

FOURTH DIVISION
December 18, 2014

Nos. 1-14-0174 and 1-14-0491, Consolidated

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

UNIFUND CCR PARTNERS; and)	Appeal from the
UNIFUND CCR, LLC,)	Circuit Court of
)	Cook County.
Plaintiffs-Appellees,)	
)	
v.)	Nos. 13 M1 132322
)	13 M1 152901
)	
KISEONG AN,)	Honorable
)	Joyce Murphy Gorman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court of Cook County's order granting judgment in favor of plaintiff on its complaint to collect a debt is affirmed because plaintiff's verified amended complaint satisfies the pleading requirements applicable to plaintiff as a debt purchaser engaging in debt collection and the record is insufficient to review the sufficiency of plaintiff's evidence to prove the claim; the appeal of the judgment granting plaintiff's motion to voluntarily dismiss a separate complaint to collect a debt is dismissed for lack of jurisdiction.

1-14-0174)
1-14-0491)Cons.

¶ 2 In appeal number 1-14-0174, defendant, Kiseong An, appeals the order of the circuit court of Cook County granting judgment in favor of plaintiff, Unifund CCR Partners, on plaintiff's complaint to recover a debt plaintiff purchased from defendant's credit card issuer. In appeal number 1-14-0491, defendant appeals the trial court's judgment granting voluntary dismissal of a separate complaint to collect a debt filed by plaintiff Unifund CCR, LLC. We consolidated both appeals and for the following reasons the trial court's judgment in case number 1-14-0174 is affirmed and the appeal in case number 1-14-0491 is dismissed for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 Case Number 1-14-0174

¶ 5 On May 29, 2013, plaintiff, Unifund CCR Partners (Unifund Partners), filed a verified complaint at law against defendant, Kiseong An. The complaint utilized a circuit court of Cook County "Civil Action Cover Sheet" which indicates that the nature of the claim is for breach of contract. The cover sheet states as follows: "A Civil Action Cover Sheet shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box of the appropriate general category which best characterizes your action." The complaint itself alleged as follows:

"1. On information and belief, the Defendant(s), utilized a
certain credit card/revolving charge (open end consumer credit)

account and/or line of credit issued directly by or in the name of
CITIBANK, NA.

2. Plaintiff acquired by purchase on June 18, 2012, for good and
valuable consideration, the account of Defendant(s), and is now
the *bona fide* holder of this claim.

3. On information and belief, Defendant(s) subsequently
defaulted by failing to pay for the indebtedness incurred on said
account since the date of issuance and, after accounting for
payments made, there remains an unpaid and past due balance in
the sum of \$5,028.31.

4. Demand for payment has been made upon the Defendant(s)
but Defendant(s) has/have failed or refused to pay said remaining
balance.”

¶ 6 Defendant filed an answer to the complaint denying every allegation listed above and
stating as other “affirmative matter” as follows:

“The defendant requests the plaintiff to send the defendant a
copy of the full documentation that the defendant actually
signed: Original contract and agreement with the defendant’s
signature requested by law. The defendant also requests: all of
the receipts for every transaction that the defendant engaged in
during the entire life of the use of the alleged credit card, all the
items purchased in each of alleged [*sic*] transactions, all the

payment record along with the proof of Plaintiff's ownership of
the alleged debt."

¶ 7 In August 2013, defendant filed a motion to dismiss the complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)). Defendant's motion to dismiss the verified complaint alleged plaintiff has no personal knowledge of the credit card numbers, business records, or the original contract between defendant and the original creditor, Citibank, therefore the verification, that the account information alleged in the complaint is accurate, is "worthless" as evidence and plaintiff is seeking judgment based on double hearsay. The motion also alleged plaintiff lacks standing to assert this claim, the complaint fails to state a cause of action for breach of contract, and the complaint fails to state a cause of action for "account stated." In support of the claim the complaint fails to demonstrate plaintiff has standing to bring the claim, defendant alleged the complaint fails to establish that plaintiff is the holder of the account in question because the purchase agreement for the account is not attached to the complaint and nothing in the complaint demonstrates a valid assignment of the account from Citibank.

¶ 8 In support of the claim the complaint fails to state a claim for breach of contract, defendant argued plaintiff failed to attach a copy of a contract to the complaint as required by section 2-606 of the Code (735 ILCS 5/2-606 (West 2012)). Defendant argued plaintiff was required to allege "actual account agreements and assignments," and the allegations in the complaint that defendant "applied for and received a credit card" and "incurred charges by use of the credit card" are insufficient to state a claim. Defendant also cited the federal Truth in Lending Act (15 U.S.C. § 1601 *et seq.*).

¶ 9 Finally, defendant's motion to dismiss argued the complaint fails to state a claim for "account stated" because plaintiff failed to establish any of the elements of that claim in that (1) plaintiff did not allege the existence of any transactions between the parties to this action, (2) plaintiff did not allege that it contacted defendant regarding the alleged debt, and (3) plaintiff did not allege defendant ever acknowledged the existence of an account or any amount due or that defendant agreed to pay the alleged balance due.

¶ 10 The trial court ordered plaintiff to respond by September 11, 2013, defendant to reply by October 11, 2013, and set the matter for hearing on October 23, 2013.

¶ 11 On September 11, 2013 plaintiff filed an amended complaint¹ seeking a judgment in the amount of \$5,028.31. Plaintiff's amended complaint alleged plaintiff acquired defendant's account from Pilot Receivables Management, LLC (Pilot) on September 7, 2012, and plaintiff is now the *bona fide* holder of this claim. The amended complaint alleged Pilot acquired defendant's account from Citibank by purchase for consideration on June 18, 2012. Plaintiff's amended complaint alleged both of those transactions were set forth in exhibits attached to the amended complaint. The exhibits to plaintiff's amended complaint included two bills of sale, one between plaintiff and Pilot and one between Pilot and Citibank. Both bills of sale state that the assignor, for value received, conveys accounts, described in an exhibit to the bill of sale, to the assignee. The amended complaint alleged that the bill of sale between Citibank and Pilot refers to a computer record listing a series of accounts transferred pursuant to the agreement and that a common identification number correlates the two documents. The

¹ "An amended pleading need not be verified where the initial pleading was verified." *In re Andrea D.*, 342 Ill. App. 3d 233, 246 (2003).

1-14-0174)
1-14-0491)Cons.

amended complaint alleged the exhibit referred to in the bill of sale between Pilot and plaintiff is that computer record. The amended complaint alleges this computer record lists the name of the account holder, the account number, and the final balance due according to the records of the issuer, and that a redacted copy was attached and filed with the court. If the record was filed with the trial court, it is not included in the record on appeal.

¶ 12 Plaintiff's amended complaint again alleged that defendant utilized a certain credit card or revolving charge account issued by Citibank, but now included a redacted account number and added that "the computer summary records of the account provided by CITI state that the account was opened on March 11, 2008, that the last payment date was July 9, 2009 and the account was charged-off on February 12, 2010." The amended complaint alleged, on information and belief, that defendant failed to pay the indebtedness incurred pursuant to an agreement that the credit issuer issued credit and the account holder agreed to pay for the charges, and that an unpaid and past due balance remains. The amended complaint alleged demand for payment has been made upon defendant and defendant has failed or refused to pay. Finally, the amended complaint alleged as follows:

"The information herein provided the Defendant with the date certain as to when the account was sold or assigned, putting him on notice of any defenses he may have with regards to the timing of payments either to the initial creditor or subsequent purchaser, and also notifies the Defendant that the Plaintiff as purchaser holds the account without recourse and without restrictions as to its collection."

1-14-0174)
1-14-0491)Cons.

¶ 13 In September 2013, defendant filed an answer to the amended complaint. Defendant's answer argued that plaintiff, as an assignee of the original creditor, was required to proceed pursuant to section 2-403 of the Code (735 ILCS 5/2-403 (West 2012)) but plaintiff's amended complaint failed to plead in conformity with section 2-403. Defendant also argued that if plaintiff is an assignee for collection purposes only, the complaint is deficient because plaintiff failed to attach documents reflecting the assignment of the specific account, the date assigned, and the amount paid for the assignment. Defendant's answer to plaintiff's amended complaint argued the bill of sale between Pilot and plaintiff "does not appear to relate to the alleged original creditor" and plaintiff failed to attach the actual purchase agreement, account schedule, or to list the consideration paid for the assignment. Defendant argued nothing in the amended complaint or exhibits refers specifically to defendant, the specific account alleged, or the amount alleged. Defendant argued the amended complaint does not demonstrate that plaintiff has a valid assignment of the specific account alleged in the amended complaint from the original creditor, thus, the amended complaint failed to adequately allege that plaintiff is the holder of that account.

¶ 14 Defendant's answer to plaintiff's amended complaint repeated defendant's arguments that plaintiff failed to demonstrate it has standing, failed to state a claim for breach of contract, and failed to state a claim for "account stated."

¶ 15 On October 23, 2013, the trial court set the matter for trial on December 18, 2013. On December 18, 2013, the trial court, with a different judge presiding, set the matter for trial on January 22, 2014. On January 23, 2014, after a trial, Judge Gorman entered judgment in

1-14-0174)
1-14-0491)Cons.

favor of plaintiff and against defendant for \$7,169.71. On the same day defendant filed a notice of appeal of the January 23, 2014, judgment.

¶ 16 On August 13, 2014, this court, on its own motion, having found that the appellee had failed to file a brief within the time prescribed by Illinois Supreme Court Rule 343(a) (eff. July 1, 2008), ordered this case taken for consideration on the record and the appellant's brief only.

¶ 17 Case Number 1-14-0491

¶ 18 On September 26, 2013, plaintiff, Unifund CCR, LLC (Unifund LLC), filed a verified complaint against defendant alleging as follows:

“1. On information and belief, the Defendant(s) utilized a certain credit card/revolving charge (open end consumer credit) account and/or line of credit issued directly by or in the name of CITIBANK, NA.

2. In exchange for good and valuable consideration, complete title and ownership of the claim passed from CITIBANK, NA, the originator of the account, to PILOT RECEIVABLES MANAGEMENT, LLC, to UNIPAC IX LLC, to UNIFUND CCR PARTNERS, to Plaintiff.

3. On information and belief, Defendant(s) subsequently defaulted by failing to pay for the indebtedness incurred on said account since the date of issuance and, after accounting for payments made, there remains an unpaid and past due balance in the sum of \$7,169.71.

4. Demand for payment has been made upon the Defendant(s)
but Defendant(s) has/have failed or refused to pay said remaining
balance.”

¶ 19 Defendant filed an appearance and answer to the complaint denying the allegations
stated above and stating as “affirmative matter” the following:

“The defendant requests the plaintiff to send the defendant a
copy of the full documentation that the defendant actually
signed: Original contract and agreement with the defendant’s
signature requested by law. The defendant also requests: all of
the receipts for every transaction that the defendant engaged in
during the entire life of the use of the alleged credit card, all the
items purchased in each of alleged [sic] transactions, all the
payment record along with the proof of Plaintiff’s ownership of
the alleged debt.”

¶ 20 Defendant’s answer asked the court to deny plaintiff’s requested relief and to dismiss
the case.

¶ 21 On November 7, 2013, the trial court set the matter for trial on January 22, 2014. On
January 23, 2014, Judge Gorman entered an order denying defendant’s motion to dismiss and
granting plaintiff voluntary dismissal of the complaint and ordered plaintiff to pay costs
within 30 days. On February 21, 2014, defendant filed a notice of appeal from the judgment
granting Unifund LLC’s request for voluntary dismissal without prejudice and denying
defendant’s motion to dismiss with prejudice.

1-14-0174)
1-14-0491)Cons.

¶ 22 On September 26, 2014, this court, on its own motion, having found that the appellee had failed to file a brief within the time prescribed by Illinois Supreme Court Rule 343(a) (eff. July 1, 2008), ordered this case taken for consideration on the record and the appellant's brief only.

¶ 23 On December 5, 2014, this court, on its own motion, ordered the appeals in case number 1-14-0174 and case number 1-14-0491 consolidated for disposition.

¶ 24 ANALYSIS

¶ 25 In case number 1-14-0174, defendant argues the trial court's judgment in favor of plaintiff should be reversed and the complaint dismissed with prejudice because (1) plaintiff is not registered under the Illinois Collection Agency Act (Collection Agency Act) (225 ILCS 425/1 *et seq.* (West 2012)) and therefore it lacks standing to attempt to collect a debt; (2) plaintiff, as an assignee of a non-negotiable chose in action, failed to comply with the pleading requirements in section 2-403 of the Code (735 ILCS 5/2-403 (West 2012)); (3) plaintiff, as an assignee of a debt for collection purposes, failed to comply with the pleading requirements of the Collection Agency Act (225 ILCS 425/8b (West 2012)); (4) plaintiff failed to comply with the pleading requirements of section 2-606 of the Code (735 ILCS 5/2-606 (West 2012)) by attaching a copy of the contract in support of its breach of contract claim; (5) plaintiff failed to support its allegation defendant had a liability on a credit card with actual account agreements and assignments in violation of the Truth in Lending Act; (6) plaintiff failed to state a claim for "account stated;" and (7) plaintiff failed to plead it could prove the contents of the business records of the original creditor and consequently its own claims.

1-14-0174)
1-14-0491)Cons.

¶ 26 In case number 1-14-0491, defendant argues the trial court erred in denying defendant's motion to dismiss plaintiff's complaint with prejudice based on the same arguments used to attack the pleading or judgment or both in case number 1-14-0174; and defendant asserts the court erred in granting plaintiff's motion for voluntary dismissal.

¶ 27 1. Case Number 1-14-0174

¶ 28 As stated above, defendant attacks the judgment in favor of plaintiff on several procedural grounds. Before we begin to address defendant's specific arguments, it will be helpful to discuss the nature of plaintiff's claims. Plaintiff's complaint arose from defendant's alleged default on a debt incurred from defendant's use of a credit card or consumer credit account issued by Citibank. Defendant's alleged debt is a "chose in action" that is assignable. *Unifund CCR Partners v. Shah*, 407 Ill. App. 3d 737, 741 (2011) (*Shah I*). The assignee of a chose in action "may sue thereon in his or her own name." 735 ILCS 5/2-403(a) (West 2012). The assignee of a chose in action suing in his or her own name "shall in his or her pleading on oath allege that he or she is the actual *bona fide* owner thereof, and set forth how and when he or she acquired title." *Id.* The plaintiff must detail how it came to own its legal interest in the debt by tracing the chain of title back to its origin with the creditor. *Unifund CCR Partners v. Shah*, 2013 IL App (1st) 113658, ¶ 11 (*Shah II*).

¶ 29 When a debt is transferred to another entity, as was the debt plaintiff acquired (after first having been transferred to Pilot by Citibank, then to plaintiff), the owner of the debt may transfer the entire chose in action to a third party without retaining any ownership interest, or may transfer only the owner's legal interest in the chose in action, retaining an equitable of beneficial interest. 735 ILCS 5/2-403(a) (West 2012). "In the context of a debt,

1-14-0174)
1-14-0491)Cons.

*** [a] partial assignment means that the owner of the debt transfers its right to bring a legal action for collection of the debt to a third party in exchange for some consideration, but retains the right to receive the amount owed when it is collected.” *Shah I*, 407 Ill. App. 3d at 742. “This type of partial assignment is known as an assignment for collection.” *Shah II*, 2013 IL App (1st) 113658, ¶ 5. The purchaser of a debt who purchases the entire chose in action without the seller retaining any ownership interest is known as a “debt buyer.” The Collection Agency Act defines a debt buyer as “a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third-party for collection or an attorney-at-law for litigation in order to collect such debt.” 225 ILCS 425/2 (West 2012).

¶ 30 Illinois regulates the collection of debts. *LVNV Funding, LLC v. Trice*, 2011 IL App (1st) 092773, ¶ 15 (“The Illinois General Assembly adopted legislation to license and regulate collection agencies beginning in 1974.”). Under the Collection Agency Act, no “collection agency” shall operate in this State without registering. A debt buyer, with certain exceptions, is “subject to all of the terms, conditions, and requirements of [the Collection Agency Act.]” 225 ILCS 425/8.5 (West Supp. 2013). In addition to the formal definition of a collection agency, the Collection Agency Act also defines acts constituting a collection agency. 225 ILCS 425/3 (West 2012). Specifically, a person or legal entity acts as a collection agency when it “[b]uys accounts, bills or other indebtedness and engages in collecting the same.” *Id.*

¶ 31 Thus, both debt buyers and assignees for collection may act as a “collection agency” under the Collection Agency Act. However, under the Collection Agency Act, “a debt buyer

1-14-0174)
1-14-0491)Cons.

is not a collection agency unless it ‘engages in collecting’ the debts it has purchased. If a debt purchaser does not engage in collection activities, it is not considered a collection agency under the [Collection Agency Act] and does not need to be licensed by the state.” *Leeb v. Pendrick Capital Partners, LLC*, 891 F. Supp. 2d 1002, 1004 (N.D. Ill. 2012). A debt buyer engages in collecting a debt it has purchased when it sues to collect the debt. *Leeb*, 891 F. Supp. 2d at 1005 (finding debt buyer did *not* fit the definition of a collection agency under the Collection Agency Act where the debt buyer “made no demand for payment, did not file a lawsuit against plaintiff, and did not hire a legal representative to take any of those actions on its behalf.”).

¶ 32 The Collection Agency Act treats debt buyers and assignees for collection differently when each is acting as a collection agency under the Collection Agency Act. Specifically, the Collection Agency Act states that “[w]ith respect to its activities as a debt buyer in pursuing the collection of accounts it owns, a debt buyer shall be subject to all of the terms, conditions, and requirements of this Act, except that a debt buyer shall not be required to *** adhere to the assignment for collection criteria under Section 8b of this Act.” 225 ILCS 425/8.6(b) (West Supp. 2013). When an assignee for collection sues to collect a debt after an assignment for collection there are two statutory pleading requirements. *Shah II*, 2013 IL App (1st) 113658, ¶ 9. First, the assignee for collection must comply with section 2-403(a) of the Code (735 ILCS 5/2-403(a) (West 2012)). An assignee complies with section 2-403(a) by filing a verified complaint that alleges that he or she is the actual *bona fide* owner of the debt and sets forth how and when he or she acquired title. *Shah II*, 2013 IL App (1st), ¶ 9. Second, an assignee for collection (who is assigned only legal title to the debt while the owner of the debt

1-14-0174)
1-14-0491)Cons.

retains equitable title) must additionally comply with section 8b of the Collection Agency Act. *Shah II*, 2013 IL App (1st) 113658, ¶ 10.

¶ 33 “[I]n addition to the allegations regarding how and when the agency acquired title to the debt that are required under section 2-403(a) of the [Code] [citation], the agency must also plead that there was a valid assignment for collection by including the three factual allegations regarding the assignment pursuant to section 8b of the Collection Agency Act [citation].” *Shah II*, 2013 IL App (1st) 113658, ¶ 10. “[S]ection 8b of the Collection Agency Act [citation] mandates that an assignee for collection establish that it holds legal title to a debt by pleading that it received title via a written agreement that identifies the accounts transferred, the consideration paid, and the effective date of the transfer. [Citation.]” (Internal quotation marks omitted.) *Shah II*, 2013 IL App (1st) 113658, ¶ 7. Because a debt buyer is expressly excused from the requirements of section 8b of the Collection Agency Act (225 ILCS 425/8.6(b) (West Supp. 2013)), “to state a cause of action *** a debt buyer, unlike an assignee for collection, need only comply with the standing requirements of section 2-403(a).” *Shah II*, 2013 IL App (1st) 113658, ¶ 14.

¶ 34 With the foregoing principles in mind, we now turn to defendant’s arguments.

¶ 35 Truth in Lending Act

¶ 36 Defendant argues that plaintiff failed to comply with section 1643(b) of the Truth in Lending Act (15 U.S.C. § 1643(b) (1980)). That section states as follows:

“In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then

the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a) of this section, have been met.” 15
U.S.C. § 1643(b) (1980).

¶ 37 Defendant’s argument is meritless because this cause of action is not an action by a *card issuer* to enforce liability for the use of a credit card.

¶ 38 Sufficiency of Plaintiff’s Allegations

¶ 39 Defendant argues plaintiff failed to state a claim for “account stated.” “An account stated is merely a form of proving damages for the breach of a promise to pay on a contract.” *D.S.A Financial Corp. v. County of Cook*, 345 Ill. App. 3d 554, 560 (2003).

“Generally, an account stated is an agreement between parties who have previously conducted monetary transactions that the account representing the transactions between them is true, and that the balance is accurate, together with a promise to pay such balance. [Citations.] An account stated must demonstrate the mutual assent of both creditor and debtor. [Citation.] The meeting of the minds as to the accuracy of an account usually results from one party rendering a statement of account to which the other party acquiesces. [Citation.] The manner of acquiescence is not critical, and the meeting of the minds may be inferred from the parties’ conduct and the circumstances of the case. When one party renders a statement of account to another,

who retains it without objection for longer than is reasonable, an account stated is established.” *Toth v. Mansell*, 207 Ill. App. 3d 665, 671-72 (1990).

¶ 40 Nothing in plaintiff’s complaint suggests plaintiff sought to recover on a theory of an account stated. The amended complaint does not allege any previous transactions between the parties. Indeed the very nature of an entity acting as a collection agency in its own name is contrary to recovery under an account stated theory. 225 ILCS 425/3 (West 2012). Defendant’s argument is meritless.

¶ 41 Sufficiency of Allegations to State a Claim Based on a Written Instrument

¶ 42 Defendant argues plaintiff failed to comply with the pleading requirements in section 2-606 of the Code (735 ILCS 5/2-606 (West 2012)). Section 2-606 states as follows:

“If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes.” 735 ILCS 5/2-606 (West 2012).

¶ 43 Defendant’s reliance on section 2-606 of the Code must be based on a misconception, to which the circuit court clerk’s civil action cover sheet may have contributed, that plaintiff

sued defendant based on defendant's purported contract with Citibank. Plaintiff's proceeding to recover defendant's debt is not a claim founded upon a written instrument. The right to recover the debt defendant allegedly owed to Citibank, which Citibank assigned to Pilot and which Pilot assigned to plaintiff, is a separate claim. In *Ginsburg v. Bull Dog Auto Fire Insurance Ass'n of Chicago*, 328 Ill. 571, 572 (1928), the plaintiff, who was an assignee of money due under an insurance contract for the insured's loss, filed suit against the insurance company. The insurance company's defense was based upon the plaintiff's failure to comply with the terms of the policy with reference to the assignment.

¶ 44 Our supreme court rejected that argument, holding that once an insurance contract has been fully executed and nothing remains to be done except to pay the money, the claim becomes a chose in action, which is assignable and enforceable." *Id.* at 573. The court held that "[t]he insured had the right to assign this debt, and when he did so plaintiff in error had a right to begin this suit." *Ginsburg*, 328 Ill. at 575. Similarly, in this case, any alleged contract between Citibank and defendant was completed when Citibank issued a credit account and defendant used it. All that remained to be done was for defendant to pay Citibank, which he allegedly failed to do giving rise to a debt. That debt is a chose in action that was assignable and enforceable under section 2-403 of the Code. 735 ILCS 5/2-403 (West 2012).

¶ 45 Regardless of the existence of a written agreement between Citibank and defendant, plaintiff was required to present parol evidence to sustain its claim. See *Ramirez v. Palisades Collection LLC*, No. 07 C 3840, 2008 WL 2512679, *3 (N.D. Ill. June 23, 2008) (in determining whether statute of limitations applicable to written instruments applies, finding that parol evidence would be necessary to determine debt buyer's right to sue debtor. "Even if a written

1-14-0174)
1-14-0491)Cons.

contract existed between [debtor] and Household Bank, parol evidence would be required to determine whether that contract was enforceable by [debt buyer], whether the assignment of that contract *** was lawful, and whether the terms of the original agreement were altered. [Debt buyer] was not a named party to the contract that purportedly bound [debtor.]”). See also *Manlapaz v. Unifund CCR Partners*, No. 08 C 6524, 2009 WL 3015166, *5 (N.D. Ill. Sept. 15, 2009) (“business records are often one of the only sources, if not the primary source, for evidence of whether someone owns a debt.”). We do not find that plaintiff’s complaint is “founded upon a written instrument.”

¶ 46 Regardless, defendant has cited to no authority holding that a party suing to collect a credit card debt is required to attach a copy of the credit card agreement to the complaint. Illinois law contravenes the suggestion that a suit to collect a credit card debt is a suit on the initial credit card agreement. This court has held that “a separate contract is created each time the card is used according to the terms of the cardholder agreement at the time of such use.” *Garber v. Harris Trust & Savings Bank*, 104 Ill. App. 3d 675, 678 (1982). The issue in *Garber* was whether the cardholder agreements between the parties were contracts. *Id.* at 677. The *Garber* court found that “the prevailing view in this country is that the issuance of a credit card is only an offer to extend credit. There is no persuasive reason, under the circumstances presented in the instant appeal, for swaying from the accepted position that the issuance of a credit card does not create a contract.” *Id.* at 680. We reach a similar conclusion in this case. Defendant has offered no persuasive reason for this court to find that a suit to collect a credit card debt is a suit on the cardholder agreement such that pursuant to section 2-606 of the Code the plaintiff must attach the cardholder agreement to the complaint. Defendant’s

argument that the judgment in favor of plaintiff should be reversed because plaintiff failed to comply with section 2-606 of the Code is rejected.

¶ 47 Sufficiency of Allegations to State a Claim to Collect a Debt

¶ 48 Next, defendant argues plaintiff failed to plead it could prove the contents of Citibank's business records and therefore failed to plead it could prove its own right to relief. To the extent defendant attacks the sufficiency of plaintiff's pleading, his argument fails.

¶ 49 "Illinois is a fact-pleading jurisdiction." *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 26. A pleader must allege facts sufficient to bring a claim within a legally recognized cause of action. *Id.* Plaintiff's amended complaint set forth sufficient facts to bring its claim within a legally recognized cause of action. Plaintiff was not required to set forth its evidence in the complaint. *Id.* Defendant attacks the type of evidence plaintiff might present at trial to attempt to prove its claims suggesting plaintiff could only prove the contents of Citibank's records--and defendant's debt--with inadmissible hearsay testimony of a witness who examined those records. Defendant has not otherwise directly challenged the sufficiency of the evidence actually presented at trial. Defendant failed to provide this court with a record of the proceedings of the trial, so we have no way of knowing what evidence plaintiff presented in support of its claims. In a bench trial, in the absence of evidence to the contrary, it is presumed that the court considered only competent evidence. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 389 (2004). Further, "[a]bsent a sufficient record, the reviewing court presumes that the trial court conformed to the law and that its rulings were supported by the evidence. [Citation.]" (Internal quotation marks omitted.) *Lisowski v. MacNeal Memorial Hospital Ass'n*, 381 Ill. App. 3d 275, 282 (2008). Accordingly, defendant's arguments alleging

1-14-0174)
1-14-0491)Cons.

the insufficiency of plaintiff's allegations and the incompetence of plaintiff's evidence both must fail.

¶ 50 Separately defendant argues that plaintiff failed to comply with the pleading requirements in section 2-403 of the Code and section 8b of the Collection Agency Act. Defendant's argument that plaintiff failed to comply with section 8b of the Collection Agency Act is premised on a presumption that plaintiff is an assignee for collection. However, based on the allegations in the amended complaint, plaintiff is a debt buyer, not an assignee for collection. Specifically, plaintiff's amended complaint alleged that plaintiff "as purchaser holds the account without recourse and without restrictions as to its collection." Because the amended complaint alleges that plaintiff holds the account without recourse as to its collection, the complaint alleges that plaintiff is a debt buyer. See *Galvan v. NCO Financial Systems, Inc.*, Nos. 11 C 3918, 11 C 4651, 2013 WL 1628190, *2 (N.D. Ill. April 15, 2013) (discussing amendments to Credit Collection Act and removal of "with recourse" from definition of acts constituting a collection agency (225 ILCS 425/3 (West 2008))). As a debt buyer, plaintiff was not required to include the additional allegations required of assignees for collection in its complaint. *Shah II*, 2013 IL App (1st) 113658, ¶ 14.

¶ 51 We also find that plaintiff complied with the standing requirements of section 2-403 of the Code. *Id.* The amended complaint alleges that Citibank is the original creditor of defendant in that the amended complaint alleges that Citibank issued a certain credit account pursuant to an agreement with defendant that defendant would pay for the charges, advances, and interest incurred on said account, and that defendant utilized the account. The complaint alleges defendant failed to pay for the charges, advances, and interest incurred on the account.

1-14-0174)
1-14-0491)Cons.

The complaint further alleges that Pilot purchased defendant's account on June 18, 2012, from Citibank. Plaintiff's amended complaint alleges that plaintiff purchased defendant's account from Pilot on September 7, 2012, and plaintiff is now the *bona fide* holder of this claim. The amended complaint alleges that plaintiff is the *bona fide* owner of the debt, sets forth how and when plaintiff acquired title, and traces plaintiff's chain of title back to defendant's original creditor. Plaintiff's amended complaint is in compliance with the statutory pleading requirements because the amended complaint alleges all of the facts required by section 2-403. *Shah II*, 2013 IL App (1st) 113658, ¶ 9.

¶ 52 Registration Under the Collection Agency Act

¶ 53 Finally, defendant argues plaintiff is not registered under the Collection Agency Act and therefore lacks standing to attempt to collect a debt. We agree with defendant that plaintiff is required to be registered under the Collection Agency Act. 225 ILCS 425/8.5 (West Supp. 2013); *Leeb*, 891 F. Supp. 2d at 1005. Plaintiff's complaint does not allege that plaintiff is registered but defendant has not submitted any evidence that plaintiff is not registered under the Collection Agency Act. Defendant has not cited any authority that a debt buyer or an assignee for collection must allege in the complaint it is registered under the Collection Agency Act and we have not found that requirement to exist based on our own research.

¶ 54 Further, unlike standing to sue in one’s own name as an assignee or to act as an assignee for collection, the text of the statute does not suggest that registration is required to be pled in an action to collect a debt. Section 2-403 of the Code specifically states that an assignee of a non-negotiable chose in action “*shall in his or her pleading on oath allege that he*

1-14-0174)
1-14-0491)Cons.

or she is the actual *bona fide* owner thereof, and set forth how and when he or she acquired title.” (Emphasis added.) 735 ILCS 5/2-403 (West 2012). Section 8b similarly expresses that the facts entitling a plaintiff to sue in its own name is a pleading requirement. Section 8b of the Collection Agency Act states that “[n]o litigation shall commence *** unless: (i) there is an assignment of the account that satisfies the requirements of this Section and (ii) the licensee is represented by a licensed attorney.” 225 ILCS 435/8b(e) (West 2012). This court found that the requirements of section 8b must be pled in the complaint based on the language in section 8b(e). *Shah I*, 407 Ill. App. 3d at 742 (“In order to state a claim to the debt, plaintiff must still plead and establish that it is an assignee of the original creditor.” (citing 225 ILCS 425/8b(e) (West 2008))). Under section 8b(e), the plaintiff must establish the validity of the assignment for collection for the litigation to commence but not the plaintiff’s registration.

¶ 55 Due to an incomplete record, we do not know if defendant challenged plaintiff’s registration at trial. Once again, we must presume that the trial court conformed to the law and that its judgment is supported by the evidence. *Lisowski*, 381 Ill. App. 3d at 282. Defendant’s argument that the judgment in favor of plaintiff should be reversed and the amended complaint dismissed with prejudice because plaintiff is not registered under the Collection Agency Act must fail.

¶ 56 For all of the foregoing reasons, the circuit court of Cook County’s judgment is affirmed in case number 1-14-0174.

¶ 57 2. Case Number 1-14-0491

¶ 58 This appeal arises from a judgment granting plaintiff’s motion to voluntarily dismiss its complaint. “An order granting a plaintiff’s motion to voluntarily dismiss an action

without prejudice is final and appealable by the defendant, but not by the plaintiff.” *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005). However, in the absence of a prejudicial ruling prior to voluntary dismissal, the only proper subject of the appeal is the granting of the voluntary dismissal. *Saddle Signs, Inc. v. Adrian*, 272 Ill. App. 3d 132, 136-139 (1995). The court would not have jurisdiction to hear an appeal of a nonprejudicial ruling made prior to the voluntary dismissal. *Id.* at 140. “Defendants are not prejudiced simply because a trial court denies their motion to dismiss.” *Id.* Accordingly, we have no jurisdiction to hear an appeal of the trial court’s denial of defendant’s motion to dismiss.

¶ 59 Defendant’s notice of appeal states that the appeal is taken from the following order:

“The order of January 22, 2014, Judgment with prejudice against the Defendant, Kiseong An on the Verified complaint ***. The judgment grants the plaintiff, Unifund CCR LLC request of dismissal without prejudice. The judgment does not grant the defendant, Kiseong An’s request of dismissal with prejudice and of filing motion to dismiss with prejudice.”

¶ 60 Even if we could construe defendant’s appeal as taken only against the trial court’s judgment granting plaintiff’s motion to voluntarily dismiss, defendant’s appeal would be meritless. “[A] plaintiff may, at any time before the trial or hearing begins, upon notice to each party who has appeared or each such party’s attorney, and upon the payment of costs, dismiss the action without prejudice. [Citation.] When a party complies with the requirements of section 2-1009(a), her right to a voluntary dismissal without prejudice is, with very limited exceptions, unfettered.” *Smith v. Bartley*, 364 Ill. App. 3d 725, 727 (2006).

1-14-0174)
1-14-0491)Cons.

Defendant has not argued nor do we find that any such exceptions apply in this case. Plaintiff had an absolute right to voluntarily dismiss its case and the trial court properly granted the motion.

¶ 61 Regardless, we do not have jurisdiction to consider an appeal or any arguments concerning the judgment denying defendant's motion to dismiss. *Saddle Signs, Inc.*, 272 Ill. App. 3d at 140. Nothing in defendant's appeal addresses the propriety of the judgment granting the voluntary dismissal and defendant's only arguments concern his motion to dismiss plaintiff's complaint. We construe defendant's appeal as solely an attack on the trial court's judgment denying his motion to dismiss. We do not have jurisdiction to hear an appeal of that judgment. Accordingly, defendant's appeal in case number 1-14-0491 is dismissed. *In re Marriage of Duggan*, 376 Ill. App. 3d 725, 727 (2007) ("a reviewing court has a duty to consider *sua sponte* whether it has jurisdiction and to dismiss an appeal if it lacks jurisdiction.").

¶ 62 3. Conclusion

¶ 63 In conclusion to the disposition of these consolidated appeals, we note that in case number 1-14-0174, the amended complaint alleged that defendant's indebtedness on the account sued on in that case was \$5,028.31 and requested judgment in that amount plus costs. In case number 1-14-0491, the complaint alleged defendant's indebtedness on the account plaintiff sued on in that case was \$7,169.71, plus costs. In the former the trial court entered judgment in favor of plaintiff for \$7,169.71 with costs assessed to defendant and in the latter the court granted plaintiff voluntary dismissal. The orders entering the judgments in both cases were entered on the same day by the same trial judge.

1-14-0174)
1-14-0491)Cons.

¶ 64 It appears the judgment requests in these cases involving the same plaintiff and two defendants represented by the same law firm may have been transposed. This court may, in its discretion under Illinois Supreme Court Rule 366 (eff. Feb. 1, 1994), make any further order that the case may require. In the exercise of our discretion under Rule 366 we order the trial court to verify that the amount of the judgment in our case number 1-14-0174, trial court number 13 M 132322, is correct and to correct the judgment if the amount entered in the trial court's order was inadvertent. The trial court's order in case number 1-14-0174 is affirmed in all other respects.

¶ 65 CONCLUSION

¶ 66 For the foregoing reasons, the circuit court of Cook County's judgment in case number 1-14-0174 is affirmed and remanded with instructions and the appeal in case number 1-14-0491 is dismissed.

¶ 67 Case number 1-14-0174, affirmed and remanded with instructions.

¶ 68 Case number 1-14-0491, dismissed.