

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

ST. HILL AND ASSOCIATES, P.C.,	:	MAY TERM 2000
Plaintiff	:	No. 5035
	:	
v.	:	COMMERCE CASE MANAGEMENT
	:	PROGRAM
CAPITAL ASSET RESEARCH	:	
CORPORATION, LTD.,	:	
Defendant	:	Control No. 070022

OPINION

Plaintiff, St. Hill and Associates, P.C. (“St. Hill”) has filed a complaint against defendant, Capital Asset Research Corporation, Ltd. (“CARC”), primarily alleging that CARC owes St. Hill monies for services performed pursuant to a contract between them. CARC has filed preliminary objections to the complaint. For the reasons set forth in this Opinion, the preliminary objections are overruled in part and sustained in part.

Discussion

A court may properly grant preliminary objections when the pleadings are legally insufficient for one or more of several reasons enumerated in Pennsylvania Rule of Civil Procedure 1028, three of which are asserted by the defendant in this case:

- (2) failure of a pleading to conform to law or rule of court . . . ;
- (3) insufficient specificity in a pleading; [or]
- (4) legal insufficiency of a pleading (demurrer) [.]

Pa.R.C.P. 1028(a)(2), (3), and (4), respectively. See Baker v. Cambridge Chase, Inc., 725 A.2d 757, 764 (Pa.Super.Ct. 1999). It is well-established that when ruling on preliminary objections in the form of

a demurrer, a court accepts as true all well-pleaded, material and relevant facts, as well as every inference reasonably deducible from those facts. Willet v. Pennsylvania Medical Catastrophe Loss Fund, 549 Pa. 613, 619, 702 A.2d 850, 853 (1997)(citations omitted). Preliminary objections, which result in a denial of the pleader’s claim or the dismissal of his suit, should only be sustained in cases that clearly and without a doubt fail to state a claim for which relief may be granted under any theory of law. Id. In addition, where doubt exists as to whether a demurrer should be sustained, the doubt should be resolved in favor of overruling it. Id. at 619-20, 702 A.2d at 853. See also, Chem v. Horn, 725 A.2d 226, 228 (Pa.Commw.Ct. 1999)(stating that “[t]he question presented by a demurrer is whether, in the facts averred, the law says with certainty that no recovery is possible.”).

In its objections, CARC moves to dismiss St. Hill’s complaint on the grounds that it fails to comply with various provisions of Pa.R.C.P.1019, and that it fails to state a cause of action, as required by Pa.R.C.P.1028(a)(4). Applying the above-listed standard to this case, this court now holds that certain objections must be sustained while others are overruled.

CARC objects to St. Hill’s failure to attach or to explain the absence of the “Master Servicing Agreement,” as required by Rule 1019(h), Pa.R.C.P. CARC argues that St. Hill relied on this agreement in paragraphs 5 and 8 of the complaint. See Preliminary Objections, at ¶¶ 16-20. While paragraphs 5 and 8 do refer to CARC’s obligation to pay St. Hill and St. Hill’s obligation to perform under the “Master Servicing Agreement,” they also refer to the “terms of the Subservicer Agreement.” Complaint, at ¶¶ 5 and 8. Throughout its complaint, St. Hill alleges that the “Subservicer Agreement” represents the subcontract between CARC and St. Hill and establishes the parties’ obligations. See id. at ¶¶ 3, 5-9, & 12. On the other hand, the “Master Servicing Agreement” represents CARC’s contract with the City of Philadelphia,

the School District of Philadelphia and First Union National Bank. See Exhibit A, attached to Complaint. St. Hill did, in fact, attach the “Subservicer Agreement” to its complaint, at exhibit A, and this agreement does make cross-references to the “Master Servicing Agreement.” Further, with its answer to the preliminary objections, St. Hill has attached the “Master Servicing Agreement,” which is sixty-six (66) pages long. Since St. Hill has supplied both the court and the defendant with a copy of this agreement, CARC’s objection is overruled as moot.¹ See Grode v. Mutual Fire, Marine and Inland Ins. Co., 154 Pa.Commw. 366, 368, 623 A.2d 933, 934 (1993)(overruling preliminary objection where plaintiff assured the court at oral argument that it would provide the necessary documents to the defendant).

The balance of CARC’s objections is that St. Hill failed to set forth sufficient facts as to time, place and items of special damages with specificity, as required by Rule 1019(f). See Preliminary Objections, at ¶¶ 9-15. CARC asserts that the complaint fails to specify what services were performed for the defendant, when they were performed and from where the alleged sum of \$93,000 derives. See id. at ¶¶ 22-26. CARC also objects that the complaint fails comply with Rule 1019(a) where it does not set forth the material facts in a concise and summary form regarding how the alleged debt arose. See id. at ¶¶ 4-8. These objections are based on both Rules 1028(a)(2) and (a)(3), and the latter rule has the most relevance

¹While it is unclear to what extent St. Hill relied on the “Master Servicing Agreement” to establish its claim against CARC, St. Hill has sufficiently complied with Rule 1019(h) by first attaching the “Subservicer Agreement” to its complaint, and later supplying the “Master Servicing Agreement” with its answer. If St. Hill had not attached either agreement to its complaint, then the complaint would have obviously been defective under Rule 1019(h). The proper method for correcting such a defect is to require the plaintiff to file an amended complaint in accordance with Rule 1028(c)(1). See Goldman v. Schlanger, 49 D. & C.2d 225, 231 (Pike C.P. 1968). Nonetheless, this court is now requiring St. Hill to file an amended complaint on other grounds; in particular, for its lack of specificity in certain allegations.

here. For the reasons which follow, these objections are sustained.

In evaluating whether a pleading is sufficiently specific, the question is “whether the pleading is sufficiently clear to enable the defendant to prepare his defense.” Paz v. Commonwealth, Dept. of Corrections, 135 Pa.Comm. 162, 170, 580 A.2d 452, 456 (1990). Rule 1019(f) requires that “averments of time, place and items of special damage shall be specifically stated.” It has been said that “where a plaintiff, suing for work and services performed, sets forth considerable details with respect to the work, he or she is obligated to set forth the time, place and manner of performance.” Goodrich Amran 2d § 1019(f):1. Further, the court in Marine Bank v. Orlando, 25 D. & C.3d 264, 267-69 (Erie C.P. 1982), a collection action between an issuer bank and a credit-card holder, sustained a motion for a more specific pleading where the plaintiff had failed to set forth allegations of time, place and special damages. The court reasoned that the plaintiff would largely know this information and averring it would be relatively simple and expeditious, while requiring defendants to obtain the information by deposition or interrogatories would be costly and time-consuming. Id. at 267-68.

In addition, Rule 1019(a) requires that the complaint give notice to the defendant of an asserted claim and synopzises the essential facts to support the claim. Krajsa v. Keypunch, Inc., 424 Pa.Super. 230, 235, 622 A.2d 335, 357 (1993). “It is not necessary that the plaintiff identify the specific legal theory underlying the complaint.” Id. However, “[i]n this Commonwealth, the pleadings must define the issues and thus every act or performance to that end must be set forth in the complaint.” Estate of Swift v. Northeastern Hosp. of Philadelphia, 456 Pa.Super. 330, 337, 690 A.2d 719, 723 (1997).

Here, St. Hill alleges only one date, October 1, 1997, as the start of the contract between itself and CARC. Complaint, at ¶ 3. The complaint does not set forth an end date of the contract, nor when

payment is due by CARC for services performed by St. Hill. The complaint also does not establish what comprises the sum of \$ 93,000, allegedly due by CARC. In its complaint, St. Hill does refer to having submitted notices and invoices to CARC for payment, but it does not state when these invoices were sent, or what the invoices specifically covered. See Complaint, at ¶ 12. Though St. Hill attempted to correct this defect in its answer by attaching copies of the invoices at Exhibit D, the proper procedure is to require St. Hill to file an amended pleading specifying the dates and times 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. A more specific pleading will better enable CARC to prepare its defense and address the issues.

Lastly, CARC sets forth a demurrer to the complaint, asserting that "St. Hill has failed to identify any theory of law or rule upon which it seeks a remedy or is entitled to relief." Preliminary Objection, at ¶ 29. In response, St. Hill asserts that it did sufficiently plead a cause of action for breach of contract. Answer, at ¶ 29. Even if St. Hill's allegations do set forth the bare elements for a breach of contract claim, this court defers ruling on this objection until after St. Hill files an amended and more specific complaint. At which time, CARC may re-assert its demurrer if it still has grounds to do so.

Conclusion

For all of the above reasons, defendant CARC's preliminary objection based on insufficient specificity in a pleading is sustained; the preliminary objection for failure to attach a writing is overruled; and a ruling on the demurrer to the complaint is hereby deferred. Plaintiff St. Hill is given a period of twenty (20) days to file an amended, more specific complaint in accordance with this Opinion. Defendant CARC shall then have twenty (20) days after service of the amended complaint upon it in which to file preliminary

objections.

BY THE COURT:

JOHN W. HERRON, J.

DATED: September 7, 2000

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ORDER

AND NOW, this 7th day of September, 2000, upon consideration of the defendant's preliminary objections to plaintiff's complaint, and plaintiff's response thereto, and in accordance with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that (a) the preliminary objections as to insufficient specificity are **SUSTAINED**; (b) the preliminary objections as to failure to attach a writing are **OVERRULED** and (c) the preliminary objections for failure to state a cause of action are hereby deferred. Plaintiff shall have twenty (20) days to file an amended and more specific complaint in accordance with the contemporaneous Opinion.

BY THE COURT:

JOHN W. HERRON, J.