, 17 A.2d 629, 634 (Pa. Super. 1971). To plead a cause of action for an account stated, plaintiff must sufficiently plead the following elements: (1) there has been a running account, (2) a balance remains due, (3) the account has been rendered upon the defendant, and (4) the defendant has assented to the account. **Citibank (S.D.) v. Ambrose**, 13 Pa.D.&C. 5th 402, 405 (C.P. Adams 2010). Retention without objection by one party for an unreasonably long time of a statement of account rendered by the other party is a manifestation of assent to the amount shown as an accurate computation of the amount due. **Donohue v. City of Philadelphia**, 41 A.2d 879 (Pa. Super. 1945). A copy of the current statement must be attached to the complaint showing a balance due, and the complaint must state that the plaintiff mailed monthly statements to the defendant setting forth the details of the defendant's account. **Citibank (S.D.) N.A. v. King**, No 2007-3412, 2007 WL 4967502 (C.P. Cent Nov. 9, 2007).

Plaintiff's complaint does not set forth a valid account stated cause of action. Something other than inclusion of one monthly statement attached to the complaint is required for a consumer to create an account stated relationship. See **Target National Bank/Target Visa v. Samanez**, 156 P.L.J. 76 (2007) (wherein only one monthly statement was attached to the complaint and that court held that cardholders cannot be said to agree to the accuracy of the monthly billing statements when there are no details listed as to the underlying charges). Furthermore, Plaintiff's complaint does not clearly indicate that monthly statements were mailed to Defendant which contained the details of the account. Plaintiff's complaint simply asserts that "demand was made upon Defendant for payment and Defendant

refused to pay”. A cause of action for an account stated, therefore, has not been sufficiently pled by the complaint.

For the reasons set forth above, the attached Order is entered.

ORDER OF COURT

AND NOW, this 28th day of June, 2017, in consideration of Defendant’s Preliminary Objections, filed May 26, 2017, it is hereby Ordered that Defendant’s Preliminary Objections are overruled in part and sustained in part. Plaintiff is granted twenty (20) days from the date of this Order within which to file an amended complaint.

**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

**FIRST PUBLICATION**

ESTATE OF MARY JANE ROBINHOLD DUNKIN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Terry R. Dunkin, 801 Bacon Hall Road, Sparks, MD 21152

ESTATE OF ROSA LEE C. MULLINIX, a/k/a ROSA LEE CRAVER MULLINIX, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Personal Representative: Patricia Ann Petry, c/o Heather Entwistle Roberts, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Heather Entwistle Roberts, Esq., Entwistle & Roberts 37 West Middle Street, Gettysburg, PA 17325

**SECOND PUBLICATION**

ESTATE OF BONNIE A. HOLLAND, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Co-Executors: Larry E. Holland, 2094 Chambersburg Road, P.O. Box 4661, Gettysburg, Pennsylvania 17325; Margaret E. Wetzel, P.O. Box 60, McKnightstown, PA 17343

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, Pennsylvania 17325

ESTATE OF CLYDE JOSEPH KALTREIDER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Patricia Ann Palmer, 24 Lee Street, Hanover, Pennsylvania 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF GAE A. OLMSTED, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robbin N. Olmsted, 222 Laurel Lane, Washougal, Washington 98671

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF CLOYD E. WILLOW, JR., DEC'D

Late of Union Township, Adams County, Pennsylvania

Co-Executors: Terry L. Willow, 1995 Hanover Pike, Hanover, PA 17331; Donna L. Scheivert, 34 Delaware Avenue, Littlestown, PA 17340

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

**THIRD PUBLICATION**

ESTATE OF BETTY JANE ENSOR a/k/a BETTY J. ENSOR-SMITH, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Lorraine L. Ensor, 5346 Carlisle Pike, New Oxford, PA 17350

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF DOROTHY A. SANDERS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Cheryl D. Gochenauer a/k/a Cheryl D. Gocheauer, 2476 Chambersburg Road, Biglerville, PA 17307

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC 47 West High Street, Gettysburg, PA 17325

ESTATE OF JEAN E. SPRANKLE, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Susan J. Parr, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

