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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4119-14T3

DENNIS OBADO,

Plaintiff-Appellant,

v.

FINANCIAL RESOURCES
FEDERAL CREDIT UNION,

Defendant-Respondent.

Submitted January 23, 2017 – Decided February 22, 2017

Before Judges Nugent and Currier.

On appeal from the Superior Court of New
Jersey, Law Division, Special Civil Part,
Somerset County, Docket No. DC-0255-15.

Dennis Obado, appellant pro se.

Peter J. Liska, attorney for respondent
(Allison J. Kiffin, on the brief).

PER CURIAM

Plaintiff Dennis Obado appeals from the grant of summary
judgment in favor of defendant Financial Resources Federal Credit
Union, arguing that his action was not barred by the statute of

limitations. After a review of the record in light of plaintiff's arguments and the applicable principles of law, we affirm.

We derive our summary of the facts from the summary judgment record. In March 2008, plaintiff retained the services of a law firm to represent him in several matters. The firm requested a retainer of \$5000 for its services. Plaintiff signed the retainer agreement and provided the firm with a \$5000 check as payment of the retainer. Plaintiff had a banking account with defendant; the law firm presented plaintiff's \$5000 check, and it was processed as an electronic transaction and debited from his account. Defendant's records and plaintiff's March 2008 account statement¹ reflect this transaction took place on March 27, 2008. Plaintiff did not have sufficient funds in his account to cover the check and it created an overdraft. On March 28, plaintiff deposited \$5000 into his account to cover the overdraft; this transaction was also reflected on the March 2008 account statement.

Plaintiff became dissatisfied with the law firm's services in 2011, and consequently, he filed an unsuccessful action in New York seeking the return of his retainer fee. The appellate court affirmed the dismissal of his complaint in March 2013.

¹ Account statements were mailed to plaintiff at his home address where he continues to reside.

In the interim, in May 2012, plaintiff wrote a letter to defendant claiming that he did not authorize the payment of the \$5000 check to the law firm. Plaintiff claimed he had no knowledge about the "unlawful electronic check transfer" and had just learned about it "sometime in 2011, or 2012." He requested a refund of the \$5000 payment.

Defendant responded to plaintiff a week later, advising that the transaction request was governed by Regulation E, 12 C.F.R. § 205.6, of the Electronic Funds Transfer Act, 15 U.S.C.A. § 1693. The Regulation requires an account holder to notify their financial institution of any disputes regarding transactions in their account within sixty days of the date of the account statement. Therefore, defendant advised plaintiff that his delay of four years caused his inquiry to be untimely.

On January 15, 2015, plaintiff filed a complaint against defendant alleging damages because of the alleged unauthorized electronic transaction of \$5000 processed through his account to his former attorney in 2008. During discovery, defendant produced records showing the processing of the check, the deposit by plaintiff the following day to cover the overdraft, and the recordation of the transaction on plaintiff's monthly statement, which was mailed to his home address.

Defendant thereafter presented a motion for summary judgment on the grounds that the claim was barred by the applicable six-year statute of limitations, N.J.S.A. 2A:14-1. In response, plaintiff cross-moved for summary judgment contending that the statute of limitations was tolled due to the discovery of fraud. Plaintiff asserted that the electronic transfer of funds was fraudulent and he had not been able to discover it in a timely manner.

In a written decision on March 27, 2015, Judge Hany Mawla granted summary judgment to defendant. Judge Mawla observed that the March 2008 account statement notified plaintiff that any concerns or questions regarding an account statement were to be reported within sixty days pursuant to 12 C.F.R. § 205.6. He found that plaintiff's contract claim accrued on March 27, 2008, the date that the electronic transfer occurred. The statute of limitations of six years expired on March 27, 2014, barring plaintiff's untimely January 2015 complaint. The judge continued,

Plaintiff's contention that he did not discover the transaction in a timely manner is unsubstantiated by the facts because on March 28, 2008, Plaintiff deposited \$5,000 into his account via electronic transfer to compensate for the overdraft that occurred on March 27, 2008. And Plaintiff admits in his cross-motion that he signed a Retainer Agreement with the . . . Law firm on March 24, 2008, thereby extinguishing any claim that the transaction was unauthorized.

Finally, the judge concluded that there was no evidence in the record of fraud that would toll the statute of limitations.

On appeal, plaintiff contends that the grant of summary judgment was inappropriate because he did not discover the existence of the allegedly unauthorized transaction until 2011 or 2012; therefore, his claim is not time-barred under the statute of limitations. Alternatively, plaintiff claims that even if his complaint was untimely, defendant did not provide him with appropriate notices under Regulation E of the Electronic Funds Transfer Act and the National Automated Clearing House Association (NACHA) Guidelines.

We review a grant of summary judgment under the same standard as the motion judge. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012). We must determine whether there are any genuine issues of material fact when the evidence is viewed in the light most favorable to the non-moving party. Id. at 38, 41. "[T]he legal conclusions undergirding the summary judgment motion itself [are reviewed] on a plenary de novo basis." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 385 (2010).

Applying the above standard, we find no merit in plaintiff's arguments and affirm substantially for the reasons set forth in Judge Mawla's thoughtful opinion. The summary judgment record demonstrates that plaintiff had actual knowledge of the

transaction because he deposited the exact overdraft amount of \$5000 into his account one day after the account was debited for the \$5000 retainer check. The March 2008 statement mailed to his home address reflected the transaction and provided the procedure for inquiries about the statement.

We find plaintiff's invocation of the discovery rule to be similarly futile. Plaintiff asserts that he could not have known whether the retainer agreement for which he wrote the check was enforceable until the conclusion of the New York litigation. We disagree. We have previously considered, and rejected the argument that the discovery rule can toll the statute of limitations in actions involving negotiable instruments, such as a check. In Psak, Graziano, Piasecki & Whitelaw, v. Fleet Nat. Bank, 390 N.J. Super. 199 (App. Div. 2007), we determined that 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." Id. at 204. Plaintiffs in Psak similarly sought to invoke the discovery rule. We rejected the argument, noting our previous decision in New Jersey Lawyer's Fund for Client Protection v. Pace, 374 N.J. Super. 57 (App. Div. 2005) aff'd per curiam, 186 N.J. 123 (2006) and our analysis of the pertinent UCC provisions. In Pace, we concluded that the discovery rule did not apply under

the UCC. Id. at 67. The Supreme Court, in its review of Pace, accepted the general statement of the law and noted: "The application of the discovery rule to negotiable instruments would be inimical to UCC policies of finality and negotiability." Pace, supra, 186 N.J. at 125.

As in Psak, plaintiff was well positioned in this matter to timely discover the transaction since he had written the original check and then authorized the \$5000 deposit into his account to cover the overdraft the following day. He also received the monthly account statement reflecting the transaction. The discovery rule does not apply as plaintiff could have reasonably ascertained the existence of the transaction in March 2008. The complaint is barred as untimely under N.J.S.A. 2A:14-1.

We find insufficient merit in the remainder of plaintiff's arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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