

# Adams County Legal Journal

Vol. 60

November 9, 2018

No. 27, pp. 86-91

## IN THIS ISSUE

CAVALRY SPV I, LLC, AS ASSIGNEE  
OF SYNCHRONY BANK VS.  
TRESSY KERSHAW

# Invest with Experience.

The right financial partner will help you plan for the future and manage investments with you and your family's best interests first and foremost. No need to look further...you've found the right partner at ACNB Bank.

Securities and Insurance Products are: NOT FDIC INSURED - MAY LOSE VALUE - NOT BANK GUARANTEED - NOT A DEPOSIT - NOT INSURED BY ANY FEDERAL GOVERNMENT ENTITY



## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, Edward G. Puhl, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Names Act of Pennsylvania (54 Pa.C.S. Section 301 et. seq.), that an application for registration of a Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, for the conduct of a business under the Fictitious Name of COTTAGE LANE CREATIONS, with its principal office or place of business at 409 Lincoln Way West, New Oxford, PA 17350. The names and addresses of all persons who are parties to the registration are: Wendy Sponseller, 409 Lincoln Way West, New Oxford, PA 17350 and Megan Schwenk, 1085 Storms Store Road, Gettysburg, PA 17325.

11/9

## NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State, Commonwealth of Pennsylvania, Harrisburg, Pennsylvania, on October 30, 2018, creating a domestic nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988, as amended. The name of the corporation is GETTYSBURG AVIATION ADVOCACY CORPORATION, INC. Its purpose is educational, to promote aviation awareness, job opportunities, economic development and carry on all activities permitted to a nonprofit corporation.

John S. Phillips, Esq.  
Phillips & Phillips  
101 West Middle Street  
Gettysburg, PA 17325

11/9

## 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, November 16, 2018 at 8:30 a.m.

**SMITH** — Orphans' Court Action Number OC-29-2017. The First and Final Account of Kimberly A. Evans and Patricia Ann Smith, Executrixes of the Estate of Kathleen B. Smith, late of Huntingdon Township, Adams County, Pennsylvania.

**WALKER** — Orphans' Court Action Number OC-107-2018. The First and Final Account of Gayle E. Walker, Administratrix of the Estate of James Allen Walker, late of Hamilton Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

11/2 & 11/9

CAVALRY SPV I, LLC, AS ASSIGNEE  
OF SYNCHRONY BANK VS.  
TRESSY KERSHAW

1. Defendant's Preliminary Objections alleged: (1) Plaintiff failed to establish itself as the real party in interest by not conforming to the law or rule of court in violation of Pa. R.C.P. 2002 by failing to attach a valid written assignment from Synchrony Bank/JCP to Plaintiff in violation of Pa. R.C.P. 1019(i); (2) Plaintiff failed to attach the writing upon which its claim is based in violation of Pa. R.C.P. 1019(h) and (i); and (3) that the Complaint was deficient because it did not contain allegations of sufficient specificity to permit Defendant to formulate a response.

2. Taking the well-pleaded allegations as true, this Court finds Plaintiff failed to establish it is the real party in interest through chain of title from the original creditor as required by Pa. R.C.P. 1019(i) and 2002.

3. Neither Pa. R.C.P. 1019 nor the holding in *Atlantic Credit and Finance, Inc. v. Guiliana*, 829 A.2d 340 (Pa. Super. 2003) requires that the credit card application attached to the complaint be signed by the defendant; Therefore, it is not necessary for Plaintiff to produce a signed credit application, but in this case no credit application was attached.

4. Furthermore, none of the monthly billing statements show an account which reached a zero balance. When a billing statement shows an account which reaches a zero balance, this creates a neutral starting point from which Defendant can properly respond to the allegation concerning the amount owed on the account.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, 2018-SU-735, CAVALRY SPV I, LLC, AS  
ASSIGNEE OF SYNCHRONY BANK VS. TRESSY KERSHAW.

Nicholas Foppiano, Esq., Attorney for Plaintiff

John L. Perry, Esq., Attorney for Defendant

Wagner, J., October 23, 2018

OPINION

Before this Court for disposition are Preliminary Objections filed by Tressy Kershawn ("Defendant") to Cavalry SPV I LLC's ("Plaintiff") Amended Complaint. For the reasons set forth herein, said Preliminary Objections are sustained.

BACKGROUND

On July 6, 2018, Plaintiff filed a Civil Complaint against Defendant alleging that Plaintiff is the assignee and successor in interest of a credit account ending in 5279 that was issued to Defendant by Synchrony Bank/JCP, that Defendant used the account, and that the account is in default in the amount of \$2,442.12. Defendant filed Preliminary Objections and a Brief in support thereof on July 31, 2018.

On August 13, 2018, Plaintiff filed an Amended Civil Complaint which averred that Plaintiff was the purchaser, assignee and/or successor in interest to Synchrony Bank/JCP of a credit account ending in 5279 issued to Defendant by Synchrony Bank/JCP. Plaintiff averred Defendant used the credit account and has accrued an outstanding balance of \$2,442.12. Plaintiff averred that the Defendant failed to make monthly payments and that the account is in default.

In support of its Amended Complaint, Plaintiff attached several documents. The first document is a Synchrony Bank/JC Penny Credit Card Account Agreement. The agreement is not dated and there is no information in the agreement linking the agreement to Defendant or Defendant's account. The second document is a Bill of Sale. The Bill of Sale asserts that, pursuant to a Purchase Agreement, Synchrony Bank and various other entities collectively known as "seller" conveyed to Cavalry SPV I, LLC "buyer" the Accounts set forth in the Notification Files. Attached to the Bill of Sale is a document labeled Notification Files, which shows the last four digits of an account number ending in 5279 and the Defendant's name, but lists an address for Defendant in Tempe, Arizona. Lastly, Plaintiff filed four Synchrony Bank/JCP Account statements with the Amended Complaint, dated June, July, and December of 2016 and one from January of 2017. The June 2016 statement lists a balance of \$1,895.30 and the January 2017 statement lists a balance of \$2,442.12.

On September 12, 2018, Defendant filed Preliminary Objections to Plaintiff's Amended Complaint and a Brief in support thereof. Defendant's Preliminary Objections alleged: (1) Plaintiff failed to establish itself as the real party in interest by not conforming to the law or rule of court in violation of Pa. R.Civ.P. 2002 by failing to attach a valid written assignment from Synchrony Bank/JCP to Plaintiff in violation of Pa. R.C.P. 1019(i); (2) Plaintiff failed to attach the writing upon which its claim is based in violation of Pa. R.C.P. 1019(h) and (i); and (3) that the Complaint was deficient because it did not contain allegations of sufficient specificity to permit Defendant to formulate a response.

## LEGAL STANDARD

Preliminary objections are limited to the grounds listed in Pa. R.C.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 alleges the Amended Complaint failed to include a writing evidencing an assignment of Defendant's account to the Plaintiff.

"When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written." Pa. R.C.P. 1019(h). "When a 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." Pa. R.C.P. 1019(i). "In determining whether a particular paragraph in a complaint has been stated with the necessary specificity, such paragraph must be read in context with all other allegations in that complaint." **Yacoub v. Lehigh Valley Med. Assoc., Inc.**, 805 A.2d 579, 589 (Pa. Super. 2002).

Defendant avers Plaintiff failed to attach to the Amended Complaint the proper documents setting forth the assignment of Defendant's account from Synchrony Bank/JPC to Plaintiff. Attached to Plaintiff's Amended Complaint is a Bill of Sale that states:

"For value received and in further consideration of the mutual covenants set forth in the Forward Flow Accounts Purchase Agreement (the "Agreement"), dated as of this 25th day of August, 2016 by and between Synchrony Bank formerly known as GE Capital Retail Bank; RFS Holding LLC. and Retail Finance Credit Services, LLC., ("Seller") and Calvalry SPV I, LLC ("Buyer"), Seller hereby transfers, sells, conveys, grants, and delivers to Buyer its successors and assigns, without recourse except

as set forth in the Agreement, to the extent of its ownership, the Accounts as set forth in the Notification Files (as defined in the Agreement), delivered by Seller to Buyer on February 19, 2017, and as further described in the Agreement.”

Also included with Plaintiff’s Amended Complaint is a document titled Notification Files that contains a purchase date of February 19, 2017, Defendant’s name, an account number ending in 5279, Defendant’s address as 4940 S. Wendler Dr. STE 101, Tempe, Arizona and a current balance of the account as \$2,479.12. Nowhere on the face of the document does it show whether Synchrony Bank/JCP, Cavalry SPV I, LLC, or some other entity created the document.

Taking the well-pleaded allegations as true, this Court finds Plaintiff failed to establish it is the real party in interest through chain of title from the original creditor as required by Pa R.C.P. 1019(i) and 2002. The Notification Files list an Arizona address for Defendant and no allegation is made that Defendant ever resided in Arizona. The Amended Complaint lists Defendant’s address as 2130 Fairfield Rd. Gettysburg, PA 17325-7217. The Notifications Files also contain no information tending to establish that it was created by the assignor, assignee, or any other entity. There is no connection between the Notification Files to the Bill of Sale except the Date of Purchase listed at the top. Plaintiff avers there is more information contained in the Notification Files but did not include such information for confidentiality reasons. Therefore, Defendant’s first Preliminary Objection is sustained.

Defendant’s second and third Preliminary Objection challenge the legal sufficiency of the pleadings (demurrer) because Plaintiff’s Amended Complaint failed to include a signed copy of the Defendant’s application for the credit account, the cardholder agreement governing that credit account, and a detailed statement of the items purchased, dates of purchase, the price paid for each item, payments and the dates and amounts of interest or other charges.

In order to sustain a Preliminary Objection in the nature of demurrer, the Court must decide whether, on the facts averred, the law states with certainty that no recovery is possible. **Morley v. Gory**, 814 A.2d 762, 764 (Pa. Super. 2002). In that regard, the Court must resolve the issues solely on the basis of the pleadings. **Mellon Bank**,

**N.A. v. Fabinyi**, 350 A.2d 895, 899 (Pa. Super. 1994). Where any doubt exists as to whether a demurrer should be sustained, it must be resolved in favor of overruling the demurrer. **Mystick Inc. v. Northwestern Nat. Cas. Co.**, 806 A.2d 39, 42 (Pa. Super. 2002). In determining sufficiency of the pleadings in a complaint, the Court will consider “whether the plaintiff’s Complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question on upon what grounds to make his defense.” **Greene**, at 1236.

Plaintiff attached to the Amended Complaint an undated Synchrony Bank/JCP Credit Card Account Agreement. No credit card application, either signed or unsigned, was attached to the Amended Complaint.

Neither Pa. R.C.P. 1019 nor the holding in **Atlantic Credit and Finance, Inc. v. Guiliana**, 829 A.2d 340 (Pa. Super. 2003) requires that the credit card application attached to the complaint be signed by defendant; Therefore it is not necessary for Plaintiff to produce a signed credit application, but in this case no credit application was attached. The Synchrony Bank/JCP Credit Card Account Agreement contains no dates or other information illustrating that it is the controlling agreement between the parties. Therefore, Defendant’s second preliminary objection is sustained.

The June 2, 2016 monthly billing statement fails to provide the date and amount of each transaction of the item(s) purchased prior to the June 2, 2016 monthly billing statement which would support the June 2, 2016 balance. Furthermore, none of the monthly billing statements show an account which reached a zero balance. When a billing statement shows an account which reaches a zero balance, this creates a neutral starting point from which Defendant can properly respond to the allegation concerning the amount owed on the account. The account activity, which is a part of this litigation, occurred almost entirely before June 2, 2016. At no point do any of the attached monthly statements show Defendant used the credit card to make any purchases or charges on the account after June 2, 2016.

In determining the sufficiency of the pleadings in a complaint, the Court will consider “whether the plaintiff’s Complaint informs the defendant with accuracy and completeness of the specific basis on which recovery is sought so that he may know without question on

upon what grounds to make his defense.” **Rambo**, 906 A.2d at 1236. “[A] defendant is entitled to know the dates on which individual transactions were made, the amounts therefore and the items purchased to be able to answer intelligently and determine what items he can admit and what he must contest.” **Remit Corp. v. Miller**, 5 Pa. D. & C. 5th 43, 48 (Centre Cnty. 2008).

Defendant could legally respond to Plaintiff’s Amended Complaint if the monthly account statements covered the entire account history or were provided from some point in time where the account was at a zero balance. As such, Defendant’s third preliminary objection is sustained.

#### ORDER OF COURT

AND NOW, this 23rd day of October, 2018, the Preliminary Objections to Plaintiff’s Amended Complaint are sustained. Plaintiff is granted thirty (30) 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 or of 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 MABEL E. BERKHEIMER, a/k/a MABEL DAYHOFF BERKHEIMER, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Debra A. Neiderer, 1460 New Chester Road, New Oxford, PA 17350

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF MICHAEL LAWRENCE FAIR, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executrix: Martine Bourque, c/o Robert L. McQuaide, Esq., Barley Snyder, 123 Baltimore Street, Suite 101, Gettysburg, PA 17325

Attorney: Robert L. McQuaide, Esq., Barley Snyder, 123 Baltimore Street, Suite 101, Gettysburg, PA 17325

ESTATE OF JOAN M. RUDISILL, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Personal Representative: Steven L. Rudisill, 280 Jefferson St., Hanover, PA 17331

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

ESTATE OF EARL A. SHANK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Diann M. Yealy, 422 Providence Drive, McSherrystown, PA 17344

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF MICHAEL J. SWISHER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor: Sherry A. Johnson, 47 White Oak Tree Road, York Springs, PA 17372

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

**SECOND PUBLICATION**

ESTATE OF RAY STEPHEN BELTZ, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Raymond C. Beltz, Jr., c/o R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

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

ESTATE OF WALTER D. BUREL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Lorraine C. Caruso, 728 Heritage Drive, Gettysburg, PA 17325; Carol Lee Fritchley, 10960 Peach Ridge Road, Athens, OH 45701

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF ANNA C. ROHRBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix C.T.A.: Jill R. Rohrbaugh, 300 Clearview Road, Hanover, Pennsylvania 17331

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

ESTATE OF ROBERT S. WEIKERT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Barbara A. Weikert, 139 Hunters Trail, Gettysburg, PA 17325

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

**THIRD PUBLICATION**

ESTATE OF BERTHA MARGARET BYERS, a/k/a BERTHA M. BYERS, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrices: Lavetta G. Caskey, 4820 Old Harrisburg Rd., Lot 150, Gettysburg, PA 17325; Loretta M. Hoffman, 50 W. Reynolds Rd., New Oxford, PA 17350

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

ESTATE OF SARAH H. CHEMBARS, a/k/a SARAH H. CHEMBARS, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administrator: Richard L. Chembars, 28023 Steeple Court, Mechanicsville, MD 20659

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

ESTATE OF BRENDA M. COLESANTI, a/k/a BRENDA MARIE COLESANTI, DEC'D

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

Administratrix: Pamela A. Markle, c/o Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

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

ESTATE OF STEPHEN W. CULLISON, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Patricia A. Stine, 9 Timber Lane, Hanover, PA 17331

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

ESTATE OF BETTY JANE HARMS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Melanie Jane Wright, 4577 Solomons Island Rd., Harwood, MD 20776

Attorney: David K. James, III, Esq., 234 Baltimore St., Gettysburg, PA 17325

**THIRD PUBLICATION CONTINUED**

ESTATE OF LUCREZIA LAMANO,  
DEC'D

Late of Berwick Township, Adams  
County, Pennsylvania

Executor: Thomas Lamano, Jr., 590  
Abbottstown Pike, Abbottstown, PA  
17301

Attorney: Clayton A. Lingg, Esq.,  
Mooney & Associates, 230 York  
Street, Hanover, PA 17331

ESTATE OF BARBARA E. SNEERINGER,  
DEC'D

Late of Oxford Township, Adams  
County, Pennsylvania

Executrix: Rebecca E. Myers, 7860  
Sassafras Road, New Tripoli, PA  
18066

Attorney: Andrew S. Ziegler, Esq.,  
Mooney & Associates, 230 York  
Street, Hanover, PA 17331

ESTATE OF JAMES EUGENE  
STEPHENS, JR., DEC'D

Late of the Borough of York Springs,  
Adams County, Pennsylvania

Administrator: James E. Stephens, III,  
5636 Carlisle Pike, New Oxford, PA  
17350

Attorney: Rand A. Feder, Esq., Morris  
& Vedder, LLP, 32 N. Duke St., P.O.  
Box 149, York, PA 17405-0149

ESTATE OF PAUL J. WALTER, SR.,  
DEC'D

Late of the Borough of Bonneauville,  
Adams County, Pennsylvania

Executrices: Paula J. Callahan, 21 Pin  
Oak Drive, Gettysburg, PA 17325;  
Lisa A. Shull, 19 Pin Oak Drive,  
Gettysburg, PA 17325

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