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IN THIS ISSUE

AMERICAN EXPRESS BANK, FSB V. ANGELA
KELLEHER

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FICTITIOUS NAME NOTICE

Kayla Repasky of 345 Willow Road, Gettysburg, Pennsylvania 17325, did file in the Office of the Secretary of the Commonwealth of Pennsylvania, on September 21, 2017, registration of the fictitious name: **THINK FIRST AMERICA** under which she intends to do business at this address, pursuant to the provisions of the Act of Assembly of December 21, 1988, known as the "Fictitious Names Act".

Barley Snyder
Attorneys

10/6

NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees, and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts, and will be presented to the Court of Common Pleas of Adams County – Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, October 20, 2017 at 8:30 a.m.

CRAWFORD – Orphans' Court Action Number OC-109-2017. The First and Final Account of Rodney W. Crawford, the accountant and Executor of the Estate of Mahlon R. Crawford, Deceased, late of Oxford Township, Adams County, Pennsylvania.

IRVIN – Orphans' Court Action Number OC-110-2017. The First and Final Account of Edwin Kammerer and Frances Kammerer, Co-Executors of the Estate of E. Maxine Irvin, a/k/a Elsie M. Irvin, a/k/a Elsie Maxine Irvin, Deceased, late of East Berlin Borough, Adams County, Pennsylvania.

ELLIOTT – Orphans' Court Action Number OC-112-2017. The First and Final Account of Suzanne A. Elliott, Executrix of the Estate of Dixie Lee Elliott, Deceased, late of Franklin Township, Adams County, Pennsylvania

OAK LAWN MEMORIAL GARDENS – Orphans' Court Action Number OC-91-2017. The First and Final Account of PNC Bank, National Association of the Oak Lawn Memorial Gardens Care Fund Trust, of Gettysburg, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

10/6 & 10/13

AMERICAN EXPRESS BANK, FSB V. ANGELA KELLEHER

1. 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.

2. To plead a cause of action for an account stated, plaintiff must sufficiently plead the following elements: (1) there had 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.

4. A copy of the current statement must be attached to the complaint showing a balance remains due, and the complaint must state that the plaintiff mailed monthly statements to the defendant setting forth the details of the defendant's account.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL 2016-S-1330, AMERICAN EXPRESS
BANK, FSB V. ANGELA KELLEHER

Kimberly F. Scian, Esq., Attorney for Plaintiff

Angela Kelleher, Pro Se Defendant

Wagner, J., September 13, 2017

MEMORANDUM OPINION

Before this Court for disposition is Plaintiff's Motion for Summary Judgment filed July 17, 2017. For the reasons set forth herein, Plaintiff's Motion for Summary Judgment is hereby granted.

BACKGROUND

On December 22, 2016, American Express Bank, FSB (hereinafter referred to as Plaintiff) filed a Complaint against Angela Kelleher (hereinafter referred to as Defendant). Plaintiff avers they issued a credit account to Defendant (ending in account number 2006), that Defendant received, accepted and used the account by making purchases, balance transfers and/or cash advances, and that the account is now in default.¹ Plaintiff avers Plaintiff has demanded payment, Defendant has failed to make payment of the amount due, and that the amount due is \$11,822.30.²

On January 17, 2017, Defendant filed her Answer to Plaintiff's Complaint. In her Answer, Defendant admits having an account with

¹ Complaint para. 3 -6.

² Id. at para. 7, 8.

Plaintiff but denies that the account Defendant has with Plaintiff is the same account as the debt alleged in the complaint.³ In New Matter, Defendant alleges Plaintiff has not provided proper documentation to prove the debt is valid or that the amount of the debt is accurate. Defendant also alleges “the court would unjustly enrich the Plaintiff by granting the relief sought herein.”⁴

In response, Plaintiff filed its Answer to New Matter on February 13, 2017, wherein Plaintiff alleged “Defendant’s New Matter consists of requests for production of documents and thus no responsive pleading is required” and “Plaintiff’s request would not result in unjust enrichment.”⁵

On July 17, 2017, Plaintiff filed a Motion for Summary Judgment and Plaintiff’s Brief in Support of Its Motion for Summary Judgment. Plaintiff argues summary judgment is appropriate because “Plaintiff has demonstrated that there is no genuine issue of triable fact,” and “Defendant has failed to sustain the burden of presenting facts which contradict the averments of Plaintiff’s complaint.” Plaintiff attached to the Motion for Summary Judgment the card member agreement for Defendant’s account ending in account number 2006 (dated June 6, 2011), credit card statements beginning July 9, 2014 bearing Defendant’s name with an account number ending in 2006, and all subsequent monthly credit card statements bearing Defendant’s name with an account number ending in 2006, the last monthly statement with a date of July 8, 2016.

Thereafter, on August 17, 2017, Defendant filed Opposition to Motion for Summary Judgment, and on August 28, 2017, Defendant filed Defendant’s Brief in Support of its Opposition to Motion for Summary Judgment. Defendant argues summary judgment is not appropriate because “There are genuine issues of material facts to decide as the Plaintiff has not proven the debt is valid or the amount of the debt is accurate.” Defendant also argues that Plaintiff has failed to provide the original contract or application with signature, and only provided a small subset of account statements. Defendant also alleges “Plaintiff failed to prove the account ownership, principal, interest, collection costs, and attorney’s fees are all correct, agreed to in a contract, and lawfully charged.”

³ Defendant’s Answer para. 3.

⁴ *Id.* at para. 9.

⁵ Plaintiff’s Answer to New Matter at para. 1, 2.

LEGAL STANDARD

Under the Pennsylvania Rules of Civil Procedure, a court may enter summary judgment when the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. **Pa. R. C. P. 1035.2; Strine v. Commonwealth**, 894 A.2d 733, 737 (Pa. 2006); **Roche v. Ugly Duckling Car Sales, Inc.**, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. **Roche**, 879 A.2d at 789. Summary judgment is only appropriate in those cases which are free and clear from doubt. **McConnaughey v. Bldg. Components, Inc.**, 637 A.2d 1331, 1333 (Pa. 1994).

However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. **Accu-Weather, Inc. v. Prospect Commc'ns, Inc.**, 644 A.2d 1251, 1253 (Pa. Super. 1994). Rather, the non-moving party must, by affidavit, or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material facts exists. **Id.** Furthermore, “[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication.” **Pa. R. C. P. 1029(b)**. “A general denial or demand of proof, except as provided by subdivision (c) and (e) of this rule, shall have effect of an admission.” **Id.**

DISCUSSION

In its Complaint, Plaintiff sets forth an account stated cause of action. Plaintiff avers that (i) at the request of Defendant, Plaintiff issued a credit account to Defendant, which account number ends in 2006; (ii) that Defendant received, accepted, and used the account by making purchases, balance transfers, and/or cash advances; (iii) the account is in default due to Defendant’s failure to make timely payments; and (iv) demand has been made, however Defendant has failed to make payment of the amount due, which as of December

22, 2016 was \$11,822.30. Plaintiff attached to its Motion for Summary Judgment, a copy of the card member agreement (dated June 6, 2011) with Defendant's card member name and account ending in 2006, and copies of all monthly statements from July 9, 2014 through July 8, 2016.

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. 1941). To plead a cause of action for an account stated, plaintiff must sufficiently plead the following elements: (1) there had 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. **Rush's Service Center, Inc. v. Genareo**, 10 Pa.D.&C.4th 445 (C.P. Lawrence 1991). "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, 881 (Pa. Super. 1945). A copy of the **current** statement must be attached to the complaint showing a balance remains 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) (emphasis added).

A review of the pleadings in this case (including Plaintiff's Complaint, Plaintiff's Motion for Summary Judgment and the relevant attachments) clearly sets forth a cause of action for an "account stated" relationship between Plaintiff and Defendant. In this matter Defendant did not merely passively fail to object to the monthly account statements but proactively used the credit card and made payments on the account over the years, which proves Defendant's acquiescence to the charges and fees listed on each statement. As such, Plaintiff has sufficiently set forth facts to assert that Defendant's assent to the amount due is implied from the circumstances, namely her use of the credit card, monthly payments to the account, and her failure to dispute the amounts or object to the charges. Defendant has not shown that a genuine issue of material fact exists.

Therefore, for the reasons stated herein, Plaintiff's Motion for Summary Judgment is granted. Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 13th day of September, 2017, upon consideration of Plaintiff's Motion for Summary Judgment and Brief filed on behalf of Plaintiff on July 17, 2017 and Defendant's Opposition to Motion for Summary Judgment filed on August 17, 2017 and Defendant's Brief in Support of its Opposition to Motion for Summary Judgment, filed August 28, 2017, it is hereby Ordered, Adjudged and Decreed that Plaintiff's Motion for Summary Judgment is granted. Judgment is entered in favor of Plaintiff and against Defendant the amount of \$11,822.30 and costs.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary 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 TIMOTHY EUGENE ANDREW, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Holly Kuykendall, 16 Main Trail, Fairfield, PA 17320

ESTATE OF BRUCE DUTTERER, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Sheryl Dutterer, c/o Heather Roberts, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

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

ESTATE OF CHARLOTTE LARUE KROH a/k/a CHARLOTTE KROH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Carol J. Anders, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF ROBERT A. SAGEDY, a/k/a ROBERT ANDREW SAGEDY, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Rita Clare Sagedy, 3232 North Street, McSherrystown, PA 17344

Attorney: Ann C. Shultis, Esq., Shultis Law, LLC, 1147 Eichelberger Street, Suite F, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF RICHARD R. GOLDEN, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executrix: Frances M. Golden, 1670 Knoxlyn Road, Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

ESTATE OF C. EDWARD LAWRENCE a/k/a C.E. LAWRENCE a/k/a CYRIL E. LAWRENCE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Jane M. (Wright) Hempfing, 1120 Roosevelt Court, Hanover, Pennsylvania 17331

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

ESTATE OF RUTH ELIZABETH STAUB a/k/a RUTH E. STAUB, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Jeffrey A. Megonnell, 47 Stoney Point Road, New Oxford, PA 17350

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

THIRD PUBLICATION

ESTATE OF LARRY E. GEBHART, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Rose M. Gebhart, 893 White Hall Road, Littlestown, PA 17340

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF SALLY ANN LOHMAN a/k/a SALLY ANN GILBERT a/k/a SALLY ANN MILLER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Evelyn S. D'Elia, P.O. Box 206, Newport, PA 17074

ESTATE OF PATRICIA A. PITNEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administrator: Susan P. Giuffreda, 10 Waterford Court, Gettysburg, PA 17325

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JAMES W. SCHAFFER a/k/a JAMES WILLIAM SCHAFFER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executors: Stephen M. Schaffer, 116 Bennett Drive, Thurmont, MD 21788; Michael D. Rankin, 7061 Kidwelly Lane, Matthews, NC 28104

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF FRANK R. SCOTT, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: F. Dennis Scott, 625 Mt. Tabor Road, Gardners, PA 17324; Corinne Ann (Scott) Moore, 1265 Russell Tavern Road, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF DAWSON W. SHELLEY, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Donald Milhimes, 1735 Highland Avenue Road Gettysburg, PA 17325

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

ESTATE OF JAY E. WEAVER, a/k/a JAY E. WEAVER, SR., DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Christian J. Weaver, c/o Gillian A. Woodward, Esq., 1701 West Market Street, York, PA 17404

Attorney: Gillian A. Woodward, Esq., 1701 West Market Street, York, PA 17404

ESTATE OF JOHN F. WILLIAMS JR., DEC'D

Late of Liberty Township, Adams County, Pennsylvania

Executrix: Natalie Williams, c/o Johanna H. Rehkamp, Esq., Cunningham, Chernicoff & Warshawsky, P.C., 2320 North Second Street, Harrisburg, PA 17110.

Attorney: Johanna H. Rehkamp, Esq., Cunningham, Chernicoff & Warshawsky, P.C., 2320 North Second Street, Harrisburg, PA 17110.

ESTATE OF BETTY JANE KARNITZ WYKES, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James Carl Roubal, Jr., 956 Fairview Ave., Gettysburg, PA 17325

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

