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# Defense to Credit Card Collection Lawsuits And "Account Actions" Under Ohio Law

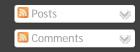
An "account", is a right to payment for a monetary obligation. Under Ohio Rev. Code § 1309.102 (2)(A), any sort of transaction that involves the sale, lease, license, or assignment of property, or a transaction for any type of performance of a service, is considered an account. While many different monetary obligations represent "accounts," a very easy or common example is a credit card. In exchange for credit in the purchase of goods and services, consumers incur a monetary obligation to the credit card company. If a consumer does not pay their obligation on their account, the credit card company (or an assignee debt collector) may bring an action on the account to collect on the debt that is owed.

In order for a creditor or debt collector to bring a successful action on account it must jump through several hoops to prove that they are the party that is entitled to collect on the debt and that the amount of debt owed on the account is



what they claim it is. For example, Ohio Rules of Civil Procedure 10(D)(1) provides that "a copy of the account or written instrument must be attached to the pleading." Additionally, where an assignee (debt collector) brings an action on an account obtained from another entity, it must establish the existence of a valid assignment agreement. <u>Worldwide Asset Purchasing, L.L.C. v. Sandoval</u>, 8th Dist. No. 2007-CA-00159, 2008-Ohio-6343, ¶26.

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Other requirements also exist. To prevail in an action on an account, a copy of the account or written instrument attached to the pleadings must establish the existence of the account in the name of the party charged (the debtor), as well as,

"(1) a beginning balance of zero, or a sum that can qualify as an account stated, or some other provable sum; (2) listed items, or an item, dated and identifiable by number or otherwise, representing charges, or debits, and credits; and (3) a summarization by means of a running or developing balance, or an arrangement of beginning balance and items that permits the calculation of the amount claimed to be due." <u>Great Seneca Fin. v. Felty</u>, 170 Ohio App.3d 737, 2006-Ohio-6618, 869 N.E.2d 30, ¶6.

<u>Capital Fin. Credit. L.L.C. v. Mays</u>, 1st Dist. No. 09-CV-19312, 2010-Ohio-4423, addresses a valid defense to actions on accounts concerning the third requirement, the need to provide a running or developing balance of the amount due. In Capital Finance, the Hamilton County Court of Appeals reversed summary judgment and remanded because the plaintiff debt collector failed to attach documents to the pleadings that itemized the credits and debits allegedly owed on an overdue credit card account. The court explained,

"When the balance due on a credit-card account is not substantiated by an itemization of the credits and debits leading to that balance, a genuine issue of material fact remains concerning the amount due on the account. Here, the evidence that CFC had properly placed before the trial court as attachments to the litigation director's affidavit established only that (1) Mays had opened a credit-card account with Citibank under the terms of a credit agreement attached to the affidavit; (2) Mays's account with Citibank had been properly assigned to CFC; and (3) according to the text of the affidavit itself, "[c]rediting all payments received to date, [Mays had an unpaid balance] of \$7,909.43 plus interest at the rate of 23.90% per annum on \$4,676.09 from June 5, 2009." This statement in the director's affidavit was the sole evidence establishing the amount due on Mays's account. No evidence was presented that substantiated the credits and debits leading to that balance."

Therefore, the court found that a genuine issue of material fact existed concerning the amount allegedly due on the credit card and it reversed the previous ruling of the trial court, which had granted summary judgment in favor of the debt collector.

Collection of an overdue debt is commonplace in business. However, in order to collect upon an account, a running itemized balance of the debt must be provided. The Capital Finance case serves as an important tool that can be utilized in defending an action for collection on an account. Alternatively, it is a reminder for all seeking to collect on unpaid bills of the requirements necessary to do so.

Posted by Aaron Minc at 6:14 PM 🖂 M 🗈 🗄 🛒 🔊

Labels: 10(d), Action on Account, business litigation, Credit Card Debt, Debt Collection, Ohio

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