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No. 12

Public Notices

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Opinion

Cadlerock Joint Venture v. Matt Kantner No. 2013-01352

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DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

FIRST PUBLICATION

ESTATE OF GEORGE K. BALDWIN, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Wendy Ruth Baldwin.
Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF HERMANN L. BOLDT, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Hermann Joseph Boldt, Executor
111 N. Ramona Road, Lot 21
Myerstown, PA 17067

Timothy T. Engler, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ROBERT F. BRIGHTBILL, late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Mary E. Brightbill
203 Karen Drive
Downingtown PA 19353

Or to

Joseph M. Farrell, Esq.
201/203 South Railroad Street
P.O. Box 113
Palmyra PA 17078
Attorney for estate

ESTATE OF WILMA J. MELENDEZ, late of Lebanon City, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

David Calderón, Administrator
1013 Mifflin Street
Lebanon, PA 17046

Timothy J. Huber, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF ALLEN C. SUTHERLY, late of Palmyra, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Steven A. Sutherly, Executor
829 Victoria Lane
Palmyra, PA 17078

David R. Warner, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF LARRY W. SWEIGART a/k/a Larry William Sweigart, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Personal Representative.

Jerol L. Hughes, Personal Representative
c/o Megan C. Huff, Esquire
Nestico Druby P.C.
1135 East Chocolate Ave.
Suite 300
Hershey PA 17033

ESTATE OF DORIS E. WHITE, late of Cornwall Borough, Lebanon County PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Norma J. Higginbotham, Executor
c/o Jeffrey C. Goss, Esquire
480 New Holland Avenue, Suite 6205
Lancaster, PA 17602
Brubaker Connaughton Goss & Lucarelli
LLC
Attorneys

SECOND PUBLICATION

ESTATE OF KATHRYN L. ADAMS late of No. 7 Cottage Lane, Borough of Newmanstown, Lebanon County, Pennsylvania, deceased. Letters testamentary on the above estate having been granted to the undersigned, all persons indebted to the estate are requested to make payment, and those having claims to present the same, without delay, to:

Molly A. Brown, Executrix
c/o Lengert & Raiders LLC
210 West Penn Avenue
PO Box 223
Robesonia, PA 19551

Attorney Rich Raiders, Esquire
Lengert & Raiders LLC
210 West Penn Avenue
PO Box 223
Robesonia, PA 19551

ESTATE OF GRACE S. FASNACHT, late of South Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Charles D. Fasnacht, III, Executor
5144 Bellerive Drive
Dallas, TX 75287

Donna Long Brightbill, Attorney

ESTATE OF MARTIN J. ILL, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Jamie Ill Berryhill, Executrix
164 Forest Circle
Palmyra, PA 17078

Thomas S. Long, Attorney

ESTATE OF HOWARD S. KREIDER, late of Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Sharon K. Schwarz, Executor
c/o Keith D. Wagner – Attorney
P. O. Box 323
Palmyra, PA 17078

ESTATE OF DOLORES TROPASSO a/k/a Dolores F. Tropasso, late of North Cornwall Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Administratrix.

Karen Boltz, Administratrix
c/o Garrett C. Spangler, Esq., J.D., LL.M
The Erb Law Firm, PC
20 S. Valley Road, Suite 100
Paoli PA 19301

THIRD PUBLICATION

ESTATE OF YVONNE V. BAILEY, late of Jackson Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Simon T. Grill, Executor
Kevin M. Richards, Esquire
P.O. Box 1140
Lebanon, PA 17042-1140

ESTATE OF LUCILLE C. BRUBAKER, late of North Londonderry Township, Lebanon County, PA, deceased. Settlor under a certain Agreement of Trust dated February 20, 1987. All persons having claims against the decedent or the trust shall present them for settlement to:

The Bryn Mawr Trust Company, Trustee
Attn: Jesse S. Ashcroft, Senior Vice President
One East Chocolate Ave.
Suite 200
Hershey PA 17033

Or to:

John S. Davidson, Esq.
Yost & Davidson
320 West Chocolate Ave.
P.O. Box 437
Hershey PA 17033

ESTATE OF DORIS J. FRITZ, late of Annville, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Linda M. Wagner, Executrix
128 E. Pershing Ave.
Lebanon, PA 17042

Bernerd A. Buzgon, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF ERMA A. GROFF, late of Myerstown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Lee Groff, Co-Executor
545 Beagle Road
Bethel PA 19507

Larry Groff, Co-Executor
123 Shartlesville Road
Bernville PA 19506

Or to their attorney:
Sarah Rubright McCahon, Esq.
Barley Snyder LLP
50 North Fifth Street, Second floor
P.O. Box 942
Reading PA 19603-0942

ESTATE OF ALFRED G. ROSS, late of South Lebanon Township, Lebanon County, PA, deceased 9/12/2017. Letters Testamentary have been granted to the undersigned Executrix.

Kathy A. Hess, Executrix
c/o George Porter, Esq.
909 E. Chocolate Ave.
Hershey PA 17033

NOTICE OF NAME CHANGE

NOTICE IS HEREBY GIVEN that on the 27th day of September, 2017, the Petition of Miranda Elizabeth Spangler was filed in the above Court requesting an Order to change her name from **Miranda Elizabeth Spangler to Miranda Elizabeth Snyder**. The Court has fixed the 16th day of November, 2017, at 9:30 o'clock, a.m. before The Honorable Bradford H. Charles, in Courtroom No. 3 of the Lebanon County Municipal Building, 400 South 8th Street, Lebanon, Pennsylvania, as the time and place for the Hearing of said Petition, where any and all interested parties may appear and show cause, if any they have, why the request of Petitioner should not be granted.

Colleen S. Gallo, Esquire
Reilly Wolfson
1601 Cornwall Road
Lebanon, PA 17042
(717) 273-3733
Attorney for Petitioner

NOTICE IS HEREBY GIVEN that a hearing will be held to on a Petition for Change of Name on November 22, 2017, at 1:30 PM in Courtroom 1 of the Lebanon County Courthouse, 400 South Eighth Street, Lebanon, PA. The Petition requests that **Jerry Vincent Teal** of 120 South Tenth Street, Lebanon, Pennsylvania, be permitted to change his surname from Teal to **Hawkins**.

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW No. 2017-01384

JPMORGAN CHASE BANK, N.A.,
Plaintiff

vs.

DIANNAD. SCHUMANN, in her capacity as Heir of TUAN A. SCHUMANN, Deceased SAMANTHA R. SCHUMANN, in her capacity as Heir of TUAN A. SCHUMANN, Deceased, BRIANNA D. SCHUMANN, in her capacity as Heir of TUAN A. SCHUMANN, Deceased, UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER TUAN A. SCHUMANN, DECEASED, Defendants

NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER TUAN A. SCHUMANN, DECEASED

You are hereby notified that on August 22, 2017, Plaintiff, JPMORGAN CHASE BANK, N.A., filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of LEBANON County Pennsylvania, docketed to No. 2017-

01384. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 18 WINCHESTER CIRCLE, LEBANON, PA 17046-1870 whereupon your property would be sold by the Sheriff of LEBANON County.

You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Notice to Defend:

Mid-Penn Legal Services

513 Chestnut Street

Lebanon, PA 17042

Telephone (717) 274-2834

CADLEROCK JOINT VENTURE II, L.P. V. MATT KANTNER

NO. 2013-01352

Civil Action-Law-Preliminary Objections-Pleading-Specificity-Sufficiency-Answer with New Matter-Affirmative Defense

Plaintiff lodged a Complaint against Defendant asserting that Defendant failed to make payments as required by the terms of a promissory note payable to Norwest Bank South Dakota, N.A., that subsequently was sold to Plaintiff. Defendant filed an Answer with New Matter in which he alleged absence of privity between the parties, the causes of action were lodged beyond the applicable statute of limitations and the debt pursuant to the notes was discharged by the entities that owned the note prior to Plaintiff. Plaintiff filed Preliminary Objections to Defendant's Answer with New Matter.

1. While a trial court may construe the Rules of Civil Procedure liberally under Pa.R.C.P. Rule 126, a pleading must provide more than notice of the claim and the grounds upon which a claim is asserted. The pleading also must summarize the essential supporting facts that provide the material foundation to a claim.
2. Pa.R.C.P. Rule 1019(a) provides that the material facts of a pleading on which a cause of action or defense is based shall be stated in a concise and summary form.
3. All allegations within a new matter must contain averments of all of the facts the defendant eventually will have to prove in order to recover and be sufficiently specific so as to enable the plaintiff to prepare a defense to such new matters. The inclusion of boilerplate allegations without sufficient facts constitutes defective pleading.
4. In asserting defenses in a new matter, one must do more than list possible defenses by name. An affirmative defense is distinguished from a denial of facts that make up the plaintiff's cause of action in that a defense will require the averment of facts extrinsic to the plaintiff's claim for relief.
5. Pa.R.C.P. Rule 1030 provides that all affirmative defenses shall be pleaded in a responsive pleading under the heading "New Matter," and a party may set forth as new matter any other material facts that are not merely denials of the averments of the preceding pleading. While Rule 1030 does not require factual averments, it does not relieve the pleading party from complying with the requirements of Rule 1019(a).
6. Blanket statements asserting that claims may be barred without offering any reason why a defendant believes this to be true does not provide a plaintiff with the material facts necessary to build a defense against what is asserted.

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7. To allow Defendant to assert his affirmative defenses without providing at least some bare facts upon which the defenses are based would prejudice Plaintiff, upon whom the burden will lie to answer such new matter.

L.C.C.C.P. No. 2013-01352, Opinion by Samuel A. Kline, Judge, April 19, 2017.

Victor O. Buente, Jr., Esquire, for Plaintiff

Greer H. Anderson, Esquire, for Defendant

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY

PENNSYLVANIA No. 2013-01352

CADLEROCK JOINT VENTURE II, L.P., Plaintiff,

v.

MATT KANTNER, Defendant

CADLEROCK JOINT VENTURE II, L.P. V. MATT KANTNER

NO. 2013-01352

ORDER

AND NOW, to wit, this 19th day of APRIL, 2017, upon consideration of Plaintiff's Second Preliminary Objections to Defendant's Answer and New Matter, the Defendant having filed no response thereto, this Court finds that Plaintiff's Preliminary Objections are SUSTAINED in part and DENIED in part as follows:

- I. Plaintiff's preliminary objection to Defendant's answer to paragraphs four, five and ten are sustained.
- II. Plaintiff's preliminary objection to Defendant's answer to paragraph eight is sustained in part and denied in part.
- III. Plaintiff's preliminary objection to Defendant's answer to paragraph eleven is denied.
- IV. Plaintiff's preliminary objections to Defendant's New Matter is sustained.

Defendant may file an Amended Answer and New Matter within 20 days after entry of this Order.

BY THE COURT:

SAMUEL A. KLINE, J.

CADLEROCK JOINT VENTURE II, L.P. V. MATT KANTNER

NO. 2013-01352

OPINION, KLINE, J., APRIL 19, 2017

INTRODUCTION

Before this Court are Preliminary Objections to Defendant’s Answer and New Matter filed by Plaintiff.

FACTS AND PROCEDURAL HISTORY

This matter involves a debt that Plaintiff, CadleRock Joint Venture II, L.P. (hereinafter “CadleRock”) alleges is owed by Defendant, Matt Kantner. This case comes before this Court as an appeal from the judgment entered in the Magisterial District Court 52-3-03, by the Hon. Kim R. Wolfe.

Plaintiff’s Complaint sets forth the facts, summarized as follows: On December 14, 1998, Mr. Kantner first signed a promissory note (hereinafter “the Note”) payable to Norwest Bank South Dakota, N.A. (hereinafter “Norwest”) in the original principal amount of \$4,665.83, with monthly payments to begin on April 1, 2004, and fulfillment on April 1, 2014. (Pl.’s Compl. ¶ 4). Wells Fargo Bank, N.A. (hereinafter “Wells Fargo”), as successor to Norwest, delivered the Note on or around September 21, 2007, to Cadleway Properties, Inc. (Pl.’s Compl. ¶ 6). Cadleway Properties, Inc. then sold the Note to CadleRock on November 7, 2007. (Pl.’s Compl. ¶ 7). Kantner has made no payments of principal or interest in the four years prior to the Complaint. (Pl.’s Compl. ¶ 5). In April of 2013, CadleRock sought payment from Mr. Kantner of past due payments on the Note in the full amount of \$3,214.41, comprised of \$2,551.12 in principal and \$663.29 in accrued interest as of July 24, 2013, along with costs, attorney’s fees and continuing interest of \$1.46 per diem. (Pl.’s Compl. ¶¶ 8-10).

CadleRock filed an action in Magisterial District Court 52-3-03. District Court Justice Wolfe found in favor of CadleRock in the amount of \$3,000 in damages and \$105.50 in costs. On July 17, 2013, Mr. Kantner appealed the decision and a Rule to File Complaint was issued. CadleRock filed its Complaint in July 26, 2013 and Mr. Kantner filed an Answer and New Matter on August 19, 2013, alleging in his New Matter lack of privity, that Plaintiff’s claim for damages is beyond the applicable statute of limitations, and that debt owed to Norwest or Wells Fargo were discharged by those entities. (Def.’s Answer and New Matter ¶¶ 13-15, Aug. 19, 2013). On September 3, 2013, CadleRock filed its Preliminary Objections pursuant to Pa.R.C.P. 1028(a)(2) and (3) to Defendant’s Answer and New Matter alleging: 1) failure to comply with Pa.R.C.P. 1019(a), and 2) failure to

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comply with Pa.R.C.P. 1024. The same day, Defendant filed a Praecipe of Substitution of Verification, mooted a portion of Plaintiff's objection as to Rule 1024. Thereafter, on October 23, 2013, Plaintiff filed its Second Preliminary Objections pursuant to Pa.R.C.P. 1028(a)(2) and (3). Defendant filed no response to the preliminary objections. We issued an order on February 10, 2017, notifying parties that the matter was listed for review upon oral arguments; however, parties agreed shortly before the date of argument, to have this matter decided on briefs. We now dispose of Plaintiff's Second Preliminary Objections.

DISCUSSION

The Commonwealth of Pennsylvania adheres to the fact-pleading standard. *Richardson v. Wetzel*, 74 A.3d 353, 356 (Pa. Cmwlth. 2013). Therefore, while a trial court may construe the rules of civil procedure liberally under Pa.R.C.P. 126, a pleading must provide more than just notice of a claim and the grounds upon which such a claim is asserted; it must also "summarize the essential supporting facts" that provide the material foundation to such claims. *Bricklayers of W. Pennsylvania Combined Funds, Inc. v. Scott's Dev. Co.*, 90 A.3d 682, 694 (Pa. 2014); See also *Steiner v. Markel*, 968 A.2d 1253, 1260 (Pa. 2009).

A party may bring forth preliminary objections in the form of a motion to strike under Pa.R.C.P. 1028(a)(2) for "(2) failure of a pleading to conform to law or rule of court or inclusion of scandalous or impertinent material." *Kapacs v. Martin*, 81 Pa. D. & C.4th 509, 515 (C.P. Lackawanna June 6, 2006). Where a lack of conformity to a law or rule of court occurs, then the motion to strike is "the proper way to object to formal errors in a pleading." *Lee v. Denner*, 76 Pa. D. & C.4th 181, 187 (C.P. Monroe 2005).

Furthermore, a party may also bring forth a preliminary objection under Pa.R.C.P. 1028(a)(3) for "(3) insufficient specificity in a pleading." Where a party has asserted a preliminary objection pursuant to Rule 1028(a)(3), the question for the court is whether the pleading is sufficiently clear to enable the opposing party for adequate preparation of defense, or whether the pleading informs the opposing party "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." *Ammlung v. City of Chester*, 302 A.2d 491, 498 n. 36 (Pa. Super 1973) (quoting 1 *Goodrich-Amram* § 1017(b)-9).

Pa.R.C.P. 1019(a) provides "that the material facts of a pleading on which a cause of action or defense is based shall be stated in a concise and summary form." (emphasis added). To withstand a challenge under Rule 1019(a), all allegations within a new matter must contain averments of all of the facts the defendant will eventually have to prove in order

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to recover, and be sufficiently specific so as to enable the plaintiff to prepare a defense to such new matters. *Baker v. Rangos*, 324 A.2d 498, 506 (Pa.Super 1974). The inclusion of “boilerplate allegations—without sufficient facts—constitute[s] defective pleading.” *Vill. of Four Seasons Ass’n, Inc. v. Elk Mountain Ski Resort, Inc.*, 103 A.3d 814, 821 (Pa.Super 2014)

Because the standard set forth in Rule 1019(a) provides no precise measurement of specificity, trial courts are granted broad discretion in determining the level of detail that must be averred in a pleading. *United Refrigerator Co. v. Applebaum*, 189 A.2d 253, 255 (Pa. 1963). Nonetheless, the court’s liberal construction “does not entail total disregard of those rules concerning pleading.” *Duquesne Light Co. v. U.S. Indus. Fabricators, Inc.*, 483 A.2d 534, 536 (Pa.Super 1984).

I. Preliminary Objections to Answer

Plaintiff argues that specific paragraphs of Defendant’s Answer fails to conform to Rule 1019 and are insufficiently specific in that Defendant “provide[s] no factual basis whatever” for “[t]he defenses entered...at paragraphs 4, 5, 8, 10 and 11.” (Pl.’s Br. in Supp. of Prelim. Objects. 6, Oct. 21, 2013). For clarity, we enumerate the paragraphs from Defendant’s Answer and New Matter that Plaintiff has objected to as follows:

4. Denied. The averments of paragraph 4 refer to a writing which speaks for itself. Defendant denies Plaintiff’s characterization of that writing.

5. Admitted. By way of further answer, Defendant was not obligated to make any payments of interest or principal within four years preceding the date of this Complaint.

8. Admitted in part and denied in part. It is admitted that Defendant made no payments to CadleRock despite CadleRock’s demand for such. It is denied Defendant owes any payments to CadleRock.

10. Denied. It is denied that Defendant has any obligation to CadleRock.

11. Denied. It is denied that CadleRock is entitled to any attorney’s fees, costs or interest. (Def’s Answer and New Matter).

In asserting defenses in a new matter, “it seems obvious that one must do more than list possible defenses by name.” *Golden v. Grange Ins. Co.*, 2014 WL 1364735 (C.P. Cumberland 2014), 4. “An affirmative defense is distinguished from a denial of facts which make up

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the plaintiff's cause of action in that a defense will require the averment of facts extrinsic to the plaintiff's claim for relief." *Coldren v. Peterman*, 763 A.2d 905, 908 (Pa.Super 2000).

Rule 1029 entitled "Denials. Effect of failure to Deny" states at subsection (a) that "[a] responsive pleading shall admit or deny each averment of fact in the preceding pleading or any part thereof to which it is responsive." The rule "enable[s] the parties to focus upon the facts on which they disagree, and to achieve agreement as to the matters not in dispute, obviating the need for presenting evidence thereon." *Bogley, Harting & Reese, Inc. v. Stuart*, 11 Pa. D. & C.3d 303, 310 (C.P. Chester 1979). Rule 1029 continues in section (a) to state that "[a]dmissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth." The determination of whether or not a denial is specific must be made in light of the particular averments involved. 2A Anderson Civil Practice, § 1029.3. As there is no fixed formula for the determination of specificity, the trial court is charged with making such a determination through an examination of the pleadings. *In re Estate of Roart*, 568 A.2d 182, 186 (Pa. Super 1989).

Each of the specified paragraphs objected to by Plaintiff is different in the nature to which the admittance, denial or other material is presented and therefore, we will attend to each in turn.

a. Paragraph Four.

In his answer to paragraph four of the complaint, Defendant denies the averments therein as a "writing which speaks for itself" to which "Defendant denies Plaintiff's characterization of that writing." (Def.'s Answer and Matter ¶ 4). Pa.R.C.P. 1029(b) states that "[a]verments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivisions (c) and (e) of this rule, shall have the effect of an admission." Defendant's denial in paragraph four is expressed generally, despite any further explanation provided. The rule requires that a defense provided in response to an averment must be specifically denied. *Id.* If such a general denial is provided, then the effect is that of admission. *Id.* Defendant has provided a general denial; he did not specifically deny that the document attached as Exhibit B to the Complaint was the Note that he signed on December 14, 1998, which we find is the substance of the averment in the Complaint. Although the Court fails to find evidence in Exhibit B supporting the allegation of the Plaintiff that the principal amount of the Note was in the amount of \$4,665.83, the Defendant did not

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specifically deny such either. Since Defendant failed to provide a specific denial, we find that the averment is therefore admitted.

b. Paragraph Five.

Defendant admits paragraph five in the complaint and provides further explanation that he “was not obligated to make any payments of interest or principal within four years preceding the date of this Complaint.” (Def’s Answer and New Matter ¶ 5). However, Defendant provides no support for the allegation or conclusion of his non-obligation by way of those “material facts” necessary under Rule 1019(a). We agree with Plaintiff’s argument that Defendant’s answer to paragraph five is a legal conclusion lacking material facts to support its averment.

c. Paragraph Eight.

Defendant admits in part and denies in part the averments in paragraph eight. For an analysis of Defendant’s answer to this paragraph, we must examine the original paragraph. Paragraph Eight reads:

On April 12, 2013, CadleRock duly presented the Note to Kantner, and declared past due installments on the Note to be due and payable, and demanded payment of the same, but Kantner has refused to pay such installments, and the installments of principal and interest of the Note not paid within the last four years are now due and payable according to its terms.

(Pl.’s Compl. ¶ 8).

In our scrutiny of Plaintiff’s original paragraph, as set forth in its Complaint, we find that it includes both averments of fact and conclusions of law. Plaintiff pleaded several facts within paragraph eight, including that CadleRock had presented notice to Kantner of past due payments, CadleRock had demanded payment for such amounts and that Kantner has refused to make any payments on the amounts. As to these facts therein averred, we find that Defendant has admitted such in his Answer.

However, Plaintiff also avers that amounts of principal and interest are now due according to the terms of the Note. “The trial court has wide discretion in determining whether a particular averment in a pleading is a conclusion of law or an allegation of fact.” *Gentzler v. Graham Packaging Co., L.P.*, No. 525 MDA 2014, 2014 WL 6682452, at *3 (Pa.Super. 2014). “Generally, whether the parties made an agreement is a question of fact to be determined by the jury... [t]he function of contract interpretation and construction is a

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question of law peculiarly within the province of the court.” Nat’l Prod. Co. v. Atlas Fin. Corp., 364 A.2d 730, 733 (Pa.Super 1975) (internal citations omitted). In paragraph eight, Plaintiff goes further than merely alleging the fact that Kantner entered into an agreement (as had been averred in paragraph four of the Complaint), but instead proclaims that the terms of such agreement demand a result. We construe this averment as a conclusion of law to which, under Rule 1029(d), no response is necessary.

Defendant’s further answer in explanation denying that he “owes any payments to CadleRock” is either mere surplusage, or a further averment to which no supporting facts are provided. Regardless of the circumstance, we find that Defendant has admitted those facts averred and the further explanatory note is stricken.

d. Paragraph Ten.

In response to paragraph ten of the Complaint, Defendant again explains that the he holds no obligation to CadleRock. Yet, Plaintiff’s Complaint at paragraph ten claims that “[t]he principal installments due on the Note are \$2,551.12, and accrued interest is \$4,663.29 as of July 24, 2013.” (Pl.’s Compl. ¶ 10). It would seem that Defendant’s Answer is inconsistent with the averment as stated in Plaintiff’s Complaint. Defendant has not specifically replied to Plaintiffs’ averment and his further explanation simply recounts a defense to which he, again, provides no material facts in support. As Defendant failed to provide a specific denial, or even a statement of insufficient knowledge or information to form a belief in the truth of the averment, we must accept that Defendant has therefore admitted the averment in paragraph ten.

e. Paragraph Eleven

Defendant denies the averments in paragraph eleven that CadleRock is entitled to attorney’s fees, costs or interest. (Def.’s Answer and New Matter ¶ 11). Plaintiff again argues that Defendant has provided no factual basis for such a defense. Initially, Plaintiff declares in its Complaint that “[i]n accordance with the terms of the Note, CadleRock is entitled to reasonable attorney’s fees and costs incurred in the collection of principal, and interest owed on the Note.” (Pl.’s Compl ¶ 11). In this statement, Plaintiff is not merely providing a fact, but is instead asserting that the agreement provides a specific remedy due to the Plaintiff. We have already stated that contract construction is within the purview of the Court to determine and therefore, any statement as to relief required under the terms of an agreement is a conclusion of law to which no response is required.

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II. Preliminary Objections New Matter

In its Preliminary Objections, Plaintiff alleges that Defendant's New Matter fails to conform to Pa. R.C.P. 1019 in that the material facts on which Defendant's New Matter is based, are not stated in a concise and summary form. In fact, no such facts are stated at all. Defendant's New Matter consists of the following statements:

13. Plaintiff's claim fails for lack of privity.

14. Plaintiff's claim for damages is beyond the applicable statute of limitations and, therefore, it is not entitled to recovery.

15. Any debt that was owed to Norwest Bank South Dakota, N.A. or Wells Fargo Bank was discharged by those companies.

(Def.'s Answer and New Matter ¶¶ 13-15).

Pa. R.C.P 1030 states in part that "all affirmative defenses ... shall be pleaded in a responsive pleading under the heading "New Matter". A party may set forth as new matter any other material facts which are not merely denials of the averments of the preceding pleading." We recognize that "[w]hile it is true that Rule 1030 does not require factual averments, it does not relieve the pleading party from complying with rule 1019(a)." *Allen v. Lipson*, 8 Pa. D. & C.4th 390, 393-94 (C.P. Lycoming Nov. 29, 1990) (emphasis added). Furthermore, the Rule provides the Plaintiff with more than just notice of the affirmative defense, "but also makes clear the grounds upon which it rests by including a summary of the facts essential to support that defense." *Lee v. Denner*, 76 Pa. D. & C.4th 181, 191 (C.P. Monroe May 16, 2005). Blanket statements asserting that "claims may be barred without offering any reason why defendants believe this to be true...does not provide plaintiff with the material facts necessary to build a defense against these claims." *Donegal Mut. Ins. Co. v. Stroker*, No. 2568 CIVIL 2010, 2010 WL 5571389 (C.P. Monroe Aug. 2, 2010).

To allow a Defendant to assert an affirmative defense without providing at least some bare facts upon which the defense is based, would prejudice the Plaintiff, upon whom the burden is now placed to answer such new matters. We agree with the Plaintiff that the averments pleaded in Defendant's New Matter are not sufficiently specific under Rule 1019(a). Defendant may file an amended Answer and New Matter within twenty (20) days of the date of this order. We will enter an order consistent with the foregoing.