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KAREN LOUISE McDANIEL

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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 Thursday, April 18, 2019 at 8:30 a.m.

HOFFMAN — Orphans' Court Action Number OC-63-1997. The First and Final Account of the Estate of Robert C. Hoffman, Deceased, late of Gettysburg, Adams County, Pennsylvania.

MELLOTT — Orphans' Court Action Number OC-7-2019. The First and Final Account of John W. Schubert a/k/a John W. Shubert, Executor of the Estate of Patsy L. Mellott, late of Adams County, Pennsylvania.

BELTZ — Orphans' Court Action Number OC-18-2019. The First and Final Account of Raymond C. Beltz Jr., Administrator of the Estate of Jay Stephen Beltz, late of Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

4/5 & 12

FICTITIOUS NAME - FORM FOR ADVERTISING

Notice is given that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 12, 2019, pursuant to the Fictitious Name Act, setting forth that A & C Used Auto Parts, Inc., of 131 Flickinger Road, Gettysburg, PA 17325, is the only entity owning or interested in a business, the character of which is a used car dealership and that the name, style and designation under which said business is and will be conducted is A & C USED AUTO and the location where said business is and will be conducted is 131 Flickinger Road, Gettysburg, PA 17325.

Barley Snyder
Solicitor

4/12

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on April 3, 2019 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 Daniel F. Chiteji to Daniel F. Marama.

The court has affixed the 14th day of June 2019 at 10:00 a.m. in court room No. 4, third floor of the Adams County Courthouse, as the time and place for the hearing of the said petition, when and where all persons interested may appear and show cause, if any they have, why the request of the petitioner should not be granted.

4/12

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on March 21, 2019, 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 Keith Allan Rippeon to Keith Allan Eiker.

The Court has affixed the 14th day of June, 2019 at 11:00 a.m. in Courtroom No. 4, Third Floor of the Adams County Courthouse, Gettysburg, Pennsylvania, as the time and place for the hearing of said Petition, when and where all interested parties may appear and show cause, if any they have, why the relief requested in the Petition should not be granted.

4/12

BANK OF AMERICA, N.A. VS. KAREN
LOUISE McDANIEL

1. In a civil action sounding in contract, a Plaintiff must set forth sufficient averments of fact in its complaint, such that when taken as true, the existence of an express or implied contract is established. 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, upon what grounds to make his defense.”

2. The credit card account agreement, coupled with the monthly statements, set forth specific allegations to provide Defendant with sufficient information to respond to the averments contained in the Amended Complaint and provide sufficient information to illustrate how Plaintiff arrived at the amount it claims is due from Defendant. Accordingly, Defendant’s first Preliminary Objection is overruled.

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. In this matter, the Defendant did not merely passively fail to object to the monthly statements, but proactively made payments on the account over the years, which proved Defendant’s acquiescence to the charges and fees listed on each statement. As such, the Defendant’s second Preliminary Objection is overruled.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2018-SU-1170, BANK OF AMERICA, N.A.
VS. KAREN LOUISE MCDANIEL

Robert L. Baroska, III, Esq., Attorney for Plaintiff

John L. Perry, Esq., Attorney for Defendant

Wagner, J., March 21, 2019

OPINION

Before this Court for disposition are Preliminary Objections filed by Karen Louise McDaniel (“Defendant”) to Bank of America, N.A.’s (“Plaintiff’s”) Amended Complaint. For the reasons set forth herein, said Preliminary Objections are overruled.

BACKGROUND

On November 2, 2018, Plaintiff filed a Civil Complaint against Defendant alleging that Defendant is the holder of a credit account that was issued to Defendant by Plaintiff, that Defendant used the account, and that the account is in default in the amount of \$5,665.46. Defendant filed Preliminary Objections and a brief in support thereof on December 11, 2018.

On January 22, 2019, Plaintiff filed an Amended Civil Complaint, which averred that Defendant applied for and received an open-ended credit account, which is owned and administered by the Plaintiff. Plaintiff averred Defendant used the credit account and has accrued an outstanding balance of \$5,665.46. 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. Exhibit ‘A’ is an AAA Credit Card Account Agreement for Karen Louise McDaniel and applies to transactions posted to the account starting March 13, 2015. Exhibit ‘B’ are AAA monthly account statements for the account of Karen Louise McDaniel. The first account statement indicated a zero balance starting March 11, 2015. The last account statement, ending March 9, 2017, indicated a balance of \$5,789.58.

On February 15, 2019, Defendant filed Preliminary Objections to Plaintiff’s Amended Complaint and filed a Brief in support thereof on February 19, 2019. Defendant’s Preliminary Objections alleged: (1) Plaintiff failed to conform to law or rule of court by failing to specify whether the credit card application was oral or written, and assuming it is written, failed to attach the written application; (2) Plaintiff failed to state a claim upon which relief can be granted for failure to allege the formulation of an account stated; and (3) Plaintiff failed to state a claim upon which relief can be granted for failure to allege a benefit conferred on Defendant worth \$5,665.46 under an unjust enrichment theory. On March 8, 2019, Plaintiff filed a brief in opposition to Defendant’s Preliminary Objections.

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). “In a civil action sounding in contract, a Plaintiff must set forth sufficient averments of fact in its

complaint, such that when taken as true, the existence of an express or implied contract is established.” **Id.** at 1236. “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.” **Id.**

DISCUSSION

Plaintiff’s Complaint alleges three causes of action – count one is a breach of contract claim, count two is breach of implied contract claim, and count three is an unjust enrichment claim. Such causes of action are permitted so long as they are pleaded in separate counts, as Plaintiff has done. The 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 action... 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.**

Defendant’s first Preliminary Objection alleges the Amended Complaint is deficient because it failed to specify whether Defendant’s credit card application was oral or written, and assuming it is a written application, failed to attach the written application. Defendant argues this is a failure to conform to Pa. R.C.P. 1019(h) and (i).

“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). Compliance with Rule 1019(i) can be obtained by attaching a copy of the cardholder agreement between the issuer and the cardholder. **Atlantic Credit and Finance, Inc. v. Guiliana**, 829 A.2d 340 (Pa. Super. 2003).

Plaintiff avers that the credit card agreement is in writing and is attached as Exhibit ‘A’ to the Amended Complaint. Exhibit ‘A’

appears to be a credit card account agreement for Karen Louise McDaniel effective March 13, 2015. In addition, Exhibit ‘B’ is a series of monthly statements purporting to be from the Exhibit ‘A’ credit card account agreement. The first account statement indicates a zero balance starting March 11, 2015. The last account statement, ending March 9, 2017, indicated a balance of \$5,789.58.

The credit card account agreement coupled with the monthly statements set forth specific allegations to provide Defendant with sufficient information to respond to the averments contained in the Amended Complaint and provide sufficient information to illustrate how Plaintiff arrived at the amount it claims is due from Defendant. Plaintiff’s position is supported by **Discover Bank v. Stucka**, 33 A.3d 82 (Pa. Super. 2011). Accordingly, Defendant’s first Preliminary Objection is overruled.

Defendant’s second and third Preliminary Objections challenge the legal sufficiency of the pleadings (demurrer). Defendant argues that the Amended Complaint fails to state a claim upon which relief can be granted for an implied contract (account stated) or unjust enrichment claim.

“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**, 650 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).

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 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.” **Rush’s Service Center, Inc. v. Genareo**, 10 Pa. D.&C.4th 445 (Lawrence Cty. 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.” **Donahue 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 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).

In this matter, the Defendant did not merely passively fail to object to the monthly statements, but proactively made payments on the account over the years which proves Defendant’s acquiescence to the charges and fees listed on each statement. As such, the Defendant’s second Preliminary Objection is overruled.

A claim for unjust enrichment arises from a quasi-contract. “A quasi-contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another.” **AmeriPro Search, Inc. v. Fleming Steel Co.**, 787 A.2d 988, 991 (Pa. Super. 2001). The Superior Court set forth the elements of unjust enrichment in **Stoeckinger v. Presidential Fin. Corp. of Delaware Valley**, 948 A.2d 828, 833 (Pa. Super. 2008):

The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Whether the doctrine applies depends on the unique factual circumstances of each case. In determining if the doctrine applies, we focus not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. Moreover, the most significant element of the doctrine is whether the enrichment of the defendant is unjust. The doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff.

Stoeckinger v. Presidential Fin. Corp. of Delaware Valley at 833, quoting *Styer v. Hugo*, 619 A.2d 347, 350 (Pa. Super. 1993) (quotation marks omitted).

In this matter, Plaintiff has plead sufficient facts to establish a cause of action for unjust enrichment as an alternative to the breach of contract claims. As such, Defendant's third Preliminary Objection is overruled.

ORDER OF COURT

AND NOW, this 21st day of March, 2019, in consideration of Defendant's Preliminary Objections, filed February 15, 2019, it is hereby Ordered that Defendant's Preliminary Objections are **OVERRULED** and the Court directs Defendant to Answer Plaintiff's Amended Complaint in accordance with all applicable rules or be subject to the entry of default judgment.

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 ELIZABETH L. DESMOND a/k/a ELIZABETH LOUISE DESMOND, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Michael W. Desmond, Jr., 27915 Barnes Road, Damascus, MD 20872

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

ESTATE OF HAROLD D. GREEN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Thomas Green, 735 Marsh Creek Road, Gettysburg, PA 17325; Todd Green, 1885 Ridge Road, Gettysburg, PA 17325; Samuel Green, 819 Marsh Creek Road, Gettysburg, PA 17325

ESTATE OF JAMES WILLIAM NEIDERER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Administratrix: Julie R. Hess, 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 TERRI A. SANDERS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Testatrix: Queena B. Cunningham, 100 North Orchard View Drive, Hanover, PA 17331

ESTATE OF SAMUEL V. SCICCHITANO SR., DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: John R. Gibbel, c/o Gibbel Kraybill & Hess, LLP, P.O. Box 5349, Lancaster, PA 17606

Attorney: Gibbel Kraybill & Hess LLP, P.O. Box 5349, Lancaster, PA 17606

ESTATE OF GEORGE M. SCOTT, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Alec C. Scott, 14 Debra Lane, Lancaster, PA 17602

ESTATE OF FRANK E. SHOOP JR. a/k/a FRANK SHOOP, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executrix: Susan Shoop, c/o J. Stephen Feinour, Esq., Nauman, Smith, Shissler & Hall, LLP, P.O. Box 840, Harrisburg, PA 17108-0840

Attorney: J. Stephen Feinour, Esq., Nauman, Smith, Shissler & Hall, LLP, P.O. Box 840, Harrisburg, PA 17108-0840

ESTATE OF MARK A. SHRINER, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Co-Executors: Cecelia J. Miller, 349 Goldenville Road, Gettysburg, PA 17325; Dennis C. Shriner, 349 Longstreet Drive, Gettysburg, PA 17325

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

ESTATE OF BETTY M. SMITH a/k/a BETTY MARIE SMITH, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Tamre D. Wentz, 342 High Street, P.O. Box 395, Cashtown, PA 17310

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

ESTATE OF EDWARD C. SNYDER a/k/a EDWARD CONRAD SNYDER, DEC'D

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

Executrix: Jane A. Snyder, c/o Kristina A. Bange, Esq., 32 South Beaver Street, York, PA 17401

Attorney: Kristina A. Bange, Esq., 32 South Beaver Street, York, PA 17401

ESTATE OF THOMAS EUGENE WOLFGANG, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administratrix: Kimberly Wolfgang, 226 Glen Road, Glen Burnie, MD 21060

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

SECOND PUBLICATION

ESTATE OF EMELIA E. CARRICK, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executor: Hugh Bruce Carrick, Jr., 1011 Weldin Circle, Wilmington, DE 19803
Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF BARBARA ANN DeGROFT, DEC'D

Late of Union Township, Adams County, Pennsylvania

Tracey Ann DeGroit, 1009 Bollinger Road, Littlestown, PA 17340

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

ESTATE OF MARIAN M. HENRY, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Sandra Kuhn, 615 Winding Lane, East Berlin, PA 17316

Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

ESTATE OF FRANCES C. JOLLY a/k/a FRANCES L. JOLLY, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Toni L. Queen, 8 Meadowview Drive, Littlestown, PA 17340

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

ESTATE OF EDITH G. MILLER a/k/a EDITH GRACE MILLER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Nora J. Sites, 372 Hilltop Road, Newburg, PA 17240

Attorney: Lawrence R. Rife, IV, Esq., Hoskinson, Wenger & Rife, 147 East Washington Street, Chambersburg, PA 17201

ESTATE OF ANNA JANE WELSH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Keith A. Welsh, 1131 Boyds School Road, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF MADELINE E. MARTIN, DEC'D
Late of Oxford Township, Adams County, Pennsylvania

Administrator: Robert A. Martin, 25 Brickyard Road, New Oxford, PA 17350

ESTATE OF WALTER REYNOLDS OTTEY, JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: James Tuschall, c/o Andrew D. Cotlar, Esq., Law Offices Cotlar & Cotlar, 23 West Court Street, Doylestown, PA 18901

Attorney: Andrew D. Cotlar, Esq., Law Offices Cotlar & Cotlar, 23 West Court Street, Doylestown, PA 18901

ESTATE OF FREDERICK D. RANDT, DEC'D

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

Executor: Ronald F. Schultz, 13253 Old Mill Road, Waynesboro, PA 17268

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF HAZEL B. RIDER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Christine V. Rider, 584 Lake Meade Drive, East Berlin, PA 17316

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

ESTATE OF WALTER C. SHOWERS, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Administratrix CTA: Doris A. Showers, 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

ESTATE OF RICHARD E. WHISLER a/k/a RICHARD E. WHISLER, SR., DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Executor: Eugene R. Whisler, 220 Union Church Road, Dillsburg, PA 17019

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

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