

**Worldwide Asset Purchasing, LLC v.
Nancy A. Stern
and
Commonwealth Financial Systems, Inc. v.
Scott Miller**

*Arbitration Appeals—Preliminary Objections—Sufficiency of
Complaint Under Pa. R.C.P. 1019 and 1042*

1. Assignees of credit card companies filed actions before District Justice against Defendants to recover credit card balances allegedly due. District Justices entered default judgment against both Plaintiffs for failure to appear at hearings and Plaintiffs filed timely notices of appeal. Defendants filed preliminary objections arguing complaints should be dismissed for failure to comply with pleading requirements of Pa. R.C.P. No. 1019 and verification requirements of Rule 1042. Preliminary Objections were granted, complaints were stricken and Plaintiffs were given 20 days to file amended complaints.

2. For complaints to satisfy the pleading requirements of Pa. R.C.P. 1019, Plaintiffs need to plead the facts on which a cause of action is based, including averments of time, place and items of special damage and must also attach copies of writings when the claim is based on a writing.

3. Where assignees of credit card companies sue for alleged credit card balances, suit is based on the contract between it, as assignee of assignor credit card company's rights, and Defendant credit card holders. To satisfy the pleading requirements, the underlying contract between Defendant credit card holder and credit card company must be attached to the complaint along with the contract between the credit card company and assignee to establish the assignees' contractual right to maintain suit against the Defendants.

4. Where Plaintiff sues for alleged credit card balances due, it must set forth the dates and amounts of the charges due as part of the duty imposed by the Rules of Civil Procedure to attach all documents which form the foundation of a cause of action and to give the Defendants sufficient notice of the charges against.

5. Where Plaintiff's counsel's verification under Pa. R.C.P. 1042(c) did not state that all parties were out of the court's jurisdiction it would be stricken as defective on its face and counsel would be permitted to file amended complaint complying with the verification requirements of the rule.

(Peter Clyde Papadakos)

Yale D. Weinstein for Worldwide Asset Purchasing, LLC.
Ann E.L. Shapiro for Stern.
Joel E. Hausman for Commonwealth Financial Systems, Inc.
Clayton S. Morrow for Miller.

Nos. AR 04-4429 and AR 04-4572. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

OPINION and ORDERS OF COURT

Wettick, J., December 29, 2004—The preliminary objections of defendants questioning the sufficiency of complaints to recover credit card balances are the subject of this Opinion and Orders of Court.¹

In both cases, plaintiffs instituted district justice proceedings to recover credit card balances allegedly due. However, plaintiffs did not appear at the district justice proceedings and the district

justices entered default judgments in favor of defendants. Plaintiffs filed timely notices of appeal from the district justice judgments. Defendants' preliminary objections to the complaints which plaintiffs have filed in these common pleas court proceedings are the subject of this Opinion and Orders of Court.

The basis for the preliminary objections is the failure of plaintiffs to comply with the pleading requirements of Pa. R.C.P. No. 1019. Defendants contend that plaintiffs have failed to comply with Rule 1019(a) which requires a pleading to set forth the material facts on which a cause of action is based; Pa. R.C.P. No. 1019(f) which requires averments of time, place, and items of special damage to be specifically stated; and Pa. R.C.P. No. 1019(i) which requires the pleader to attach a copy of a writing, or the material part thereof, whenever any claim is based on a writing.

GENERAL DISCUSSION OF THE CASE LAW

In *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340 (Pa.Super. 2003), Atlantic Credit filed a complaint in which it alleged that the defendants were indebted to GM Card and that the plaintiff had purchased the defendants' account from GM Card. The plaintiff did not attach to the complaint any agreements between GM Card and the defendants, or any contract or agreement between GM Card and itself other than a single sheet which appeared to be a monthly statement from GM Card addressed to the defendants showing a new balance of \$9,644.66 as of March 28, 2000. The Superior Court found to be meritorious the defendants' preliminary objection asserting that the plaintiff was required to attach writings evidencing any contract between GM Card and the defendants. The Court stated that the plaintiff's "failure to attach the writings which assertedly establish appellee's right to a judgment against appellants in the amount of \$17,496.27, based on an alleged debt it allegedly purchased for substantially less than \$9,644.66, is fatal to the claims set forth in the appellee's complaint. Thus, the preliminary objection of appellants based on failure to produce a cardholder agreement and statement of account, as well as evidence of the assignment, establishes a meritorious defense." *Id.* at 345.

In *St. Hill and Associates, P.C. v. Capital Asset Research Corp., Ltd.*, 2000 W.L. 33711023 (C.P. Phila. 2000), the Court considered preliminary objections to a complaint alleging that the defendant owed \$93,000 to the plaintiff. In these preliminary objections, the defendant contended that (1) the complaint failed to comply with Rule 1019(a) because it did not set forth material facts regarding how the alleged debt arose and (2) the complaint violated Rule 1019(f) because it did not specify what services were performed for the defendant, when they were performed, and from where the alleged sum of \$93,000 derived. While the plaintiff alleged that it sent notices and invoices to the defendant, it did not state when these invoices were sent or what the invoices covered. The Court sustained the preliminary objections stating that:

...the proper procedure is to require St. Hill to file an amended pleading specifying the times and dates of St. Hill's performance and demands for payment, pursuant to the alleged contract. It should also attach the relevant invoices to its amended complaint. *Id.* at 2.

In *Marine Bank v. Orlando*, 25 D.&C.3d 264 (C.P. Erie 1982), the Court addressed preliminary objections to a complaint to recover a credit card debt raising noncompliance with Rule 1019. The Court ruled that the plaintiff may comply with Rule 1019(h) by attaching the underlying agreement between the issuer and the cardholder. *Id.* at 66.

The Court also addressed the defendant's contention that the complaint failed to comply with Rule 1019(f) because the complaint failed to contain averments of time, place, and specific

averments of damage. The Court sustained these preliminary objections, stating that "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 items he must contest." *Id.* at 268.

A recent opinion of an Ohio Court of Appeals (*Asset Acceptance Corp. v. Proctor*, 804 N.E.2d 975 (Ohio Ct. App. 2004)) addressed the pleading requirements in a lawsuit by an assignee of an AT&T Universal credit card. The complaint alleged that the defendant owed \$3,540.92, plus another \$3,901.55 in accrued interest through September 30, 2002, and interest thereafter of 10% per annum. The complaint included a copy of a customer account statement and an affidavit of a branch manager setting forth the total principal and total accrued interest through September 30, 2002. Neither the complaint nor the affidavit explained how the plaintiff arrived at these numbers. The Court described the pleading requirements:

Because an action on an account is founded upon contract, the plaintiff must prove the necessary elements of a contract action, and, in addition, must prove that the contract involves a transaction that usually forms the subject of a book account. In order to adequately plead and prove an account, "[a]n account must show the name of the party charged. It begins with a balance, preferably at zero, or with a sum recited that can qualify as an account stated, but at least the balance should be a provable sum. Following the balance, the item or items, dated and identifiable by number or otherwise, representing charges, or debits, and credits, should appear. Summarization is necessary showing a running or developing balance or an arrangement which permits the calculation of the balance claimed to be due." *Id.* at 977 (citations omitted).

PRELIMINARY OBJECTIONS—WORLDWIDE ASSET PURCHASING, LLC v. STERN

Plaintiff's complaint (without Exhibit A) and plaintiff's revised verification are attached to this Opinion as Attachment 1.

In its complaint, plaintiff avers that Bank of America issued a credit card to defendant for her use in making purchases subject to the terms and conditions governing the use of the credit card. Defendant accepted these terms and conditions. Plaintiff purchased defendant's account from Bank of America and is now the holder and owner of the account.

Plaintiff's preliminary objections include the failure of plaintiff to attach to the complaint the written agreement showing the assignment of defendant's account from Bank of America to plaintiff. Rule 1019(i) provides that when a claim is based on a writing, the pleader shall attach a copy of the writing or material part thereof. Plaintiff's claim is based on the assignment of defendant's account from Bank of America to plaintiff because this assignment is a material fact upon which plaintiff's cause of action is based. See *Atlantic Credit and Finance v. Giuliana, supra*; 4 *Standard Pennsylvania Practice 2d* §21:75 at 84 (all documents which form a plaintiff's cause of action shall be attached to the complaint).

Defendant's preliminary objections also raise the failure of plaintiff to attach any writings showing the agreement between defendant and plaintiff's assignor, Bank of America. The only writing attached to the complaint (Exhibit A) is an undated and unsigned Visa or MasterCard CardMember Agreement which appears to have been prepared in 4/99. The complaint does not contain any documents signed by defendant that would show whether defendant ever agreed to these terms and conditions or whether these terms and conditions are applicable to the rel-

evant period in which plaintiff's claim is based. As defendant states in her brief, "it is impossible to discern from Plaintiff's Complaint whether the attached Terms and Conditions were ever agreed to by Plaintiff, or whether these Terms and Conditions have merely been copied from some anonymous debtors' credit card file and attached to the Complaint." (Brief in Support of Preliminary Objections at 5.)

In *Atlantic Credit and Finance v. Giuliana, supra*, the plaintiff sought money allegedly due under a credit card which GM Card allegedly issued to the defendants. However, the plaintiff did not attach to its complaint any agreement between GM Card and the defendants; it attached only what appeared to be a monthly statement from GM Card addressed to the defendants. The Court sustained the defendants' preliminary objections based on a failure to attach writings which assertedly establish the plaintiff's right to a judgment in the specific amount which it sought.

It is my understanding that in a typical credit card transaction, the relationship between the cardholder and the issuer begins with a written application signed and submitted by the cardholder. In this application, the cardholder agrees to be bound by provisions set forth in the application and possibly other terms and conditions that are furnished to the cardholder at the time the card is issued. The application also provides that the terms and conditions may be changed through mailings to the cardholder and accepted by the cardholder's continued use of the credit card. In this situation, the writings that must be attached to the complaint include the application signed by the cardholder and any other relevant terms and conditions which govern the issuer's claims. For example, if the claim involves a period of time in which the initial terms and conditions applied and a later period of time in which amended terms and conditions apply, the complaint must attach both the original and amended terms and conditions with the dates for which they were applicable.

Defendant Stern next contends that plaintiff's complaint fails to comply with Rule 1019 because it seeks recovery of a specific amount of money that is allegedly due without offering any documentation or allegations supporting the claim. This complaint does not include a single date. The complaint simply avers that monthly statements were sent to defendant which detailed the charges made to the account, including finance charges, late and over limit charges, and that the balance due is \$7,240.44. None of the monthly statements is attached and there is no description of the items forming the basis of the claim.

Under Rule 1019, a complaint must include the amounts of the charges that are part of the claim, the dates of the charges, credits for payments if any, dates and amounts of interest charges, and dates and amounts of other charges. The complaint should contain sufficient documentation and allegations to permit a defendant to calculate the total amount of damages that are allegedly due by reading the documents attached to the complaint and the allegations within the complaint. See *St. Hill and Associates v. Capital Asset Research Corp., supra*; *Marine Bank v. Orlando, supra*.²

Defendant also seeks to strike the complaint because the verification does not comply with Pa. R.C.P. No. 1024. This rule requires a pleading containing an averment of fact not appearing of record to state "that the averment or denial is true upon the signer's personal knowledge or information and belief." Rule 1024(a). Plaintiff's substitute verification does not make any statement as to the truthfulness of any factual allegations within the complaint—the substitute verification simply states that Angel Y. Moss, Attorney Relationship Manager for worldwide, "makes this statement on its behalf as to the truthfulness of the facts set forth in the foregoing Complaint." (Attachment 1, last page.) Consequently, the substitute verification is stricken.

PRELIMINARY OBJECTIONS—COMMONWEALTH

FINANCIAL SYSTEMS, INC. v. MILLER

Plaintiff's complaint and Exhibit C (without Exhibits A and B) are attached as Attachment 2. Defendant's preliminary objections to this complaint raise grounds very similar to those raised by the defendant in *Worldwide Asset Purchasing v. Stern*.

In its complaint, Commonwealth Financial avers that it is an assignee of Unifund CCR Partners, assignee of Citibank Universal Card, and that plaintiff's assignor transferred to plaintiff all its right, title, and interest in, and to the agreement between the assignor and defendant. Plaintiff attaches as Exhibit A to the complaint a bill of sale under which Unifund CCR transferred to plaintiff its title to accounts listed in an account schedule (which is not attached).

Defendant's preliminary objections raise the failure of the complaint to contain allegations as to the terms and conditions of any alleged assignment between Citibank and Unifund CCR Partners, and plaintiff's failure to attach a copy of this assignment. I am sustaining this preliminary objection.

The complaint is based on an alleged credit card relationship between defendant and Citibank Universal Card. Plaintiff is not a party to this relationship (i.e., plaintiff does not stand in the shoes of Citibank Universal Card) unless plaintiff can establish that its assignor (Unifund CCR Partners) acquired Citibank's right, title, and interest in and to the alleged account between defendants and Citibank. As I previously discussed, Rule 1019(i) requires a party to attach all documents which form the foundation of the plaintiff's cause of action. The foundation of plaintiff's cause of action includes Citibank's assignment of defendant's account.

Defendant's preliminary objections also raise the failure of plaintiff to attach any writings showing the agreement between defendant and Citibank Universal Card. The complaint avers that defendant was granted a credit card by "plaintiff" (I assume the complaint should read Citibank Universal Card) at the terms and conditions agreed upon by the parties as more specifically shown in an agreement, a copy of which is attached as Exhibit B. However, Exhibit B is an incomplete and unsigned writing that makes no reference to the defendant. The final page of this exhibit has a date of 1998. The heading of the writing states, "AT&T Universal Card Cardmember Agreement." I am sustaining this preliminary objection because of plaintiff's failure to attach to the complaint any writing referring to and/or signed by the defendant or any explanation as to how Exhibit B applies to defendant. Exhibit B raises more questions than it answers because the complaint refers to the initial assignor as Citibank Universal Card and plaintiff appears to have attached to the complaint a portion of an AT&T Universal Card Cardmember Agreement.

The complaint is also deficient because of the absence of any documentation or other explanation supporting the averment that the balance due is \$8,250.70, with interest at the rate of 19.99% per annum on the balance due from October 23, 2003.³ While paragraph 9 of the complaint alleges that the amount which is due is more specifically shown in a statement of account marked Exhibit C, this exhibit is simply a computer printout showing a balance of \$4,827.51, interest of \$3,304.69 and court costs of \$118.50, for a total balance of \$8,250.70. As I previously discussed, in order to meet the requirements of Rule 1019, the complaint must set forth the dates and amounts of the charges and the contractual basis for any interest payments and late charges.⁴

Defendant's preliminary objections also seek dismissal of the complaint on the ground that the complaint is not properly verified. The relevant portion of the verification reads as follows:

1. I am the attorney for the Plaintiff;
2. Verification by the Plaintiff or an authorized agent of Plaintiff cannot be obtained within the time allowed

by law for the filing of pleading;

3. That the facts set forth in the foregoing Pleading are true and correct to the best of my knowledge, information, and belief, based upon information received from the Plaintiff.

A verification must be made by a party "unless all of the parties (1) lack sufficient knowledge or information, or (2) are outside the jurisdiction of the court and the verification of none of them can be obtained within the time allowed for filing the pleading." Rule 1042(c). Counsel's verification (which is based on information received from the plaintiff) does not state that all of the parties are outside the jurisdiction of the court. Consequently, the verification is stricken.⁵

For these reasons, I enter the following Orders of Court:

Worldwide Asset Purchasing, LLC v. Nancy A. Stern

No. AR 04-4429

ORDER OF COURT

On this 29th day of December, 2004, upon consideration of defendant's preliminary objections, it is hereby ORDERED that:

- (1) plaintiff's complaint is stricken; and
- (2) within twenty (20) days, plaintiff may file an amended complaint, including an amended verification, which complies with the pleading and verification requirements set forth in the Opinion accompanying this Order of Court.

BY THE COURT:
/s/Wettick, A.J.

Commonwealth Financial Systems v. Scott Miller

No. AR 04-4572

ORDER OF COURT

On this 29th day of December, 2004, upon consideration of defendant's preliminary objections to plaintiff's complaint, it is hereby ORDERED that:

- (1) plaintiff's complaint is stricken; and
- (2) within twenty (20) days, plaintiff may file an amended complaint, including an amended verification, which complies with the pleading and verification requirements set forth in the opinion accompanying this Order of Court.

BY THE COURT:
/s/Wettick, A.J.

ATTACHMENT 1

BURTON NEIL & ASSOCIATES, P.C.

By: Yale D. Weinstein, Esquire
Identification No. 89678
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-2120

WORLDWIDE ASSET PURCHASING, LLC

9911 Covington Cross Drive, Suite 107
Las Vegas, NV 89144
Plaintiff
v. NANCY A. STERN
1750 Borland Road, Pittsburgh, PA 15243
Defendant

IN THE COURT OF COMMON PLEAS
ALLEGHENY COUNTY, PENNSYLVANIA
NO. CIVIL ACTION—LAW

a statute of limitations defense based on the pleadings. (Attachment 2, Ex. C.)

⁶ If the verification had not been defective on its face, I would have required a written explanation of the facts supporting the averment that a verification by the plaintiff could not be obtained within the time allowed by law for the filing of the pleading. This is so because this litigation was instituted through the filing of a complaint with a district justice on May 21, 2004, and the verification is dated July 29, 2004. See *Rokeby-Johnson v. William Moennig and Son, Ltd.*, 41 D.&C.3d 594, 597-98 (C.P. Phila. 1984) ("given our modern, worldwide facilities of communication and travel, it is patently disingenuous to claim baldly that verifications cannot be obtained from any of the foreign plaintiffs within the time limit of the applicable statute of limitations").

**American International Resources, Inc. v.
Russell E. Swanson v.
Christopher D. Moore,**

Preemption—Amended Pleadings

1. ERISA preempts state law cause of action for pension or welfare benefits.

2. Amended Counterclaim and Complaint to Join Third Party Defendant in state court may not state cause of action preempted by ERISA.

(Joan Shoemaker)

Peter N. Georgiades for Plaintiff.

Adam S. Ennis for Russell E. Swanson.

GD 04-3018. In the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division.

OPINION

Strassburger, J., January 10, 2005—This matter first came before the Court upon a suggestion by the Plaintiff, American International Resources, Inc. ("AIR"), that this Court lacks jurisdiction over the subject matter of portions¹ of the counterclaim asserted in this case by Defendant, Russell E. Swanson, as well as the third-party complaint filed against Additional Defendant Christopher D. Moore. Later, Defendant filed a motion to amend its counterclaims and third party complaint.

Defendant, a former employee of AIR, has asserted claims for the value of medical and dental benefits and for contributions to an employee pension plan which Defendant maintains AIR was to have funded for the benefit of Defendant while Defendant was an employee of AIR. Pursuant to Pa. R.Civ.P. 1032 (b), Plaintiff has suggested that this Court lacks jurisdiction over such claims because they are preempted by the Employee Retirement Income Security Act, Public Law No. 93-406, 88 Stat. 829 ("ERISA"), and that these portions of Defendant's counterclaims must now be dismissed.

An argument was held on the matter on December 28, 2004, at which time this Court granted the parties until January 3, 2005 to file any motions or supplemental memoranda related to this aspect of the case. Defendant has filed a motion for leave to amend both his counterclaim and his complaint to join additional defendant, which motion Plaintiff has opposed.

Defendant bases the portion of his counterclaim against AIR regarding medical, dental and pension benefits upon two legal theories. One theory is that the failure to pay these benefits is a violation of the Pennsylvania Wage Payment and Collection Law, 43 P.S. §260.1, *et seq.* The Defendant's other theory is breach of contract. The Defendant bases his claim against the Additional

Defendant, Christopher D. Moore, exclusively upon the Pennsylvania Wage Payment and Collection Law.

It is now well settled that ERISA preempts all state law causes of action for pension or welfare benefits. 29 U.S.C. §1144(a). This preemption has specifically been held to preclude actions under the Pennsylvania Wage Payment and Collection Law and common law claims for breach of contract. *Vulcan v. United of Omaha Life Ins. Co.*, 715 A.2d 1169 (Pa.Super. 1998); *McMahon v. McDowell*, 794 F.2d 100 (3d Cir. 1986). Defendant's sole remedy for the alleged failure of AIR to pay for medical, dental and retirement benefits is pursuant to ERISA itself, and prior to the proposed amendments, no such claim was pleaded in this case.

Defendant has asserted that Plaintiff's preemption argument, first asserted less than a month before the scheduled trial date, has been waived. Whether that is so depends upon whether preemption goes to subject matter jurisdiction, which cannot be waived. This court agrees with Plaintiff's contention that preemption does indeed go to subject matter jurisdiction. See *Phillips ex rel. Estate of Williams v. Cricket Lighters*, 773 A.2d 802, 806 fn. 2 (Pa.Super. 2001) *rev'd in part on other gnds. Phillips v. Cricket Lighters*, 576 Pa. 644, 841 A.2d 1000 (2003) (preemption relates to jurisdiction, and is a non-waivable inquiry); *LaChappelle v. Interocean Mgmt. Corp.*, 731 A.2d 163, 165 (Pa.Super. 1999) (federal preemption under Seaman's Act deprived Pennsylvania courts of jurisdiction over the subject matter); *Fetterman v. Green*, 689 A.2d 289 (Pa.Super. 1997) (Federal Communications Act deprives Pennsylvania courts of jurisdiction to impose state law remedies).

Defendant's proposed amendments to his counterclaim and to the complaint to join third party defendant would reassert the causes of action under state law, and add a cause of action under ERISA, pursuant to 29 U.S.C. §1132(a)(1)(B). The state law causes of action, being preempted, would be no more valid under the proposed amended pleadings than they are now, and so amendment to that extent would be pointless. The Defendant's motion for leave to amend will therefore be denied to the extent the Defendant seeks to reassert causes of action for unpaid pension benefits under Pennsylvania common law or the Pennsylvania Wage Payment and Collection Law.

The remainder of Defendant's proposed amendments seek to raise claims under ERISA.² Plaintiff admits that state courts have concurrent jurisdiction to hear claims for health and pension benefits under ERISA. *Vulcan*, 715 A.2d at 1175-76.

However, Plaintiff asserts that the amendment to raise ERISA claims should not be allowed at this time because Defendant has failed to exhaust his administrative remedies. Although there is no exhaustion requirement in the ERISA statute, Defendant cites numerous federal courts of appeal decisions implying such a requirement, including *Harrow v. Prudential Ins. Co. of America*, 279 F.3d 244, 249 (3d Cir. 2002). Although entitled to respect, such decisions are not binding on this court, even when a federal question is involved. *Vulcan*, 715 A.2d at 1172.

Assuming *arguendo* that an exhaustion requirement exists, it is inapplicable here. Plaintiff seems to be taking the position that Defendant must exhaust both an internal review within the plan, and a review by the Department of Labor. Under the circumstances of this case, there is no need for the internal review within the plan because Plaintiff asserts in its brief that it has already taken place and Plaintiff has offered to credit Defendant with the amount Plaintiff thinks is due. Just because Defendant has not accepted Plaintiff's offer of settlement does not mean that Defendant has failed to exhaust his administrative remedy.

As far as review by the Department of Labor³ is concerned, none of the cases cited by Plaintiff holds that such a review is required, and this court will not imply such a requirement.

An appropriate order follows.

STRASSBURGER, J.
January 10, 2005

Complaint

1. The plaintiff is WORLDWIDE ASSET PURCHASING, LLC, a business corporation, with place of business located at 9911 Covington Cross Drive, Suite 107, Las Vegas, NV.

2. The defendant is Nancy A. Stern, who resides at 1750 Borland Road, Pittsburgh, Allegheny County, Pennsylvania.

3. At the defendant's request, Bank of America issued the defendant a credit card bearing account number 5442626xxxxxx for defendant's use in making charge purchases subject to the terms and conditions governing the use of the credit card. Attached hereto, made a part hereof and marked Exhibit A is a true and correct copy of the terms and conditions.

4. The defendant accepted the credit card and the terms and conditions governing its use for the purchase of goods, merchandise and services and/or for cash advances from vendors who accepted Bank of America's credit card. In using the credit card, the defendant agreed to comply with the terms and conditions governing its use which included the obligation to pay Bank of America for all charges made in full upon receipt of the statement or in installments subject to monthly finance charges.

5. The defendant utilized the credit card by making/obtaining purchases of goods, merchandise and services and/or cash advances from vendors who accepted the credit card. Monthly statements were sent to the defendant which detailed the charges made to the account including finance charges, late and/or, over limit charges. The balance due for the charges made by the defendant including any finance charges, late or over limit charges is \$7,240.44.

6. Defendant did not pay the balance due in full upon receipt of the billing statements and failed to make the required minimum monthly payment set forth in the billing statement. As such, defendant is in default of the terms and conditions governing the use of the credit card.

7. Plaintiff purchased the defendant's account from Bank of America and is now the holder and owner of the account.

8. Although demand has been made by plaintiff upon defendant to pay the sum of \$7,240.44, the defendant failed and refused to pay all or any part thereof.

9. Plaintiff alleges it is entitled to recovery of attorneys fees from defendant pursuant to the terms and conditions governing the account. Plaintiff seeks recovery of attorneys fees in the sum of \$759.56.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$7,240.44, attorneys fees in the sum of \$759.56 and the costs of this action.

BURTON NEIL & ASSOCIATES, P.C.
By: Yale D. Wienstein, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates, P.C. is a debt collector.

Verification

Angel Y. Moss is Attorney Relationship Manager for Worldwide Asset Purchasing, LLC, the within Plaintiff, and makes this statement on its behalf as to the truthfulness of the facts set forth in the foregoing Complaint subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 7/13/04
Nancy A. Stern

Name: Angel Y. Moss

ATTACHMENT 2

COMPLAINT ON APPEAL

1. Plaintiff is a corporation having offices at 120 North Keyser Avenue, Scranton, PA 18504, and as the assignee of Unifund CCR

Partners, assignee of Citibank Universal Card, stands in its assignor's stead, and all are hereinafter referred to interchangeably as "Plaintiff."

2. At a specific instance the Assignor sold, assigned and transferred to Plaintiff all of Assignor's right, title and interest in, and to the agreement between Assignor and Defendant. Assignor had the right to assign the agreement. A copy of the assignment is attached hereto as Exhibit "A."

3. All conditions precedent to Assignor's right to be paid under the terms of the contract have occurred.

4. Defendant is an individual whose address is 425 7th St., Pittsburgh, Allegheny County, Pennsylvania 15139.

5. At a specific instance and request of the Defendant, the Defendant applied for and was granted a credit card by Plaintiff at the terms and conditions agreed upon by the parties, as is more specifically shown by the Agreement, a true and correct copy of which is attached hereto, marked Exhibit "B" and made a part hereof.

6. The Plaintiff avers that the agreement between the parties was based upon a written agreement which the Defendant accepted by using credit card to make purchases and/or cash advances.

7. Thereafter, in breach of obligations under the Agreement, the Defendant failed to make payments as they became due.

8. Plaintiff avers that the terms of the Agreement provide for acceleration of the entire balance due and owing upon Defendant's breach of the Agreement.

9. Plaintiff avers that the balance due amounts to \$8,250.70, as is more specifically shown by Plaintiff's Statement of Account, a true and correct copy of which is attached hereto, marked Exhibit "C" and made a part hereof.

10. Plaintiff avers that the interest has accrued at the rate of 19.99% per annum on the balance due from October 23, 2003.

11. Per the term of the agreement, the Defendant has agreed to pay to the Plaintiff as liquidated damages, the costs of collection, including all reasonable attorneys' fees incurred in the collection of monies owing, which Plaintiff avers will amount to 25% of the balance due.

12. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and refused to pay the amount due to Plaintiff or any part thereof.

WHEREFORE, Plaintiff demands Judgment against Defendant in the principal amount of \$8,250.70, with appropriate additional interest from October 23, 2003, plus attorneys fees and costs.

APPLE AND APPLE, P.C.
BY: s/ _____
Attorneys for Plaintiff(s)

¹ I am addressing these preliminary objections through an Opinion because issues concerning the adequacy of complaints to recover credit card balances have been arising with considerable frequency.

² According to 4 *Standard Pennsylvania Practice 2d* §22:84 at 210-11, the "complaint should contain an informative statement of the account, with debits and credits properly identified, itemized, and segregated; there must be clear and definite charges, not lumped but itemized, showing the nature of the transactions[; an] exhibit must set forth the items on which plaintiff claims, delivery dates, unit charges, and total amounts." (Footnotes omitted.)

³ The complaint does not attach any writing showing that defendant agreed to pay this rate of interest.

⁴ The computer printout lists 10/11/99 as the last payment date. There is no reference to the date when the card was last used. Without such information, defendant is not in a position to raise