

Adams County Legal Journal

Vol. 58

May 13, 2016

No. 1, pp. 1-6

IN THIS ISSUE

DISCOVER BANK V. JACQUELYN ALICE BILLERBECK



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

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

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LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: ADOPTION OF
EMILY ELAINE ROSS
NO. 2016-0037

NOTICE IS HEREBY GIVEN that on the 30th day of March, 2016, the Application of Emily Elaine Ross was filed in the above-named Court, praying for a Decree to change her name to Emily Elaine Cook. The Court has fixed the 1st day of June, 2016, at 3:30 p.m., in Court Room 6003, Sixth Floor, York County Judicial Center, 45 North George Street, York, PA, as the time and place for the Hearing of said Application, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petitioner should not be granted.

CGA Law Firm
Mich lle Pokrifka, Esq.

5/13

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN on the 21st day of April, 2016, a petition for change of name was filed in the Court of Common Pleas of Adams County, Pennsylvania requesting a decree to change the name of Samantha Queen Butt to Samantha Queen Brockman. The Court has fixed the 7th day of July, 2016, at 1:00 PM in Courtroom 4, Third Floor, Adams County Courthouse as the time, date and place for the hearing of said petition, where and when all persons interested may appear and show cause, if they have such, why the request of said petitioner should not be granted.

5/13

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN pursuant to the provisions of Act 1982-295, approved December 16, 1982, of the filing in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, PA, on April 18, 2016, of a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of MASON DIXON MILITARIA with its principal place of business at 13 Baltimore Street, Gettysburg, Pennsylvania 17325. The name and address of the entity owning or interested in said business is Gettysburg Antiques and Militaria, 13 Baltimore Street, Gettysburg, PA 17325.

5/13

NONPROFIT ARTICLES OF
INCORPORATION

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on April 20, 2016, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988. The name of the proposed nonprofit corporation is OXFORD GLEN HOMEOWNERS ASSOCIATION, INC.

The purpose for which it will be organized is: To be a unit owners' association which provides for the management, maintenance and care of the residential community project located in Oxford Township, Adams County, Pennsylvania, known as Oxford Glen, A Planned Community.

McNEES WALLACE & NURICK LLC
100 Pine Street
Harrisburg, PA 17101

5/13

DISCOVER BANK V. JACQUELYN ALICE BILLERBECK

1. Multiple causes of action which are inconsistent are permitted so long as they are pleaded under separate counts. Theories of breach of contract and unjust enrichment must be pleaded alternatively in order to allow recovery under the latter theory where an express contract cannot be proven.

2. 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.

3. 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.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL 2015-S-1095, DISCOVER BANK V.
JACQUELYN ALICE BILLERBECK.

Matthew C. Urban, Esq., Attorney for Plaintiff
Erik M. Helbing, Esq., Attorney for Defendant

Wagner, J., April 13, 2016

OPINION

Before this Court for disposition are Preliminary Objections filed by Jacquelyn Alice Billerbeck (“Defendant”) to Discover Bank’s (Plaintiff) Amended Complaint. For reasons set forth herein, said Preliminary Objections are overruled.

BACKGROUND

On September 22, 2015, Plaintiff filed a Civil Complaint against Defendant which averred that Defendant applied for and received a credit card account which was used by Defendant and accrued a balance of \$13,648.21. Plaintiff averred that Defendant had failed to make monthly payments as required, causing the account to be in default and the entire balance being due immediately.

On October 19, 2015, Defendant filed Preliminary Objections to Plaintiff’s Complaint and concurrently filed her brief in support of the same. Defendant’s preliminary objections challenged: 1) the Complaint for failing to aver whether the agreement on which the claims are based is an oral or written agreement, 2) that if the agreement on which the claims are based is a written agreement, Plaintiff has failed to attach such agreement to the Complaint, 3) the legal sufficiency of the averments to support an account stated theory and 4) the legal sufficiency of the Complaint for failing to aver when the subject account was opened, whether the Defendant submitted a written application, and for failing to attach a cardholder agreement.

Plaintiff filed its Brief on November 2, 2015, simply arguing that the Complaint “set forth the allegations necessary to establish that the defendant has breached the terms and conditions of his/her agreement with the Plaintiff by failing to repay the sums due as set forth in the complaint” and “by doing so, the Plaintiff has met its burden under the applicable Pennsylvania Rules of Civil Procedure.”

On December 16, 2015 the Honorable John D. Kuhn, Judge of the Court of Common Pleas of Adams County, sustained Defendant’s Preliminary Objections and granted Plaintiff thirty days to file an amended complaint. Judge Kuhn granted Defendant’s first and second Preliminary Objections that the complaint failed to conform to rule of law or court under Pennsylvania Rule of Civil Procedure 1028(a)(2) by failing to state whether the agreement is oral or written and, if written, by failing to attach a copy of the cardholder agree-

ment. Judge Kuhn granted Defendant's third Preliminary Objection for legal insufficiency of a pleading under Pennsylvania Rule of Civil Procedure 1028(a)(4) for failing to sufficiently state the elements of an account stated theory of liability. Finally, Judge Kuhn granted Defendant's fourth Preliminary Objection for legal insufficiency for failing to aver the date the account was opened and whether a written application was submitted, and because Plaintiff failed to attach a cardholder agreement to Plaintiff's complaint.

On January 7, 2016 Plaintiff filed an Amended Complaint against Defendant which avers the Defendant applied for and received a credit card account which was used by Defendant and accrued a balance of \$13,648.21. Attached to Plaintiff's Amended Complaint was a copy of Defendant's December 5, 1997 Application requesting Plaintiff issue the Defendant a Discover Bank credit card, monthly statements from November 23, 2008 through August 23, 2013 setting forth the charges and payments, if any, by the Defendant, and the applicable interest rate governing the account and an unsigned written cardmember agreement with a copyright date of 2011. Plaintiff's Amended Complaint raised three separate causes of action against Defendant: a breach of contract claim, an unjust enrichment claim and a contract implied in law claim (account stated cause of action) against Defendant.

On January 21, 2016 Defendant filed Preliminary Objections to Plaintiff's Amended Complaint and concurrently filed her brief in support of the same. Defendant's Preliminary Objections challenge: (1) failure of the Amended Complaint to conform to rule of court because the Amended Complaint alleged that Defendant applied for the subject credit card on December 5, 1997 and Plaintiff attached a cardholder agreement which was copyrighted 2011, in violation of Pennsylvania Rule of Civil Procedure 1028(a)(2); and (2) the Amended Complaint is legally insufficient to support Plaintiff's claims (demurrer) because Plaintiff did not attach a copy of the cardholder agreement in effect when the credit card was issued to Plaintiff on or about December 5, 1997, in violation of Pennsylvania Rule of Civil Procedure 1028(a)(4).

Plaintiff filed its brief on February 19, 2016, and argued that Plaintiff's Amended Complaint clearly sets forth a claim for breach

of contract because the Amended Complaint apprised the Defendant of the nature and extent of the Plaintiff's claims so that the Defendant has notice of what the Plaintiff intends to prove at trial and may prepare to meet such proof with his or her own evidence.

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. Ct. 2006).

DISCUSSION

Plaintiff's Amended Complaint alleges three inconsistent causes of action – count one is a breach of contract claim, count two is an unjust enrichment claim and count three is a contract implied in law claim, also known as an account stated cause of action. Such inconsistent causes of actions are permitted so long as they are pleaded in separate counts, as Plaintiff has done. Furthermore, although Plaintiff avers the cause of action arises out of a contractual relationship, Plaintiff may be unable to prove the existence of a contractual relationship and should therefore be permitted to attempt recovery under the equitable doctrine of unjust enrichment.

A Plaintiff may raise more than one cause of action against a Defendant within the same complaint so long as each cause of action is in a separate count containing a demand for relief. Pa. R.C.P. 1020(a). "Causes of actions....may be pleaded in the alternative." Pa. R.C.P. 1020(c). Multiple causes of action which are inconsistent are permitted so long as they are pleaded under separate counts. **Standard Pennsylvania Practice §16:59**. Specifically, "theories of breach of contract and unjust enrichment must be pleaded alternatively in order to allow recovery under the latter theory where an express contract cannot be proven. **Lugo v. Farmer's Pride, Inc.**, 967 A.2d. 963 (Pa. Super. 2009).

Defendant's first and second Preliminary Objections to Plaintiff's

Amended Complaint both attack count one of Plaintiff's Amended Complaint, the breach of contract claim. Defendant's first Preliminary Objection is that the Amended Complaint fails to conform to law or rule of court under Pa. R.C.P. 1028(a)(2) because although the Amended Complaint references a credit card agreement or contract, the cardmember agreement is copyrighted 2011 and the credit card account was opened December 1997. Pennsylvania Rule of Civil Procedure 1019(h)(i) provides that "when any claim is based upon an agreement, the pleading shall state specifically if the agreement is oral or written" and if written "the pleader shall attach a copy of the writing, or the material part thereof", or explain why it is not accessible. Compliance with Rule 1019(i) can be obtained by attaching a copy of the cardholder agreement between the issuer and the card holder. *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d. 340 (Pa. Super. 2003). "In determining whether a particular paragraph in a complaint has been stated with necessary specificity, such paragraph must be read in context with all other allegations in that complaint." *Yacoub v. Lehigh Valley Medical Associate, Inc.*, 805 A.2d. 579, 589 (Pa. Super. 2002).

Upon review of the attached billing statements, which date from November 23, 2008 through August 23, 2013, each statement clearly lists the interest rate(s) charged, how they were calculated, the purchase amount which corresponds to each interest rate, and, when applicable, the fees associated with late payments. The November 23, 2008 billing statement has a zero balance on the account. 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 allegations concerning the amount owed on the account. Also, the attached billing statements coupled with the attached cardholder agreement provide in effect that Defendant will make minimum required monthly payments, and that if Defendant fails to make those payments, the account will be in default and the entire balance will be due. Therefore, this Court finds that Plaintiff has set forth sufficient allegations to provide Defendant with sufficient information to respond to the averments contained in the Amended Complaint and as such, Defendant's first Preliminary Objection is overruled.

Defendant's second Preliminary Objection challenges the legal

sufficiency of the pleadings (demurrer) because the Amended Complaint failed to include a copy of the cardholder agreement in effect when the Discover credit card was issued to the Defendant during December 1997. 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. *Mystic 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.” *Rambo v. Greene*, 906 A.2d. 1232, 1236 (Pa. Super. 2006). “[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 Corporation v. Miller*, 5 Pa. D. & C. 5th 43, 48 (Centre Cty. 2008). The Plaintiff’s Amended Complaint establishes that the Defendant applied for a Discover credit card on or about December 5, 1997, Plaintiff attached billing statements to the Amended Complaint which date from November 23, 2008 through August 23, 2013 and an unsigned cardholder agreement. The billing statement from November 23, 2008 has a zero balance on the account. 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 allegations concerning the amount owed on the account. Through the credit card application, billing statements and the cardholder agreement, the Plaintiff has attached sufficient information to illustrate how it arrived at the amount it claims is due from Defendant. Therefore, Defendant’s second Preliminary Objection is overruled.

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 ALLAN G. BLUE a/k/a ALLAN GRANT BLUE, DEC'D

Late of Menallan Township, Adams County, Pennsylvania

Executor: R. Joseph Landy, 228 Desmond Street, P.O. Box 206, Sayre, PA 18840-0206

Attorney: R. Joseph Landy, Esq., Landy & Rossettie, PLLC, 228 Desmond Street, P.O. Box 206, Sayre, PA 18840-0206

ESTATE OF RICHARD E. CHAMBERS, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administratrix: Elisabeth A. Chambers, c/o Robert C. Saidis, Esq., Saidis, Sullivan & Rogers, 100 Sterling Parkway, Suite 100, Mechanicsburg, Pennsylvania 17050

Attorney: Robert C. Saidis, Esq., Saidis, Sullivan & Rogers, 100 Sterling Parkway, Suite 100, Mechanicsburg, Pennsylvania 17050

ESTATE OF J. NORMAND FRONTAIN, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Kenneth S. Frontain, c/o David A. Mills, Esq., Blakey, Yost, Bupp & Rausch, LLP, 17 E. Market Street, York, PA 17401

Attorney: David A. Mills, Esq., Blakey, Yost, Bupp & Rausch, LLP, 17 E. Market Street, York, PA 17401

ESTATE OF WREATHA E. GLATFELTER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Co-Executors: Vicki D. Wagaman and Roger L. Wagaman, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, PO Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, PO Box 606, East Berlin, PA 17316

ESTATE OF CLAANNA ELIZABETH GREGG a/k/a CLAANNA E. GREGG, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administrator c.t.a: Mary Rae Stouten, 1742 Mayfair Place, Crofton, MD 21114

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

ESTATE OF MARIAN J. KNIPPLE, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executrix: Linda K. Newman, 80 Locust Drive, Littlestown, PA 17340

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

ESTATE OF FRANK W. MERRBAUGH, JR., DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Mrs. Dawn H. Merrbaugh, 10 Foxtown Drive, Abbottstown, PA 17301

Attorney: Todd A. King, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

ESTATE OF JEANETTE C. WILT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: James Redding, Sr., 760 Bollinger Road, Littlestown, PA 17340

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF BARBARA J. WINES, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Martha M. Potter, 598 Wagaman Avenue, Georgetown, DE 19947

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

TRUST NOTICE

Trust: THE TRUST OF ALLAN G. BLUE DATED MARCH 1, 1994

Deceased: ALLAN G. BLUE a/k/a ALLAN GRANT BLUE

Date of Death: APRIL 2, 2016

Late of Menallan Township, Adams County, Pennsylvania

M&T Bank, Co-Trustee
1100 Wehrle Drive
Buffalo, NY 14221

R. Joseph Landy, Co-Trustee
741 South Main Street
Athens, PA 18810

Attorney: R. Joseph Landy, Esq.
LANDY & ROSSETTIE, PLLC
228 Desmond Street, P.O. Box 206
Sayre, PA 18840-0206

SECOND PUBLICATION

ESTATE OF E. MAXINE IRVIN a/k/a ELSIE M. IRVIN a/k/a ELSIE MAXINE IRVIN, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Co-Executors: Frances Kammerer and Edwin Kammerer, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, PO Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, PO Box 606, East Berlin, PA 17316

ESTATE OF LEONARD E. MARSICO, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

John M. Crabbs 202 Broadway
Hanover, PA 17331

Attorney: Ruth M. Gunnell, Esq., Crabbs & Crabbs, 202 Broadway Hanover, PA 17331

ESTATE OF CHARLES W. MATTERN, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Amelia B. Mattern, 724 Quaker Church Road, York Springs, PA 17372

Attorney: Brian C. Linsenbach, Esq., Stone, Wiley, & Linsench, PC, 3 N. Baltimore Street, Dillsburg, PA 17019

ESTATE OF ROMAINE E. MYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Barbara Heim and Gary Myers, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, PO Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, PO Box 606, East Berlin, PA 17316

SECOND PUBLICATION CONTINUED**ESTATE OF CYNTHIA J. ORNER, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Administrator: Jack C. Orner, Jr., 120 E. King Street, East Berlin, PA 17316

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

ESTATE OF SHIRLEY M. PRICE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Clayton A. Lingg, Esq., 230 York Street, Hanover, PA 17331

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

ESTATE OF JAMES C. ROHRER a/k/a JAMES CLARENCE ROHRER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Barbara A. Bankert, 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 KATHERN L. TOMASZEWSKI, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Administratrix: Gladys Elaine Luther, 6565 Old Harrisburg Rd., York Springs, PA 17372

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

THIRD PUBLICATION**ESTATE OF MARGARET S. BROWN, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: Michael K. Brown, 430 N. President Avenue, Lancaster, PA 17603-2604

ESTATE OF JOSEPHINE A. HACZEWSKI, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: John Haczeowski, 96 Tyoka Drive, Littlestown, PA 17340

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MERLE C. HOOVER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Deborah L. Sbraga, c/o Robert Clofine, Esq., Elder Law Firm of Robert Clofine, 340 Pine Grove Commons, York, PA 17403-5193

Attorney: Robert Clofine, Esq., Elder Law Firm of Robert Clofine, 340 Pine Grove Commons, York, PA 17403-5193

ESTATE OF CONCETTA M. ROUNTRY, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Richard J. Rountry, Jr., 1190 Sachem Head Terrace, Wellington, Florida 33414

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

ESTATE OF DAVID F. STAUB, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Lisa Ann Noel-Staub, 25 Ashfield Drive, Littlestown, PA 17340

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF BEVERLY L. STEPLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Mildred E. Shields, c/o Bradley L. Griffie, Esq., Griffie & Associates, P.C., 100 Lincoln Way East, Suite D, Chambersburg, PA 17201

Attorney: Bradley L. Griffie, Esq., Griffie & Associates, P.C., 100 Lincoln Way East, Suite D, Chambersburg, PA 17201

ESTATE OF HELEN P. WEAVER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: C. Robert Weaver, 5225 Pooks Hill Road 308 N, Bethesda, MD 20814

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325