

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

WESSELING & BRACKMANN, P.C.,  
a Michigan corporation,

Plaintiff,

vs.

HUNTINGTON BANCSHARES  
FINANCIAL CORPORATION d/b/a  
HUNTINGTON BANK, an Ohio  
corporation,

Defendant.

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Case No. 15-00245-CZB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING DEFENDANT'S  
SECOND MOTION FOR SUMMARY DISPOSITION

On July 13, 2015, the Court issued an order granting summary disposition to the defendant, Huntington Bancshares Financial Corporation d/b/a Huntington Bank ("Huntington"), but allowing Plaintiff Wesseling & Brackmann, P.C. ("W&B") an opportunity to amend its complaint pursuant to MCR 2.116(I)(5). In due course, W&B filed an amended complaint, and then Huntington filed a motion for summary disposition under MCR 2.116(C)(10). As loyal readers may recall, this case involves a contest between two relatively blameless businesses about a \$58,155.20 loss that resulted when W&B fell prey to a fraudulent scheme and attempted to negotiate a bogus cashier's check for \$380,000. In October 2014, W&B partner Douglas Brackmann called Huntington to ensure that the cashier's check had cleared, and a Huntington bank teller named Heidi McClintic informed him that the funds were available in W&B's account, so W&B transferred \$200,000 by wire from its account. Soon thereafter, the \$380,000 cashier's check was dishonored, and this litigation ensued.

Defendant Huntington initially moved for summary disposition under MCR 2.116(C)(8), and the Court granted that request on July 13, 2015, but the Court permitted Plaintiff W&B to amend its complaint pursuant to MCR 2.116(I)(5). This time around, after the completion of all discovery, the defendant has moved for summary disposition under MCR 2.116(C)(10), which enables Huntington to test the factual sufficiency of the complaint. See Maiden v Rozwood, 461 Mich 109, 120 (1999). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” West v General Motors Corp, 469 Mich 177, 183 (2003). Such a genuine issue of material fact exists only when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. Id. Applying these standards, the Court must consider whether there exists a genuine issue of material fact that enables W&B to present its claims to a jury.

Plaintiff W&B has been a customer of Defendant Huntington for years, see First Amended Complaint, ¶ 5, maintaining a trust account for client funds with the bank. On September 24, 2014, W&B received an inquiry from a man purporting to be Jason Walter, who sought legal representation in connection with the sale of an oil-drilling rig. See id., ¶ 6. Walter signed a retainer agreement on October 6, 2014, id., ¶ 8 & Exhibit B, and then sent W&B a \$380,000 cashier’s check on Friday, October 17, 2014. See id., ¶¶ 9-10 & Exhibit D. W&B deposited the \$380,000 cashier’s check into its IOLTA trust account at Huntington, id., Exhibit E, and then waited until the following Monday to access funds from the cashier’s check.

On Monday, October 20, 2014, at the behest of Jason Walter, Plaintiff W&B commenced the process of transferring by wire \$200,000 from its trust account to an account at U.S. Bank. See First Amended Complaint, ¶ 14. Before making that transfer, W&B called Defendant Huntington to “ask

for confirmation that the Cashier's Check in the amount of \$380,000 had cleared." Id., ¶ 15. During that telephone call, W&B partner Douglas Brackmann asked Huntington teller Heidi McClintic if the \$380,000 cashier's check had cleared. See Plaintiff's Brief in Opposition to Defendant's Motion for Summary Disposition, Exhibit 1 (Deposition of Heidi McClintic at 22). McClintic checked the bank's records and told Brackmann that the check "had posted to the account." See id. (Deposition of Heidi McClintic at 22, 34). Thus, Brackmann "instructed Huntington to wire transfer \$200,000 to U.S. Bank as directed by Jason Walter," see First Amended Complaint, ¶ 21, so Huntington "wire transferred from Plaintiff's IOLTA account \$200,000 to U.S. Bank on that same day" in accordance with the instruction of Brackmann on behalf of W&B. See id., ¶ 22 & Exhibit G.

After the \$200,000 wire transfer, Defendant Huntington learned that the cashier's check for \$380,000 was fraudulent. See First Amended Complaint, ¶ 23. Although Huntington attempted to recover the \$200,000 it had transferred to the U.S. Bank account, Huntington came up \$58,155.20 short. Id., ¶ 26. Because Huntington refused to fully reimburse the IOLTA trust account of Plaintiff W&B, a \$58,155.20 shortfall resulted in W&B's trust account. Id. Therefore, W&B filed this action against Huntington demanding \$58,155.20 based upon five separate theories. The Court swept away four of those theories in an order issued on July 13, 2015, but allowed W&B to amend its complaint to allege "conduct on the part of Huntington that amounts to something more than mere negligence." See Order Granting Summary Disposition to Defendant, But Allowing Plaintiff to File an Amended Complaint at 6-7 (July 13, 2015). On July 23, 2015, W&B submitted a first amended complaint that includes as Count Five a claim for breach of the duty of good faith against Huntington. After both sides engaged in discovery, Huntington moved for summary disposition under MCR 2.116(C)(10), arguing that W&B's inability to show anything more than mere negligence dooms its claims.

Under MCL 440.4207, which constitutes Michigan’s version of section 4-207 of the Uniform Commercial Code (“UCC”), there exist transfer warranties for financial instruments such as checks. “[E]ach person who obtains payment of a check from the drawee and each prior transferor warrants to the party who pays the check that he has good title to the instrument.” See Dominion Bank, NA v Household Bank, FSB, 827 F Supp 463, 466 (SD Ohio 1993). “The rationale of UCC § 4-207 is that the party who took from the [preparer of a fraudulent instrument] is in the best position to have prevented the fraud.” Id. “That rationale may, in many cases, bear little relationship with reality.” Id. “In fact, all of the parties in the chain of collection may have acted in a commercially reasonable manner and in complete good faith.” Id. “Nevertheless, the UCC provision satisfies the need for a rule for the assignment of liability among innocent parties.” Id. Defendant Huntington contends that that rule, set forth in MCL 440.4207, should place the financial responsibility for the fraudulent cashier’s check in this case squarely upon Plaintiff W&B, which handled that cashier’s check in the first instance.

The specific language of MCL 440.4207 defines the terms of the parties’ debate. According to MCL 440.4207(1)(b), any bank customer “that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank” that “all signatures on the item are authentic and authorized.” In the instant dispute, “because the [cashier’s] check was fraudulent,” Plaintiff W&B “violated the warranty that ‘all signatures on the item are authentic and authorized.’” See TCF Nat’l Bank v Adobe Liquidations, LLC, No 286335, slip op at 6 (Mich App Nov 24, 2009) (unpublished decision). Pursuant to MCL 440.4207(2): “If an item is dishonored, a customer . . . transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item . . . .” Thus, Defendant Huntington contends that W&B must pay for the

loss resulting from the fraudulent cashier's check. Indeed, as MCL 440.4207(3) clearly provides, any "person to whom the warranties under subsection (1) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach[.]" In sum, the language of MCL 440.4207 seems to establish that W&B must compensate Huntington for any loss resulting from the fraudulent cashier's check.

But Plaintiff W&B asserts that Defendant Huntington failed to act in "good faith" when it advised W&B that the fraudulent cashier's check had cleared, so Huntington cannot avail itself of the remedy in MCL 440.4207(3) for anybody "who took the item in good faith." A bank customer "may defend a breach of [transfer] warranty action on the ground that the paying bank lacked good faith." Wachovia Bank, NA v Federal Reserve Bank of Richmond, 338 F3d 318, 322 (4th Cir 2003). For purposes of the UCC, "[g]ood faith" . . . means honesty in fact and the observance of reasonable commercial standards of fair dealing." See MCL 440.1201(2)(t). "The failure of the paying bank to exercise ordinary care is insufficient to establish a lack of good faith." Wachovia Bank, 338 F3d at 322. Accordingly, W&B must show more than mere negligence on Huntington's part in order to defeat Huntington's reliance upon the transfer warranties prescribed by MCL 440.4207. That issue forms the basis for the dispute presented by Huntington's motion for summary disposition.

The record reveals that, although Douglas Brackmann of Plaintiff W&B and Heidi McClintic of Defendant Huntington discussed the availability of funds from the \$380,000 cashier's check, the two of them unintentionally were talking past one another in that conversation on October 20, 2014. That is, Brackmann asked if the check "had cleared the account[.]" see Plaintiff's Brief in Opposition to Defendant's Motion for Summary Disposition, Exhibit 1 (Deposition of Heidi McClintic at 22), and McClintic responded that "it had posted to the account." Id. Both the question and the answer

had a precise meaning, but those precise meanings were not the same. Brackmann wanted to know if the cashier's check was honored, and therefore good forevermore; McClintic's answer meant that Huntington would allow W&B to draw funds upon the cashier's check, see id. (Deposition of Heidi McClintic at 29), but the check could still be dishonored down the road. See id. (Deposition of Heidi McClintic at 35-36). This evidence merely demonstrates something less than negligence, rather than something more than negligence, on Huntington's part.

Returning to the specific issue of Defendant Huntington's alleged lack of "good faith," which Plaintiff W&B must establish to defeat Huntington's reliance upon the transfer warranties prescribed in MCL 440.4207, Michigan law defines "good faith" for purposes of the Uniform Commercial Code as follows: "honesty in fact and the observance of reasonable commercial standards of fair dealing." See MCL 440.1201(2)(t). In this case, the record reveals that Huntington's teller, Heidi McClintic, followed Huntington's standard procedures by checking the information available to her about the cashier's check and W&B's trust account. Then she gave Douglas Brackmann an accurate account of Huntington's approach to the cashier's check by stating that the check had posted and W&B could draw funds upon the check. Therefore, the authority cited by W&B in its effort to fend off summary disposition can readily be distinguished from the instant case. Specifically, the instant case does not involve a check bearing obvious hallmarks of fraud that Huntington should have detected, compare JPMorgan Chase Bank, NA v MAL Corp, No 07-C-2034 (ND Ill March 26, 2009) (opinion available at 2009 WL 804049), nor does the record contain evidence that teller Heidi McClintic – or any other representative of Huntington Bank – failed to adhere to any reasonable commercial standards of fair dealing. Compare Mechanics Bank v Methven, No A136404 (Cal App Sept 12, 2014) (available at 2014 WL 4479741). In sum, W&B has neither facts nor precedent on its side.

In the final analysis, the Court concludes that Defendant Huntington may properly rely upon the transfer warranties prescribed by MCL 440.4207 to prevent Plaintiff W&B from shifting the loss of \$58,155.20 to the bank. Huntington's employees engaged in commercially appropriate conduct, its employee gave W&B information that was technically accurate, and the bank made every effort to recover funds lost as a result of the fraudulent cashier's check accepted and deposited by W&B. Although the Court has a great deal of sympathy for W&B, that sympathy cannot justify imposing upon Huntington the loss flowing from the fraudulent check that W&B presented to the bank. Thus, the Court must grant summary disposition under MCR 2.116(C)(10) to Huntington on all claims in W&B's first amended complaint. In addition, the Court need not afford W&B another opportunity to amend its complaint under MCR 2.116(I)(5). Based upon its careful review of the entire record, the Court concludes that any further amendment would be futile. See Ormsby v Capital Welding, Inc, 471 Mich 45, 53 (2004).

IT IS SO ORDERED.

**This is a final order that resolves the last pending claim and closes the case.**

Dated: July 13, 2016



HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge