

PREPARED BY THE COURT

LIBERTY PHYSICAL MEDICINE AND
REHABILITATION, P.C. and
BENJAMIN CHANG,

Plaintiffs,

v.

JAMIE CHA, TD BANKNORTH, N.A.,
d/b/a TD BANK, SIMON CHA, HELEN
CHA, BRUCE PARK, IL GYU KIM, SU
YONG SIM, HAILY NG, YUMIN
MANAGEMENT CORPORATION
(NEW YORK), YUMIN
MANAGEMENT CORPORATION
(NEW JERSEY), JEE HOON CHOI, EUN
YOUNG LEE, ALPHA TRAVEL
AGENCY, INC., DONG MIN JUNG and
SANG YOON KIM,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION

BERGEN COUNTY

DOCKET NO. BER-L-8927-16

CIVIL ACTION

OPINION

Argued: May 12, 2017

Decided: May 15, 2017

Honorable Robert C. Wilson, J.S.C.

Edward N. Mazlish, Esq., appearing for the Plaintiffs Liberty Physical Medicine and Rehabilitation, P.C. and Benjamin Chang, (from the law offices of Kim & Bae, P.C.).

Jeffrey R. Johnson, Esq., appearing for the Defendant TD Bank, N.A. d/b/a TD Bank, (from the law offices of Brown & Connery, LLP).

FACTUAL BACKGROUND

In 2008, the Plaintiffs hired Defendant Jamie Cha (hereinafter, "Cha") as their billing clerk. As their billing clerk, Cha was given full responsibility for and authority over the financial affairs of the medical practice. Specifically, Cha's responsibilities included submitting bills to insurance companies and patients for payment, processing and posting payments from insurance companies

into Liberty's billing software, receiving, processing, and depositing payments from insurance companies and patients into the official bank account for the medical practice, and accounting for bills issued and payments received.

Over the course of her employment, the Plaintiffs allege that Cha stole over 500 checks payable to the Plaintiffs with a total value in excess of two million dollars. See Complaint at ¶ 35. Plaintiffs allege that in or around January 2009 Cha opened a bank account with TD Bank titled "Liberty Physical Med & Rehab, P.C." for a business operation for which she was the President in order to facilitate her scheme. Id. at ¶¶ 28-31. At no time did either Liberty or Chang maintain an account with TD Bank. Id. During this time, Cha allegedly began depositing these stolen checks into the bank account opened under the name "Liberty Physical Med & Rehab, P.C.", which were endorsed with a stamp bearing this name. Id. at ¶¶ 35 and 38.

Plaintiffs filed their Complaint on or about December 21, 2016, seeking reimbursement from TD Bank for their losses. TD Bank has since filed this Motion on or about March 16, 2017 to Dismiss Plaintiffs' claims against it for failure to state a claim upon which relief may be granted pursuant to R. 4:6-2(e). The Plaintiffs filed their opposition on or about April 17, 2017.

MOTION TO DISMISS STANDARD

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Under the New Jersey Court Rules, a Complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned

from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1513 (2016) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

RULE OF LAW AND DECISION

1. Plaintiffs’ Only Cause of Action Sounds in the Uniform Commercial Code Against TD Bank.

The relationship between a bank and its customer with respect to negotiable instruments, including checks, is governed by the Uniform Commercial Code (“UCC”). See Travelers Indemnity Ins. Co. v. Good, 325 N.J. Super. 16, 21 (App. Div. 1999). The UCC is an integrated statutory enactment, comprehensively governing that relationship. Id. It is well settled that “the UCC displaces the common-law where reliance on the common law would thwart the purposes of the UCC.” Psak, Graziano, Paisecki & Whitelaw v. Fleet Nat. Bank, 390 N.J. Super. 199, 204-05 (App. Div. 2007). The New Jersey Supreme Court has held that “in the check collection arena, unless the facts establish a special relationship between the parties created by agreement, undertaking or contact, that gives rise to a duty, the sole remedies available are those provided in the [UCC].” ADS Associates Group, Inc. v. Oritani Sav. Bank, 219 N.J. 496, 517 (2014) (citing City Check Cashing, Inc. v. Manufacturers Hanover Trust Co., 166 N.J. 49, 62 (2001)).

In City Check Cashing, Inc., the Supreme Court did not find a special relationship that would support a common law cause of action against the defendant bank. The plaintiff check-cashing service was not the bank's customer, it had no agreement with the bank, and it had not promised an immediate response to its urgent request. City Check Cashing, Inc., 166 N.J. at 63. The Supreme Court underscored its holding in City Check Cashing, Inc. by noting "in the unique context of whether a bank owes a duty to a non-customer, it is clear that 'absent a special relationship, courts will typically bar claims of non-customers against banks.'" Brunson v. Affinity Federal Credit Union, 199 N.J. 381, 400 (quoting City Check Cashing, Inc., 166 N.J. at 60).

In the instant matter, Plaintiffs have alleged common law causes of action against TD Bank. The Complaint alleges that TD Bank committed conversion (Count II), aiding and abetting conversion (Count III), aiding and abetting breach of fiduciary duty (Count V), negligence (Count VI), violating the UFL (Count VIII), committing a prima facie tort (Count IX) and committing fraud (Count XV). However, TD Bank and the Plaintiffs have no banking relationship, or any other relationship for that matter. See Complaint at ¶¶ 28-35. In order for the Plaintiffs, non-customers, to maintain common law causes of action against TD Bank, they need to demonstrate that they have a "special relationship" with TD Bank. Brunson, 199 N.J. at 400. Because Plaintiffs and TD Bank have no relationship, banking or otherwise, "the sole remedies available are those provided in the [UCC]." ADS Associates Group, Inc., 219 N.J. at 517. As such, the only cause of action against TD Bank sounds in the UCC. Travelers Indemnity Ins. Co., 325 N.J. Super. at 21.

2. The Issue of When the Cause of Action Arose Is Reserved for a Summary Judgment Motion Upon the Conclusion of Discovery.

The statute of limitations for actions under Article 4 of the UCC is codified at N.J.S.A. 12A:4-111, which provides that “[a]n action to enforce an obligation, duty, or right arising under this chapter must be commenced within three years after the cause of action accrues.” Similarly, the statute of limitations under Article 3 of the UCC for claims arising from “conversion of an instrument ... or like action based on conversion ... must be commenced within three years after the cause of action accrues.” N.J.S.A. 12A:3-118(g). “An action involving a negotiable instrument accrues at the time the check is negotiated; that is the statute of limitations begins to run at the time the check amount is debited from the maker’s account.” Psak, 390 N.J. Super. at 204; see also New Jersey Lawyers’ Fund for Client Protection v. Pace, 374 N.J. Super. 57, 62 (App. Div. 2005). The UCC’s limitations period reflects the drafters’ decision that employers seeking to shift part of their loss to banks must bring suit within three years. Siemens Bldg. Techs., Inc. v. PNC Fin. Servs. Grp. Inc., 226 F. App’x 192, 202 (3d Cir. 2007).

Here, Plaintiffs’ claims against TD Bank arise from the negotiation of checks deposited by Cha into an account she opened at TD Bank. Plaintiffs allege that shortly after hiring her, Cha began stealing checks payable to Plaintiffs. See Complaint at ¶¶ 24 and 27. Plaintiffs purportedly failed to discover Cha’s alleged embezzlement scheme and related financial irregularity for seven years. Id. at ¶ 41. TD Bank contends that the UCC’s three year statute of limitations begins to run when the bank pays on the forged indorsement. However, the issue of exactly when the cause of action arose, or when the alleged embezzlement scheme began, or when Plaintiffs found out about the alleged scheme, is reserved for a summary judgment motion upon the conclusion of the discovery period, which has yet to begin.

As such, and for the foregoing reasons, TD Bank's Motion to Dismiss Plaintiffs' common law claims against TD Bank with Prejudice is **GRANTED**. TD Bank's Motion to Dismiss Plaintiffs' UCC claims against TD Bank with Prejudice is **DENIED**.

It is so ordered.