

High Style Floors, Inc. v Discover Bank

2025 NY Slip Op 31745(U)

May 8, 2025

Supreme Court, Kings County

Docket Number: Index No. 501491/2024

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At the I.A.S. Trial Term Part 84 of the Supreme Court of the State of New York, held in and for the County Kings, at the Courthouse located at 360 Adams St, Borough of Brooklyn, City and State of New York on the 9th day of MAY, 2025.

PRESENT: HON. CAROLYN E. WADE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

HIGH STYLE FLOORS, INC.,
Plaintiff,
-against-
DISCOVER BANK; JOHN DOES 1-10,
Defendants.

DECISION & ORDER

Index No. 501491/2024
Motion Seq. 002

Defendant DISCOVER BANK's (hereinafter "Defendant") Motion to Dismiss, Seq. 002 (NYSCEF Doc. Nos. 13-14) seeks an Order (1) pursuant to CPLR § 3211(a)(7) dismissing all claims asserted by Plaintiff HIGH STYLE FLOORS, INC. (hereinafter "Plaintiff") against Defendant in the Amended Complaint due to a failure to state a claim upon which relief can be granted and (2) granting such other and further relief as this Court deems just, proper, and equitable.

Plaintiff opposed the Defendant's Motion (NYSCEF Doc. No. 17) respectfully requesting that this Court deny the portion of Plaintiff's Motion, which seeks to dismiss Plaintiff's cause of action under Article 4A of the Uniform Commercial Code (hereinafter "UCC § 4A"); however, Plaintiff consented to the dismissal of the common law claims (i.e., unjust enrichment) as against Defendant, without prejudice.

Defendant filed a Reply Affirmation in Further Support of the Motion (NYSEF Doc. No. 20) on the ground that Plaintiff cannot maintain a cause of action as against Defendant under Article 4A of the Uniform Commercial Code, as it is legally deficient and, as such, must be dismissed with prejudice.

STATEMENT OF FACTS

On January 15, 2024, Plaintiff, a dealer in ceramic tile and similar products, commenced this action by filing a Summons and Complaint. Therein, Plaintiff alleges that Plaintiff “sent an ACH payment to a supplier known as ItalgranitiGroup (“IG”) in the amount of \$61,076.30 on September 14, 2023.” *See* NYSCEF Doc. No. 1.

“On or about September 18, 2023, the Plaintiff learned that it had been the victim of a ‘phishing’ scam, in that they had received payment instructions via email from a source purporting to be IG.” *Id.* “The account information was at [Defendant] Discover Bank and the ACH instructions included the name of IG as the recipient.” *Id.* “In fact, IG was not the source of this email, and the funds were stolen by the unknown recipients.” *Id.*

Plaintiff further alleges that “Discover failed to verify the identity of the account holder, which did not match the identity indicated in the payment order issued by Plaintiff [and] [u]pon information and belief, Discover was aware that the name and account numbers did not match and should have refused to complete the transaction.” *Id.*

As a result, “Plaintiff contacted Chase Bank, from where the funds had been sent, and Chase [Bank] attempted to recall the funds from Discover Bank. Chase [Bank] insisted upon a release and indemnity to process the recall...” *Id.* “Plaintiff also emailed numerous individuals at Discover Bank to notify them of the fraud and to ask that the funds be held in the fraudulent account pending the recall from Chase Bank.” *Id.*

Nonetheless, Plaintiff alleges that “Discover failed to hold the funds or take any action to prevent the withdrawal of the funds.” *Id.*

On August 25, 2024, Plaintiff filed an Amended Complaint adding JP MORGAN CHASE BANK N.A. (hereinafter “CHASE”) as a defendant; however, Plaintiff subsequently settled with CHASE and dismissed CHASE from the action.

ANALYSIS

Upon a reading of the foregoing papers, and all other papers and proceedings in this action, and after oral argument, Defendant’s Motion is decided as follows:

Summary judgment is “a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues.” *Andre v. Pomeroy*, 35 N.Y.2d 361, 363 [1974]. Further, “summary judgment should be denied even when the existence of a factual issue is arguable.” *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 398 [1957].

Here, the arguments set forth by *both* Plaintiff and Defendant hinge upon § 4-A-207 of the Uniform Commercial Code, entitled “Misdescription of Beneficiary, which provides that:

- (1) Subject to subsection (2), if, in a payment order received by the beneficiary’s bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.
- (2) **If a payment order received by the beneficiary’s bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:**
 - a) Except as otherwise provided in subsection (3), **if the beneficiary’s bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary**

of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

- b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.
- (3) **If (i) a payment order described in subsection (2) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by paragraph (a) of subsection (2), the following rules apply:**
- a) If the originator is a bank, the originator is obliged to pay its order.
- b) **If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.**
- (4) In a case governed by paragraph (a) of subsection (2), **if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:**

- a) If the originator is obliged to pay its payment order as stated in subsection (3), the originator has the right to recover.
- b) **If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.**

Defendant argues that “it is well established that claims under Article 4-A can only be asserted by the originator (here, Plaintiff) against a receiving bank (here, Plaintiff’s own bank).” *See* Defendant’s Motion to Dismiss (NYSCEF Doc. No. 14, Pg. 6). Defendant further argues that “similar claims by an originator against the beneficiary bank pursuant to various sections of Article 4-A are consistently dismissed ... as plaintiff was not in privity ... with the beneficiary bank.” *Id.*

Conversely, plaintiff argues that “while certain provisions of Article 4A apply only between a bank and its customer, no provision of § 4-A-207 state[s] that limitation.” *See* Plaintiff’s Affirmation in Opposition (NYSCEF Doc. No. 17, Pg. 3). Plaintiff further argues that “[Defendant] had actual knowledge of its claim for the misidentified account prior to its payment of the funds to the beneficiary.”

Under the statute, “a bank that accepts a wire transfer and credits the proceeds to the account number designated by the originator has handled the wire transfer properly as long as it does not have actual knowledge that the recipient’s account belongs to someone other than the intended beneficiary (emphasis added).” *Targoff v Wells Fargo Bank, N.A.*, 67 Misc. 3d 504, 505 [Sup Ct, Westchester County 2020].

Notably, this Honorable Court has previously held that “according the Plaintiff the benefit of every possible favorable inference, the Court finds that [Plaintiff] has stated a cause of action, which alleges [a] violation of UCC Article 4-A. Moreover, no evidence has been submitted which reflects that Plaintiff ‘signed a writing to which the notice relates,’ as set forth in the above UCC

provision. Future discovery can potentially expound on this issue.” *Beltran Tech., Inc. v Citibank, N.A.*, 2023 N.Y. Misc. LEXIS 51535, at *2 [Sup Ct, Kings County July 20, 2023, No. 521893/2022])

As such, there are issues of fact to be determined by a jury. Accordingly, it is hereby ORDERED that Defendant’s Motion to Dismiss is **DENIED**.

This constitutes the Decision and Order of the Court.

ENTER



Hon. Carolyn E. Wade, J.S.C.
HON. CAROLYN E. WADE
JUSTICE OF THE SUPREME COURT

KINGS COUNTY CLERK
FILED
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