NORTH DAKOTA BANKERS ASSOCIATION

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BANK DUTIES

Apple Pay, VoIP, and the Ghost of Fiduciary Duty [ND TX]

A bank customer that received Social Security disability benefits and relied on an accountant to manage his finances opened two accounts with a national bank. The bank was aware of his disabilities and his need for assistance. He later alleged that the bank debited a large sum from his account without authorization and processed the transfers without two-factor authentication, out-of-band confirmation, or other commercially reasonable safeguards. The customer also alleged that the bank had earlier denied a fraud claim on a smaller unauthorized transaction. He further alleged that the bank tried to coerce his accountant into signing a document containing false statements, communicated directly with him rather than through counsel despite his requested accommodations, and took no meaningful steps to recover the funds. He sued for violations of the Electronic Fund Transfer Act (EFTA), Title III of the Americans with Disabilities Act (ADA), and the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA), as well as for negligence and breach of an informal fiduciary duty. The bank moved to dismiss the complaint for failure to state a claim under the pleading standards established in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009).

In Felknor v. Bank of Am., N.A., No. 4:25-cv-01291-P-BP, 2026 WL 679595, 2026 U.S. Dist. LEXIS 50343 (N.D. Tex. Feb. 23, 2026) (unpublished opinion), report and recommendation adopted, No. 4:25-CV-1291-P-BJ, 2026 WL 676383, 2026 U.S. Dist. LEXIS 48788 (N.D. Tex. Mar. 10, 2026), the court recommended granting the motion to dismiss in part. It first declined to dismiss the EFTA claim. Although the EFTA excludes transfers made through Fedwire or similar systems primarily between financial institutions, the customer alleged that the disputed transfers moved through Voice-over-Internet-Protocol and Apple Pay, which plausibly fell within the statute's "telephonic instrument" definition of an electronic fund transfer rather than the wire-transfer exclusion. See 15 U.S.C. § 1693a(7). The court also held that the one-year limitations period did not apply, because the deadline fell on a Saturday, and the customer had filed the next business day under Fed. R. Civ. P. 6(a)(l)(C). Regarding the common-law claims, the court rejected the bank's lead argument that Article 4A of the UCC preempted them. The court ruled that parties to a funds transfer must look first to Article 4A, but the Article does not automatically eliminate common-law claims. Rather, Article 4A displaces only claims that create rights, duties, or liabilities inconsistent with its provisions. Consorcio Indus. de Construccion Titanes, S.A. de C.V. v. Wells Fargo Bank, N.A., No. 3:10-cv-2111-K, 2012 U.S. Dist. LEXIS 200382, 2012 WL 13019678, at *2 (N.D. Tex. July 12, 2012); Regions Bank v. Provident Bank, Inc., 345 F.3d 1267, 1275 (11th Cir. 2003). Because the customer grounded his negligence and fiduciary-duty theories on the initial unauthorized transfers and also on the bank's failure to later investigate and recover the funds, the fact-specific displacement analysis did not bar those claims at the pleading stage. JESCO Constr. Corp. v. Wells Fargo Bank, NA., No. 1:20CV147-HSO-JCG, 2021 U.S. Dist. LEXIS 262229, 2021 WL 9629459 at *4-7 (S.D. Miss. Mar. 1-1, 2021).

Surviving preemption did not save the tort claims. The court dismissed the negligence claim for want of any duty, reaffirming that a bank relationship creates no duty of care. Barge v. Wells Fargo Bank, N.A., No. 1:23-CV-00189, 2024 WL 2520324, 2024 U.S. Dist. LEXIS 93793 (E.D. Tex. Mar. 28, 2024). The customer asserted a "special relationship" premised on the bank's recognition of his accountant, which the court denied, as courts confine that narrow exception to settings such as insurer and insured. Nor had the bank assumed a duty by previously investigating fraud, because the customer never alleged that the earlier investigation increased the risk of harm or that he had relied on it. Torrington Co. v. Stutzman, 46 S.W.3d 829 (Tex. 2000). Independently, the economic loss rule barred the claim because the customer identified no injury independent of his contractual expectancy and never answered the argument at all. A-1 Am. Fence, Inc. v. Wells Fargo Bank, N.A., No. l:20-cv-441, 2021 WL 7184973, 2021 U.S. Dist. LEXIS 254245 (E.D. Tex.

May 5, 2021). The DTPA claim met the same fate. The court found that the customer pleaded his deceptive-practice allegations with the particularity Rule 9(b) demands and had plausibly alleged "consumer" status. The court noted that authorities conflicted on whether merely holding an account suffices but that a depositor who pays service fees in exchange for the bank's honoring of his checks qualifies under the statute. Bank One, Tex., N.A. v. Taylor, 970 F.2d 16, 28 n.12 (5th Cir. 1992). Even so, the economic loss rule again required dismissal of the claim because the customer alleged no injury independent of the contract. The court likewise dismissed the informal fiduciary duty claim; although Article 4A did not reject it, the customer had pled no facts that overcame the settled rule that a bank relationship alone creates no fiduciary duty, and he showed none of the trust and reliance that such a relationship requires. Wells Fargo Bank, N.A. v. Citizens Bank of Tex., N.A., 181 S.W.3d 790, 801 (Tex. App.-Waco 2005, pet. denied); Schlumberger Tech. Corp. v. Swanson, 959 S.W.2d 171, 176 (Tex. 1997). The court did allow the ADA claim to proceed, finding that the customer described his requested communication accommodations with enough specificity to state a plausible Title III violation. Because the customer had already amended his pleading once and had pled his best case, the court recommended dismissing the deficient claims without leave to amend.

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BANK FRAUD

Article 4A Displaces Negligence Claim [CDCA]

The pay-on-death beneficiary of a decedent's bank account alleged that the bank paid him substantially less than the amount in the account. After the decedent passed, the beneficiary confirmed with the bank's branch manager that he was in fact the beneficiary by providing the bank with the decedent's death certificate. The beneficiary alleges that after providing the bank with the decedent's death certificate, the bank transferred money to another individual than the beneficiary. Based on this action, the beneficiary sued the bank for negligence and declaratory relief. The bank responded by filing a motion to dismiss.

In Page v. Citibank, N.A., No. 2:25-cv-11940-WLH-MAR, 2026 WL 712575, 2026 U.S. Dist. LEXIS 53385 (C.D. Cal. Mar. 6, 2026) (opinion not yet released for publication), the court granted the motion to dismiss with prejudice as to the negligence claim and without prejudice as to declaratory relief, also granting the beneficiary leave to amend on the declaratory relief claim. Concerning the beneficiary's negligence claim, the court found that Article 4A of the UCC preempted such claims under California law. "Section 4A-212 of the UCC provides that the liability of a 'receiving bank' for 'acceptance' of 'a payment order' 'is limited to that provided in this Article . . . the bank owes no duty to any party to the funds transfer except as provided in this division or by express agreement.'" Chino Com. Bank, NA. v. Peters, 190 Cal. App. 4th 1163, 1174 (2010). Because a wire transfer constitutes a payment order, the bank's liability is limited to the statutory UCC violations, and there is no legal harm for a common law cause of action. The negligence claim was dismissed with prejudice. Next, the court also dismissed the beneficiary's declaratory relief claim, holding that because the beneficiary raised no other "viable theory of liability to support the declaratory relief claim," that claim must be dismissed. The court concluded that "[d]eclaratory relief is just that; a form of relief. It is not an independent basis of liability." However, the court dismissed the claim without prejudice, allowing the beneficiary to amend his complaint because the claim indicated a breach of fiduciary duty. The court therefore allowed the beneficiary to refile to clarify his claim under that theory or any other theory he saw fit. The court also noted a potential timing issue with an alternative theory; however, the court declined to consider the timing issue in this proceeding.

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Bayou Beware: Federal Claims Fail, but Contract Claim Survives [WD LA]

The depositors maintained commercial deposit accounts with the bank. However, a dispute arose after the bank's fraud department notified the depositors that charges at stores in Florida had posted to one or more of their accounts. The depositors reported additional unauthorized charges and transfers the following day, and the bank informed them that the transfers appeared to be continuing in real time. The depositors then met with a bank branch manager, who verified ongoing transfers from the accounts and stated that he would report the activity to the bank's fraud department. According to the depositors, however, the bank waited more than thirty days before submitting requests to reverse the transfers, failed to seek reversals for all affected accounts, and failed to provide the receiving banks with requested hold-harmless agreements. As of March 7, 2023, the depositors had recovered only $82,986.76 of the $291,500.00 transferred from one account. The depositors later alleged they had suffered approximately $113,184 in total losses. The depositors sued the bank in Louisiana state court, asserting negligence, breach of contract, and "legal fault" claims based on the bank's alleged failure to prevent, investigate, and reverse the unauthorized transfers. After removal to federal court, the district court granted the bank's first motion to dismiss in part, dismissing negligence claims based on the initial transfers but allowing other negligence claims to proceed. The court also permitted the depositors to amend their deficient contract and legal fault allegations. The depositors' amended complaint added claims under the Gramm-Leach-Bliley Act (GLBA) and the Electronic Fund Transfer Act (EFTA), along with allegations that the bank failed to provide or maintain account agreements that addressed wire' transfers, security measures, liability limitations, and fraud protection. The bank moved to dismiss the amended complaint under Fed. R. Civ. Pro. 12(b)(6).

In B & C FDO lnvs. #2 LLC v. Regions Bank, No. 6:24-CV-00365, 2025 WL 2257531, 2025 U.S. Dist. LEXIS 153136 (W.D. La. Aug. 7, 2025) (opinion not yet released for publication), the court granted the bank's motion in part and denied it in part. First, the court dismissed the GLBA claims with prejudice because the statute did not create a private right of action. Although the GLBA established a federal policy requiring financial institutions to protect the security and confidentiality of customers' nonpublic personal information, the court found that the policy's language did not create individual rights that the private parties could enforce through litigation. Instead, the statutory scheme assigned enforcement and rulemaking authority to designated public agencies. Second, the court dismissed the EFTA claims with prejudice because the depositors were business entities, and the accounts at issue were commercial accounts. The EFTA defined a consumer as a natural person and protected accounts established primarily for personal, family, or household purposes. The depositors therefore failed to satisfy both requirements: (1) the limited liability companies were not natural persons, and (2) the amended complaint did not allege that the accounts had been established primarily for personal use. The court rejected the depositors' unsupported contention that a business entity could bring an EFTA claim when an account involved mixed personal and commercial use. Even assuming mixed use could satisfy the statute's definition of an account, the depositors identified no authority extending the EFTA's definition of consumer to a business entity. However, the court allowed the contract claims to proceed. The amended allegations remained sparse and did not identify the exact provisions that the bank allegedly breached. But the court interpreted the original and amended complaints together and inferred that the deposit agreements governed the parties' rights and obligations concerning unauthorized wire transfers, account security, and maintenance of account documents. The depositors' allegations that the bank had allowed unauthorized transfers, had failed to act promptly to recover the funds, had failed to maintain adequate safeguards, and had failed to provide or update the governing account agreement were sufficient to state a plausible contract claim at the pleading stage. Finally, the court dismissed the legal fault claims with prejudice because the amended complaint did not identify an independent cause of action or cure the earlier pleading deficiencies. The allegations concerning statutory duties, good faith, and other unspecified fault were largely duplicative of the negligence and contract claims and did not give the bank fair notice of a separate claim. Although the depositors also made a passing reference to Uniform Commercial Code Article 4A, they identified no specific provision that applied, and the parties did not address whether Article 4A displaced any negligence or contract theories. The court therefore declined to determine Article 4A's effect on the remaining claims. Accordingly, the court dismissed the GLBA, EFTA, and legal fault claims with prejudice but denied dismissal of the contract claims.

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Declaratory Judgment Claim Allowed Under UCC 4A-207 Though the Absence of Privity Precluded Recovery of Damages [D NH]

The originator wired funds to an account at the beneficiary bank. Instead of the intended recipient receiving the funds, an alleged criminal posing as the intended recipient received them. The originator sued the beneficiary bank under Uniform Commercial Code (UCC) provisions governing electronic funds transfers in order to recover the funds sent. The beneficiary bank moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) on two grounds: (1) that the claim under Ohio Rev. Code § 1304.62 failed because the originator did not meet the statute's privity requirement with the beneficiary bank, and (2) that the pleadings did not plausibly allege actual knowledge by the beneficiary bank as the statute requires. The originator objected to the motion, arguing that the statute did not require privity and that it did plead sufficient facts to plausibly allege actual knowledge. The originator also filed a motion for leave to amend for the following reasons: (1) to bring a claim against its own bank (the originating bank) and seek recovery of the funds from it, (2) to seek a declaratory judgment against the beneficiary bank, and (3) to supplement and clarify a factual allegation. The beneficiary bank objected on the basis that amendment would prove futile.

In Lee T. Corrigan, LLC v. JP Morgan Chase Bank, N.A., 800 F. Supp. 3d 318 (D. N.H. 2025), the court granted the beneficiary bank's motion to dismiss in part, dismissing the claim for a direct refund, but permitted the declaratory judgment claim to proceed and granted the originator leave to amend. Thus, the remaining claims included a claim for declaratory relief against the beneficiary bank under Ohio Rev. Code § 1304.62

and a claim for damages against the originating bank under §§ 1304.62 and 1304.74. In analyzing the dispute, the court first applied § 1304.62, the codification of UCC § 4A-207(b), that states: "when a payment order from one bank to another (1) identifies the intended beneficiary by both a name and an account number, (2) the beneficiary's bank knows that the name and number identify different persons, and (3) no beneficiary identified by the payment order is actually entitled to receive the payment then no person has rights as beneficiary and acceptance of the order cannot occur." (Internal quotations omitted). Additionally, comment 2 to Section 207 requires the beneficiary bank to take the loss if it accepts the funds and transfers them to the unintended beneficiary. See Approved Mortg. Corp. v. Truist Bank, 106 F.4th 582, 589 (7th Cir.-2024). Thus, the court concluded that the originator's alleged facts, if proven true, would lead the beneficiary bank to bear the loss. The court then addressed the dispute over the impact of that conclusion in light of the statute's silence on what happens if acceptance does occur despite the statute's prohibition of it. The beneficiary bank cited Approved Mortgage for its holding that UCC Section 402, adopted as Ohio. Rev. Code § 1304.74, provides a "money-back guarantee" to originators but requires privity with whom they seek to recover, effectively limiting damages to the originating bank, who must seek reimbursement from the beneficiary bank. The court reconciled the rulings in Approved Mortgage and Elkin Valley Baptist Church v. PNC Bank, NA., 748 F. Supp. 3d 293, 318 (W.D. Pa. 2024), by narrowly reading Approved Mortgage to not consider the possibility of obtaining a declaratory judgment as relief under Section 207. Therefore, the court held that the privity requirement of Section 402 precluded recovery of damages from the beneficiary bank but did not apply to declaratory judgment because it is a nonmonetary form of relief. Further, the court concluded that the Declaratory Judgment Act explicitly allows recovery in a "case or controversy" when other relief, including damages, is unavailable. See 28 U.S.C. § 2201(a). The court then considered the beneficiary bank's second ground for Fed. R. Civ. Pro. 12(b)(6) dismissal: that the originator failed to plausibly allege actual knowledge, at the time of the transfer, of the mismatch between the beneficiary's name and the account holder. The court ruled that the originator did plausibly allege actual knowledge and that the allegations were not too conclusory because of the specific facts included. Thus, the court allowed the originator's remaining claims and granted the originator's motion for leave to amend.

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Internal Bank Policies Did Not Create Contractual Duties to Customers [SD NY]

The account holder maintained a personal savings account with the bank. He fell victim to an alleged scam in which fraudsters convinced him that his assets were at risk. The account holder then transferred all of his assets to bank accounts held by the fraudsters. The bank had internal policies to freeze accounts and report suspicious activity, but it failed to implement them. The account holder sued the bank on six counts of breach of contract, all related to the theory that the bank failed to freeze his accounts, investigate the transfers further, or prevent future fraudulent transactions. The bank responded with a motion to dismiss all claims.

In Markatos v. Citibank, N.A., No. 24-CV-803 (KMK), 2026 WL 836706, 2026 U.S. Dist. LEXIS 65193 (S.D.N.Y. Mar. 26, 2026) (opinion not yet released for publication), the court granted the bank's motion to dismiss on all of the account holder's breach of contract claims. The court addressed two of the bank's arguments when considering the motion to dismiss. First, the bank asserted that Article 4 and 4A preempted the account holder's claims, and second, it claimed that the account holder failed to state a plausible claim. Addressing the Article 4A argument, the court reasoned that the Article has a preclusive effect on common-law claims. However, the court considered whether the claims were "based on security measures that banks follow before and after wire transfers[,]" which are not subject to the preclusive effect of Article 4. Although the court did not express a definitive opinion on whether the claims were preempted, it still held that the claims must be dismissed. The court concluded that even if the account holder's claims were not preempted, he still must sufficiently plead his breach of contract claim. Relying on its prior decisions, the court determined that the bank's failure to follow its internal policies did not state a claim for breach of contract. Therefore, the court granted the bank's motion to dismiss all claims.

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SECURITY INTERESTS

Bank Entitled to Crop Proceeds in the Absence of a Superior Lien or a Bankruptcy Stay [BKR D NE]

The debtors, a husband and wife, owned land, equipment, and other assets to operate a farm on which they grew and sold crops annually. The debtors signed two promissory notes with the bank that granted them "a one-year operating line of credit" and a second loan consolidating three other notes. The security for the loans consisted of a "blanket agricultural security agreement" and two deeds of trust on a piece of their farmland. After the debtors defaulted on the loans the husband filed a Chapter 12 (family farmer) bankruptcy petition. The court granted the bank's motion for relief from the automatic stay based on allegations that the debtor failed to: (1) account for collateral, (2) maintain insurance on the collateral, (3) protect the collateral, and (4) prevent the wife from "sell[ing] collateral and divert[ing] the proceeds to her separate bank account." The bank then claimed that the debtor's failure "to timely file a plan" and "to account for the bank's collateral," combined with the lack of a "reasonable likelihood of rehabilitation" due to other secured creditors, warranted dismissal of his bankruptcy case for cause. The court granted the bank's motion to dismiss the case. The bank set the secured real estate for sale, and the wife then filed for Chapter 13 bankruptcy. The court granted in part the bank's motion for relief from stay, allowing the bank to sell the collateralized real estate but setting the remainder of the issues for trial. The debtor and creditor agreed that the debtor would maintain proper insurance on the collateral and add the bank "as an additional payee for any farm products sold." The bank and another creditor with an interest in the equipment filed a motion for relief from stay regarding the farm equipment and irrigation equipment, in which the debtor asserted she held an interest. The Chapter 13 trustee also moved to dismiss the Chapter 13 case due to the debtor's failure to make payments, and the debtor filed a motion to use cash collateral for farming and living expenses. The court held a trial on the pending motions, at which it denied the debtor's motion and granted the creditors' motion and the trustee's motion, which resulted in dismissal of the case. The court based its judgment on the fact that the wife acted in bad faith by filing for Chapter 13 bankruptcy and diverting collateral. Furthermore, the court held that the debtor could not claim an interest in her husband's assets while she had kept their assets separate in her husband's bankruptcy case. The bank filed an adversary proceeding before the court's ruling to seek recovery of the crop proceeds from the debtor. The bank specifically requested recovery of three checks made payable to either the husband or wife and the bank. The debtor objected in her answer, asserting that other lienholders possessed interests superior to the bank's, including the husband as an "input provider." The bank moved for summary judgment, and the debtors did not respond.

In Heartland Bank v. Spilker (In re Spilker), No. BK 25-41113-TLS, Chapter 13, Adv. No. A26-4003-TLS, 2026 WL 846249, 2026 Bankr. LEXIS 766 (Bankr. D. Neb. Mar. 26, 2026) (opinion not yet released for publication), the court granted the bank's uncontested motion for summary judgment, holding that the bank possessed a perfected security interest with priority over the debtor's grain proceeds. The court additionally ordered the debtor to sign over the three checks constituting proceeds of its collateral to the bank. The court noted that the debtor's failure to respond meant acceptance of the bank's statements of fact. Though no issue of fact remained, the court still considered whether the bank established "all of the essential elements of the claim ... to warrant judgment in [its] favor." Fontenot v. Upjohn Co., 780 F.2d 1190, 1194 (5th Cir. 1986). The court ruled that "the dismissal of the [debtor's] bankruptcy cases and the orders granting relief from the automatic stay to [the] [b]ank" eliminated any of the debtor's claims to the crop proceeds. Additionally, the court- held that the other creditor established its lien but that the bank's prior perfected lien was superior under Neb. U.C.C. § 9-322. Therefore, relying on the bank's loan documents and security agreements, the court ruled that the bank submitted sufficient evidence to meet its summary judgment burden.

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Snooze, You Lose Priority: Lapsed Financing Statement Costs Prior Lenders First Priority [D NJ]

The debtor entered into multiple loan agreements with the creditor to secure funds through a senior secured convertible promissory note and a subordinated secured convertible promissory note. To secure these obligations, the debtor executed a security agreement granting the creditor a broad security interest in its collateral, which included rights to various business assets. Simultaneously, the creditor and a group of previous lenders entered into a subordination agreement. This agreement established that the creditor's junior note would take priority over the previous lenders' interests regardless of the order of attachment or the manner of perfection. Before that agreement, the previous lenders filed a financing statement to secure their earlier interests; however, they failed to file a continuation statement, causing the filing to lapse after five years. Three days after the lapse, the other creditor filed its own financing statement to perfect its security interest. After the debtor made no payments toward the principal or interest, resulting in a total debt exceeding $20 million, the creditor began foreclosure proceedings. A collateral agent for the previous lenders challenged the foreclosure, arguing that the senior note was unsecured, that the creditor's interest was invalid due to a failure of a condition precedent, and that the creditor had acted in bad faith by not warning the lenders of the impending lapse of their filing. The court determined the priority of the conflicting interests and whether a secured party owed a duty of good faith.

In 1-800-Doctors, Inc. v. MM & JF Invs., LLC, No. 21-cv-17559-ESK-SAK, 2026 WL 194647, 2026 U.S. Dist. LEXIS 13626 (D.N.J. Jan. 26, 2026) (opinion not yet released for publication), the court granted summary judgment in favor of the second creditor, allowing the foreclosure to proceed. The court first applied the Uniform Commercial Code, which New Jersey law adopted in N.J. Stat. Ann. § 12A:1-101, et seq., to determine whether the notes were enforceable. Under N.J. Stat. Ann. § 12A:3-104, a "negotiable instrument" is an unconditional promise to pay a fixed amount of money at a definite time. The court first concluded that the notes qualified as negotiable instruments under N.J. Stat. Ann. § 12A:3-104(a). Further, the court explained that because value had been-given, the debtor held rights in the collateral. Thus, an authentic security agreement existed, and an enforceable security interest attached to the collateral. Addressing the priority dispute, the court looked to N.J. Stat. Ann. § 12A:9-322(a)(l), which ranks conflicting perfected security interests according to the time of filing or perfection. While the previous lenders filed first in 2011, the court noted that NJ. Stat. Ann. § 12A:9-515(a), (c) provides that a financing statement is effective for five years and lapses if a continuation statement is not timely filed. The court reasoned that upon this lapse, the previous lenders' interest became unperfected and lost priority to the second creditor's subsequent 2016 filing. Furthermore, the court rejected the previous lenders' argument that the creditor breached a covenant of good faith and fair dealing by failing to disclose the lapse. Based on Kare Distrib., Inc. v. Jam Labels & Cards LLC, No. 09-00969, 2012 WL 266386, 2012 U.S. Dist. LEXIS 10718 at *7 (D.N.J. Jan. 30, 2012), the court explained that such claims failed when the conduct was governed by an express contract. Because the subordination agreement explicitly made the previous lenders responsible for maintaining their own perfection, the creditor possessed no duty to monitor their filings. Consequently, the court found that the creditor held a first-priority security interest and was entitled to foreclosure.

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SETOFF

No Cutting in Line: Court. Rules that Article 9 Grandfather Clause Defeats the Bank's Set-off [BKR D PR]

The debtor, a general contractor, obtained two lines of credit from a bank, secured by its own accounts receivable and a deposit account. Several years earlier, the debtor executed an indemnity agreement that assigned all proceeds from its bonded contracts to a surety, and the surety had perfected its interest. The debtor then entered into a public construction contract, and the surety issued the required performance and payment bonds. The debtor failed to pay project vendors. As a result, the surety notified the public financing authority of claims under the bonds and directed it to make all future project payments jointly to the debtor and the surety. The authority mistakenly deposited a $537,924.18 progress payment into the debtor's bank account instead of the surety's. The bank immediately applied $464,757.60 to the debtor's matured lines of credit under a contractual set-off provision. The debtor later filed for bankruptcy, and both the trustee and surety sought return of the funds. On remand, the bankruptcy court considered cross motions for summary judgment addressing the question of whether the bank's set-off either had priority over the surety's interest, involved mutual debts, or remained valid under other Puerto Rico law.

In Wiscovitch Rentas v. Oriental Bank (In re Builders Holding., Corp.), Adv. Proc. No. 17-00012-EAG, Case No. 16-06643-EAG, 2026 WL 752589, 2026 Bankr. LEXIS 654 (Bankr. D.P.R. Mar. 16, 2026) (opinion not yet released for publication), the bankruptcy court granted the surety summary judgment, denied the bank's motion, and ordered the bank to tum over $464,757.60 to the surety and trustee jointly. First, the court applied former Article 9 through the revised statute's grandfather clause, because the surety had perfected its interest before the 2012 revision to the code took effect. The pre-2013 version of Article 9 gave priority to the first party to file, and the surety's filing preceded the bank's filings; by contrast, the revised Article 9 provisions would have favored the bank that maintained the deposit account, but those provisions did not apply. Second, the bank lacked the mutuality required for set-off under Bankruptcy Code § 553 and Puerto Rico law. The progress payment consisted of public funds that did not belong to the debtor before completion and acceptance of the project. The bank also had constructive knowledge of the funds' special purpose because Puerto Rico law required the bonds, its loan agreement permitted bond-related liens, and it relied on the debtor's public contracts. Third, the court analyzed whether unjust enrichment occurred by examining: "(1) the existence of an enrichment; (2) a correlative impoverishment; (3) a connection between the impoverishment and the enrichment; (4) absence of cause to justify the enrichment; and (5) lack of a legal provision which precludes application of an enrichment without cause." Ortiz Andujar v. Commonwealth, 122 D.P.R. 817, 822 (1988). The court held that the unjust enrichment did not validate the set-off because the loan contract governed the bank's rights. The court also addressed the doctrine of equitable subrogation. The court found that equitable subrogation independently gave the surety priority over the debtor's other creditors. Additionally, it concluded that, after paying bond claims, the surety's rights related back to the indemnity agreement and survived bankruptcy. Thus, the court granted the summary judgment motion and ruled that the bank could not retain the funds.

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WIRE FRAUD

Authorized Wire Transfer Fraud Not Protected [ED NY]

A seventy-two-year-old depositor maintained two personal accounts with a bank. Several months after the customer's information was stolen through the "MOVEit" file-transfer system, the bank notified the depositor that her name, address and account numbers had been compromised. The bank stated that it would continue to monitor her accounts for potentially fraudulent activity. The depositor later received a frozen-screen message on her laptop instructing her to call a telephone number. The individuals who answered the call claimed to be Microsoft security agents and bank investigators. They told the depositor that the employees at her local branch had sold her identity and banking information to criminals. They instructed her to protect her savings by transferring her funds to a purported Federal Reserve security account. The scammers also warned her not to disclose the purpose of the transfers to branch employees because the employees were allegedly under investigation. Acting on those instructions, the depositor went to a bank branch and authorized two wire transfers to a bank in Hong Kong, one on August 4, 2023, and another on August 8, 2023, totaling approximately $478,000. Before those transfers, the depositor had no history of high-dollar transactions and had never initiated a wire transfer from her accounts. She later sued the bank for breach of contract, alleging that the bank violated its ordinary-care obligations under the governing deposit agreement by failing to recognize the warning signs, investigate the transactions, refuse to execute the wires' or freeze her accounts. The bank moved to dismiss, arguing that the claim was untimely, displaced by Article 4A of New York's Uniform Commercial Code, and otherwise inadequately pleaded.

In Pitrone v. M&T Bank, N.A., 818 F. Supp. 3d 503 (W.D.N.Y. 2026), the court granted the bank's motion to dismiss, holding that Article 4A preempted the depositor's breach of contract claim. Article 4A supplies a comprehensive framework governing wholesale wire transfers and was designed to replace inconsistent common-law rules with predictable standards for allocating responsibility and risk. Although Article 4A does not displace every common-law claim involving a wire transfer, it does so when the statute addresses the type of injury or misconduct alleged. Sections 4-A-202 through 4-A-204 determine whether a payment order is authorized or effective and whether the bank must refund the customer. A payment order is authorized when the identified sender authorizes it, while Article 4A's commercially reasonable security-procedure provisions address unauthorized payment orders. The depositor acknowledged that she personally authorized both transfers. Her claim, therefore, did not concern an unauthorized payment order or the bank's failure to follow an agreed-upon security procedure for detecting an unauthorized order. Instead, she sought to impose an additional contractual duty requiring the bank to protect a customer from a transfer that the customer authorized in response to a third party's fraudulent representation. The court rejected the depositor's argument that her claim escaped Article 4A merely because it involved conduct preceding execution of the transfers, including the earlier data breach, the bank's promise to monitor the accounts, and the branch employees' alleged failure to recognize the scam. Any additional measures contemplated by the depositor would have been aimed at stopping customers from making ill-advised but authorized transfers, rather than preventing unauthorized transfers governed by Article 4A's security provisions. Imposing liability on that basis would conflict with Article 4A' s allocation of loss and its limitation on varying the rights and obligations created by §§ 4-A-202 and 4-A- 203. Therefore, the court dismissed the debtor's claims without reaching the bank's statute-of-limitations argument or its separate contention that the complaint otherwise failed to state a contract claim.

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