

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-2313-21**

**ROBERT J. TRIFFIN,**

Plaintiff-Appellant,

v.

**PRINCETON FOOD SERVICES,  
LLC, d/b/a WENDY'S, LAURA E.  
BUTRICO, and BRYON A. GOFF,**

Defendants-Respondents.

---

Argued March 29, 2023 – Decided July 10, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law  
Division, Essex County, Docket No. DC-006947-20.

Robert J. Triffin, appellant, argued the cause pro se.

Jerome F. Gallagher, Jr., argued the cause for  
respondents (Norris McLaughlin, PA, attorneys;  
Jerome F. Gallagher, Jr., of counsel and on the brief).

**PER CURIAM**

This case arises from a dispute over a dishonored check. Plaintiff Robert Triffin appeals from the February 9, 2022 order which Judge Bruce Buechler, after conducting a bench trial, dismissed the complaint with prejudice as to defendant Princeton Food Services, LLC (PFS), doing business as, Wendy's.<sup>1</sup> We affirm.

I.

We discern the facts from the two-day bench trial conducted on February 8 and 9, 2022. On May 11, 2018, PFS issued a payroll check to Goff, then an employee, in the amount of \$440.75. The check was drawn on PFS's payroll account with Provident Bank (Provident). Goff endorsed and electronically deposited the payroll check into his personal checking account at Wells Fargo Bank.

Later the same day, Goff physically presented the payroll check to Roselle Financial Services, doing business as, United Check Cashing, Inc. (United), a check cashing business, in exchange for cash. The payroll check bore two endorsements on the back, one of which was crossed out.

---

<sup>1</sup> Plaintiff voluntarily dismissed all claims with prejudice against Laura Butrico in November 2022 and against Goff prior to the start of the bench trial.

Plaintiff called as a witness Tim Harty, owner and operator of United. Harty testified the check was cashed on May 11. Harty confirmed the copy of the payroll check was an "authentic representation of the check [he] sold to [plaintiff]." But he could not testify that the manager followed standard procedure at the time the check was cashed. The same day, United deposited the check into its business account with the Republic Bank of Chicago (RBC). United, however, was not notified the check was dishonored until July 25, 2018. Harty did not know whether United contacted PFS for payment.

PFS presented the testimony of Laura Butrico, managing member of PFS. Butrico testified that Goff had been employed with PFS. She confirmed the May 11 payroll check was issued to Goff, drawn on Provident, and deposited in Wells Fargo. According to Butrico, the second presentment was flagged as a duplicate and payment was rejected as instructed by PFS's payroll manager.

PFS presented bank records establishing the processing and payment of Goff's payroll check. George Karpinecz, manager of Provident's item processing department, testified that based on the routing number and "capture date" of May 11, 2018, Wells Fargo was the "the bank of first deposit." He stated the original payroll check was received as a mobile deposit and Wells Fargo forwarded the check image onto Provident for payment on May 14.

Karpinecz confirmed Provident approved Goff's mobile deposit and the funds were transferred to his Wells Fargo account at approximately 1:00 a.m.

Additionally, Karpinecz determined based on the routing number the payroll check deposited by RBC was also presented on May 14, but at 5:00 a.m. Provident rejected the duplicate presentment under the positive pay system<sup>2</sup> and did not pay the check from PFS's payroll account. According to Karpinecz, the check was returned to RBC the next day.

Both plaintiff and Harty testified that on February 14, 2019, plaintiff and United Checking entered into an "assignment agreement" in which plaintiff purchased United's rights in connection with PFS's dishonored payroll check to Goff. In the agreement, United "warrant[ed] that at the time it cashed the referenced checks[,] it had no notice that the referenced checks had been dishonored" and "had no notice of any defense . . . of any party to the payment of the referenced checks." Neither Harty nor plaintiff physically inspected the check prior to the assignment. Additionally, plaintiff did not contact PFS or Provident to determine why the check had been dishonored.

---

<sup>2</sup> Provident offered the positive pay service to PFS for the purpose of daily reviewing and determining whether issued checks should be returned or paid. The system pays an issued check if there is no exception. The system rejects a check that is not issued or a duplicate presentment.

Plaintiff filed a complaint in which he asserted he had purchased all of United's rights to "a dishonored payroll check" issued by PFS to Goff, and United had cashed the check for Goff when it had no knowledge of any defenses by any party regarding the check. United thereby became a holder in due course of the check pursuant to N.J.S.A. 12A:3-302; and because of the assignment, plaintiff had "the legal status of a holder in due course." Plaintiff also claimed PFS had an obligation to pay the amount of the check to anyone who had given "consideration" or "value" for the check if the check were dishonored, citing N.J.S.A. 12A:3-414 and -415, and that PFS had been unjustly enriched. Plaintiff sought \$1,026.41 in damages, which equaled the amount of the check, plus various fees, and interest.

After considering the parties arguments and weighing the evidence, the judge concluded defendant was not liable for the check. The judge found Provident had paid PFS's check to Goff on May 11, and when Goff presented the check to United the same afternoon, "the check had already been cashed and paid in full."

The judge rejected plaintiff's argument the Check Clearing for the 21st Century Act<sup>3</sup> (21st Century Act), 12 U.S.C. §§ 5001-04, preempted New Jersey's Uniform Commercial Code (UCC) or the New Jersey rules of evidence. The judge stated:

[T]he court holds that from an evidentiary perspective the 21st Century check act does not preempt the [N.J.R.E.] with regard to the admission of duplicate copies of checks or financial or other records, especially in this case where it comes to checks that as a matter of federal law once the check is deposited in the bank[,] the actual individual check is not returned to the drawer . . . .

Consequently, the duplicate check was admitted into evidence.

At trial, the judge clarified with plaintiff whether this was a holder in due course case. Plaintiff replied the case was not a holder in due course case but a "real defense case . . . under New Jersey [UCC § 3-308] and N.J.S.A. [12A]:3:4-

---

<sup>3</sup> Effective October 28, 2004, the Check Clearing for the 21st Century Act (Check 21) is a federal law that provides that a substitute check is the legal equivalent of the original check if (1) it accurately represents all of the information on the front and back of the original check as of the time it was truncated (including payment, identification, and indorsement information), (2) it bears the legend: "This is a legal copy of your check. You can use it the same way you would use the original check," and (3) a bank has made the Check 21 Act warranties with respect to the substitute check. Pub. L. No. 108-100, 117 Stat. 1177 (2003)

4." The judge then rejected plaintiff's argument that this was a defense case under either statute.

The judge found PFS proved its defense "under N.J.S.A. 12A:3-4[14(c)] which states that . . . when a draft . . . is accepted by a bank[,] then the drawer is discharged regardless of when or by whom acceptance was obtained based upon the warrant[ies]." The judge likewise cited 12 U.S.C. § 5004(2), which "states that no deposit[ary] bank . . . drawee, drawer or endorser . . . will be asked to make payment [based] on [a] check that the bank, drawee, drawer or endorser has already paid." The judge stated, "[T]he 21st Century Act has a provision that pretty much parallels N.J.S.A. 12A:3-4[14(c)] . . . and make clear that . . . [PFS], if it [ha]s paid the check[,] then it does not have to pay a second time."

Finally, the judge noted case law in New Jersey holds that a previous payment of a draft is a defense to enforcement. Citing Triffin v. SHS Group, LLC, 466 N.J. Super 460, 467 (App. Div. 2021), the judge found "the defendant has established a real defense which is payment" under the UCC and 12 U.S.C. § 5004(2). Further, the uncontroverted business records presented at trial by PFS showed PFS's Provident account had already been debited the check amount before the check was presented to United. The judge further found "[u]nder

those circumstances[,] N.J.S.A. 12A:33-4[14(c)] clearly discharge[d] the drawer from liability." In sum, the judge stated, "defendant ha[d] established such a defense of prior payment of the draft and that is in defense to enforcement by Triffin for payment a second time as the assignee of [United]." On February 9, 2022, the judge issued an order dismissing plaintiff's complaint.

## II.

On appeal, plaintiff contends PFS failed to satisfy its statutory obligation under N.J.S.A. 12A:3-308(b) to rebut the presumption that plaintiff was entitled to recover from PFS. Plaintiff also contends the trial committed prejudicial and reversible error by admitting the substituted check copy and not the original check, contrary to 12 U.S.C. § 5003(b)(1)-(2) and the due process clause; substituted bank records for the original check under N.J.R.E. 1002; and relaxed the rules of evidence under N.J.R.E. 101(a)(3) in favor of PFS.

We defer to a trial court's evidentiary rulings absent an abuse of discretion. State v. Garcia, 245 N.J. 412, 430 (2021). "[T]he decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (internal quotation marks omitted) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under that deferential standard, appellate courts "review a trial court's evidentiary



ruling only for a 'clear error in judgment.'" State v. Medina, 242 N.J. 397, 412 (2020) (quoting State v. Scott, 229 N.J. 469, 479 (2017)). However, an evidentiary decision is reviewed de novo if the trial court applies the wrong legal standard in deciding to admit or exclude the evidence. Hassan v. Williams, 467 N.J. Super. 190, 214 (App. Div. 2021).

"A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"Negotiable instruments" are governed by N.J.S.A. 12A:3-101 to -119. Specifically,

[A] "check" is a draft, N.J.S.A. 12A:3-104(f); a "drawer" is the person who signs a draft ordering payment from their account (i.e., the person who wrote the check), N.J.S.A. 12A:3-103(a)(3); and a "deposit[a]ry bank" is "the first bank to take an item," such as a draft. N.J.S.A. 12A:4-105.

[SHS Grp., LLC, 466 N.J. Super. at 467.]

Checks are "negotiable instruments" under the statute when they are "payable to a bearer for a fixed amount, on demand, and do[] not state any other undertaking by the person promising payment, aside from the payment of

money." Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 82 (App. Div. 2001); N.J.S.A. 12A:3-104.

Here, PFS was the drawer of Goff's payroll check under N.J.S.A. 12A:3-103(a)(3). Wells Fargo was the depository bank under N.J.S.A. 12A:4-105.

N.J.S.A. 12A:3-308(b) governs the proof of signatures and plaintiff's status as a holder in due course. The statute states:

If the validity of signatures is admitted or proved and there is compliance with subsection a. of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under N.J.S.12A:3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

In addition, a defendant may claim a previous payment defense under N.J.S.A 12A:3-414(c) that when "a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained." SHS Grp., LLC, 466 N.J. Super. at 465, 469 (quoting N.J.S.A. 12A:3-414(c) and holding N.J.S.A. 12A:4-205 applicable and fatal to an enforcement action where defendant demonstrated electronic endorsement by both depository bank and payor bank and deduction from the drawer account). Federal law similarly

exempts a drawer having an instrument enforced when the instrument has already been paid. 12 U.S.C. § 5004(2).

We first address plaintiff's contention that PFS failed to satisfy its statutory obligation under N.J.S.A. 12A:3-308(b). Plaintiff contends, as assignee, he is entitled to payment of the dishonored check under N.J.S.A. 12A:3-308(a). However, under N.J.S.A. 12A:3-308(b), plaintiff is not entitled to payment if PFS "proves a defense or claim in recoupment." Plaintiff's contention lacks merit.

The facts are uncontroverted. At trial, plaintiff unequivocally asserted "this was not a holder in due course case" but a "real defense case" brought under the UCC. Goff made an initial electronic deposit into his personal account that was accepted at Wells Fargo. The payroll check was cleared and paid out of PFS's payroll account with Provident as intended under N.J.S.A. 12A:4-205. Further, Provident's bank records clearly demonstrated the check was first processed by Wells Fargo and paid by Provident because of the electronic deposit. The evidence showed thereafter a second line of endorsement was on the check when it was cashed at United and deposited at RBC.

We are convinced the trial judge correctly applied the statutes and well-established principles and appropriately concluded PFS's obligation to pay the

payroll check was discharged under N.J.S.A. 12A:3-414(c) based upon the initial electronic deposit and payment to Wells Fargo. Because PFS proved a defense to payment for the dishonored check, plaintiff did not have a right to payment under N.J.S.A. 12A:3-308(b) and N.J.S.A. 12A:3-414(c). Therefore, we are satisfied the trial judge appropriately dismissed plaintiff's complaint.

We next address plaintiff's contention that the trial judge erred in admitting copies of the dishonored payroll check and Provident's records. Plaintiff argues the trial judge violated his oath under N.J.S.A. 41:2A-6 to support the United States Constitution and the Supremacy Clause of the Constitution by admitting into evidence defendant's copies of the check. Plaintiff's argument rests on 12 U.S.C. § 5003(b)(1) to (2), which addresses when a "substitute check shall be the legal equivalent of the original check" such that it can be used in "the same way you would use the original check."

During trial, plaintiff offered and admitted into evidence a copy of the dishonored check during his case in chief. Harty, plaintiff's witness, confirmed that the copy of the payroll check authentically represented the original check. Because plaintiff did not raise any objection to the admissibility of the check at trial, we ordinarily "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is

available." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)).

However, even analyzing plaintiff's claims for completeness, his evidentiary argument fails. We perceive no abuse of discretion in the judge's decision to admit copies of Goff's payroll check into evidence and no error in his consideration of those copies. Plaintiff submitted a copy of the dishonored payroll check as evidence of payment owed. PFS submitted copies of the dishonored check pursuant to a trial subpoena and admitted bank records into evidence as business records of Provident under N.J.R.E. 803(c)(6) to establish payment upon the initial presentment. Pursuant to N.J.R.E. 1003, "[a] duplicate as defined by Rule 1001(d) is admissible to the same extent as an original unless a genuine question is raised about the original's authenticity, or the circumstances make it unfair to admit the duplicate." See also Biunno, Weissbard & Zegas, N.J. Evidence Rules Annotated, cmt. 1 to R. 1002 ("[T]he use of duplicates as authorized by Rule 1003 significantly diminishes the preference previously accorded originals under New Jersey law.") Here, plaintiff did not dispute the authenticity of the payroll check. Nor did he raise an objection regarding authenticity when PFS admitted copies of the checks and bank records into evidence.

We also find plaintiff's contentions that the trial judge violated his due process and constitutional rights unavailing. The trial judge determined the 21st Century Check Act did not preempt our rules of evidence regarding the admission of copies of the payroll check because under federal law, once the check was deposited, it was not returned to PFS. Based on those standards, the judge did not abuse his discretion in admitting and considering copies of the payroll check as evidence.

Lastly, under N.J.R.E. 101(a)(3)(A), the court may relax requirements of the rules of evidence "to admit relevant and trustworthy evidence in the interest of justice." Contrary to plaintiff's assertion, the record shows the judge applied, and did not relax, the rules. Therefore, we are satisfied the judge considered all relevant factors in his well-reasoned oral opinion. We find no error in judgment.

To the extent we have not addressed any of plaintiff's remaining arguments, we deem them to be without sufficient merit to warrant 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.



CLERK OF THE APPELLATE DIVISION