Pioneer Bank v Gabbiano
2025 NY Slip Op 35596(U)
March 4, 2025
Supreme Court, Rensselaer County
Docket Number: Index No. EF2024-277094
Judge: Richard J. McNally, Jr.
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At a IAS Term of the Rensselaer County Supreme Court, held in and for the County of Rensselaer, in the City of Troy, New York, on the 4th day of March, 2025.

PRESENT: HON. RICHARD J. MCNALLY, JR.
JUSTICE

STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

PIONEER BANK (FKA PIONEER SAVINGS BANK),

Plaintiff,

-against-

VANESSA INAYAH GABBIANO,

Defendant.

DECISION & ORDER
Index No. EF2024-277094

APPEARANCES:

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MCNALLY, J.

Plaintiff, Pioneer Bank, moves for summary judgment pursuant to CPLR 3212 in this commercial contract action involving a bad check. Defendant opposes the motion. For the reasons stated below, plaintiff's motion is denied.

On September 11th, 2023, defendant deposited a check with plaintiff in the amount of $18,000.00. It appears from the record that after defendant deposited the check, the funds were made provisionally available to defendant, pending final settlement. The next day on September 12th, 2023, defendant withdrew $12,000.00 from her account. Defendant made several other withdrawals on September 12th and 13th. On September 14th, the check was returned as dishonored by the payor bank, and $18,000.00 was debited to defendant's account. Defendant did not have enough funds in her account to cover this debit, and now owes an outstanding balance of $16,562.70.

On a motion for summary judgment, the movant must establish, by admissible proof, the right to judgment as a matter of law. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). The burden shifts to the opponent of the motion to establish, by admissible proof, the existence of genuine issues of fact. (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). It is well established that on a motion for summary judgment, the court's function is issue finding, not issue determination, (*Barr v County of Albany*, 49 NY2d 557 [1980]), and all evidence must be viewed in the light most favorable to the opponent to the motion. (*Crosland v New York City Transit Auth.*, 68 NY2d 165 [1986]).

The facts and circumstances of this case show that defendant was likely the victim of a scam. Defendant may very well have been tricked into depositing a fraudulent check, and withdrew some of the money and perhaps even purchased gift cards, both of which she may have sent to the person scamming her. The Court of Appeals has made it clear that under the Uniform Commercial Code ("UCC"), until there is final settlement of a check, the risk of loss lies with the depositor (*Greenberg, Trager & Herbst, LLP v HSBC Bank USA*, 17 NY3d 565, 582 [2011]). Defendant alleges negligence and culpable conduct on the part of plaintiff, however this has been rejected by *Greenberg*, as it was made clear in this case that the UCC has the objective of promoting certainty and predictability in commercial transactions (*see id.*). The Court of Appeals reasoned in *Greenberg* that the depositor is in the best position to guard against the risk of a counterfeit check by knowing its "client," meaning the person who wrote the check (*id.* at 582).

The duty a collecting bank owes to a depositor is that of ordinary care in handling the item (*id.* at 580). Absent from the record here is any question of fact indicating plaintiff deviated from ordinary banking practices in handling the check at issue, or violated the Expedited Funds Availability Act (*see id.* at 576). However, there are exceptions to the final settlement rule of the UCC, such as if the payor bank paid the item in cash, settled for the item without reserving a right to revoke the settlement, completed the process of posting the item to the indicated account of the drawer, or making a provisional settlement for the item and failing to revoke the settlement in the time and manner permitted by statute (*see id.* at 582; UCC 4-213 [1]).

Here, there exists a question of fact as to whether defendant's $12,000.00 withdrawal from her account on September 12th, 2023, constitutes plaintiff having paid the item in cash, and whether plaintiff making the funds available to defendant immediately constituted completing the process of posting the item to defendant's account.

As such, plaintiff's motion must be denied.

Accordingly, it is

ORDERED that plaintiff's motion for summary judgment is denied.

The Court has uploaded the original Decision and Order/Judgment to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Rensselaer County Clerk.

Counsel is not relieved from the applicable provisions of CPLR 2220 or the Uniform Rules of Supreme and County Courts § 202.5b [h] [2], insofar as it relates to service and notice of entry of the filed document upon all other parties to this special proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

Uniform Rules of Supreme and County Courts § 202.5b [b] [2] [I] directs that service upon nonparticipating parties must be made in hard copy.

SO ORDERED!
ENTER

Dated: March 4th, 2025
Troy, New York

RICHARD J. MCNALLY, JR.
Supreme Court Justice

Papers Considered:

NYSCEF Docketed Nos 1-23.