

STATE OF MAINE
CUMBERLAND, ss.

DISTRICT COURT
PORTLAND
Docket No. CV-13-392
502-9 11-9/28/2013

VION HOLDINGS, LLC)
)
 Plaintiff)
 v.)
)
)
 KELLEY ACE)
)
 Defendant)

ORDER ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS

Plaintiff seeks Judgment on the Pleadings pursuant to M.R. Civ. P. 12(c) in this credit card collection action. In support of its Motion, Plaintiff asserts that Defendant "has admitted: a) that Defendant entered into a contract with Plaintiff; b) that Defendant made charges on the account and Plaintiff provided the requested funds; c) that Defendant has failed to pay Plaintiff; d) that Defendant owes Plaintiff a principal balance of \$2,283.02." See Plaintiff's Motion for Judgment on the Pleadings at 1-2.

Plaintiff's recital mischaracterizes the admissions set forth in Defendant's Answer.

Defendant's Answer is in the form of a letter sent to Plaintiff's counsel. Plaintiff is correct in asserting that Defendant therein acknowledges that she owes "the outstanding demanded balance to Best Buy." The Complaint and appended account statement list the balance as \$2,244.02, a sum which Defendant acknowledges. See Answer at ¶ 2 ("I believe I can begin to repay my debt at \$100.00 per month until the balance of \$2,244.02 is paid off in full"). Defendant has not admitted to a principal balance of \$2,283.02 as asserted in Plaintiff's Motion.

Further, Defendant has admitted that she had a Best Buy credit card; she has not admitted that she entered into a contract *with Plaintiff*; that *Plaintiff* provided the requested funds; that she failed to pay *Plaintiff*; or that she owes *Plaintiff* anything.

Plaintiff's Complaint alleges that "[a]ll of the rights, titles, and interest in Defendant's account was assigned, endorsed and set over to Plaintiff Vion Holdings, LLC." No documentation for that assertion is appended to the Complaint.

Given the absence of documentation evidencing that Plaintiff Vion Holdings is the entity entitled to relief, and the absence of any admission by Defendant to that effect, Plaintiff is not entitled to Judgment on the Pleadings. Cf. *FIA Card Services, N.A. v. Saintonge*, 2013 ME 65, ¶ 3 & n. 1 (noting requirement that Plaintiff provide support for assertion that Defendant's account was assigned to it in order to obtain summary judgment); *Arrow Financial Services, LLC v. Guilliani*, 2011 ME 135, ¶ 12, 32 A.3d 1055, 1058 (same).

STATE OF MAINE
Cumberland, ss, Clerk's Office

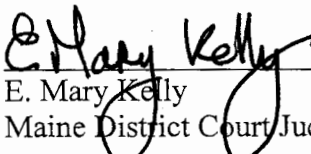
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Accordingly, it is hereby ORDERED that Plaintiff's Motion for Judgment on the Pleadings is DENIED.

The clerk may incorporate this Order on the docket by reference pursuant to M.R. Civ. P. 79(a).

DATED: 8/28/13



E. Mary Kelly
Maine District Court Judge

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