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BANKING

Catching a Bank for Fraudulent Transactions [D SC]

A customer brought a claim against a bank in which it held a business account (the “transferring bank”) and a separate bank in which they it [sic] no account (the “receiving bank”) (collectively the “banks”) for allegedly enabling a fraudulent transaction. In December 2022, a third party had made an electronic transfer in the amount of \$23,765 from the customer’s account at the transferring bank to a separate account at the receiving bank. “Criminal customer(s)” withdrew a majority of the amount transferred the following day from the receiving bank. Later, the customer claimed both the transferring bank and the receiving bank violated 4A of the Uniform Commercial Code (UCC) (adopted in South Carolina in S.C. Code Ann. § 36-4A (1996)). Specifically, the complaint alleged the transferring bank authorized a transfer initiated by someone other than the customer or its agent(s) in violation of § 36-4A-201; the receiving bank failed to confirm the payment order name with the name associated with the account number in violation of § 36-4A-207(b)(2); and that both banks failed to cancel the payment despite the customer notifying both banks of cancellation in violation of § 36-4A-211. Next, the customer alleged negligence, conversion, and money and received claims. Finally, the customer alleged the banks violated the South Carolina Unfair Trade Practices Act (SCUTPA) by collecting transfer fees from the transaction at issue despite knowing it was fraudulent and by exhibiting a pattern of misinforming commercial victims of fraud by making false statements in their investigation letters. The transferring bank and receiving bank moved to dismiss the customer’s claims for failure to state or sufficiently plead viable claims.

In Skin Studio Day Spa, LLC v. Wells Fargo Bank, NA,
No. 3:23-cv-2111-SAL, 2024 WL 503666, 2024 U.S. Dist.

LEXIS 25372 (D.S.C. Jan. 9, 2024) (opinion not yet released for publication), the U.S. District Court for the District of South Carolina granted in part and denied in part the banks’ motions to dismiss. The court first examined the customer’s claims brought under Article 4A of the UCC. The court first denied the transferring bank’s motion to dismiss the customer’s § 36-4A-201 claim. The court reasoned that the customer pleaded facts that would allow it to draw a reasonable inference that the transferring bank processed an order the customer did not authorize but was instead initiated by a third party. The court then granted the receiving bank’s motion to dismiss the customer’s § 36-4A-207(b)(2) claim, finding the customer failed to allege facts to support the assertion that the receiving bank had actual knowledge of any discrepancies between the names, a requirement for a bank to be liable under § 36-4A-207(b)(2). Next, the court addressed the customer’s § 36-4A-211 cancellation notice claims. It denied the transferring bank’s motion to dismiss, finding it plausible that the customer satisfied the notice requirements by submitting a cancellation order at a time and in a manner affording it a reasonable opportunity to act. However, it granted the receiving bank’s motion to dismiss with the same reasoning. The court then addressed and granted the banks’ motions to dismiss the negligence, conversion, and money had and received claims. The court held that Article 4A of the UCC preempted these common law actions. Finally, the court addressed and granted the banks’ motions to dismiss claims brought under the SCUTPA. A plaintiff must show (1) the defendant engaged in unlawful trade practice(s); (2) the plaintiff suffered actual damages as a result; and (3) the unlawful trade practice adversely impacted public interest. The court found the customer failed to adequately plead the public interest element because “allegations of accusations are not the same as allegations of specific similar past acts.”

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BANKRUPTCY

Denial of Debtor's Discharge Denied [BKR ED WI]

A judgment creditor (the creditor) filed an adversary complaint objecting to a debtor's discharge in a Chapter 7 Bankruptcy. The creditor initially sued the debtor in state court to collect on a loan guaranty and then moved for summary judgment in that matter. The debtor had signed a continuing guaranty for repayment on all loans made to a company in which he served as president. After leaving the company (which eventually closed), the debtor moved from his original property and sold it for \$172,000 (the sale proceeds). Following the commencement of the state court case but before the state court granted summary judgment, the debtor made a series of transfers and transactions, including: (1) transferred, by quit-claim deed, his Milwaukee property from his limited liability company (the LLC), to which he was the only member, to himself; (2) loaned money to a company, whose only members were two of the debtor's relatives; (3) sold his Wisconsin property to a "stranger" company that granted the debtor's relatives, who were renting the home prior to the sale, the option to purchase (the relatives remained on the property during and after the sale); and (4) purchased an annuity from an insurance company with the proceeds from various sales and money from an account held by the LLC and a personal account. The state court granted the creditor's motion, entering a judgment amount for the creditor. The debtor then voluntarily filed for Chapter 7 bankruptcy, with several of its debts discharged as a result.

The court held a bench trial on objections to discharge and ordered the creditor to file an opening post-trial brief "explaining why the court should enter judgment in its favor on one or more of its claims based on an application of the law to the facts shown by evidence presented." The parties also filed responsive post-trial briefs. The creditor primarily argued the debtor had engaged in transactions with the intent to avoid payment of debts.

In *WiscTex, LLC v. Galesky* (In Re Galesky), 648 B.R. 643 (Bankr. E.D. Wis. 2022), the court, after reviewing the parties' post-trial briefs, overruled the creditor's objection to the debtor's discharge. In evaluating which of the creditor's post-trial brief arguments were properly raised (not waived), the court applied the following principles: (1) only facts in evidence may support arguments raised; (2) arguments are limited to those raised in an opening brief; (3) nonresponse to arguments results in a waiver; and (4) conclusory, unsupported, and undeveloped arguments result in a waiver. The court found the creditor waived almost all the arguments it made or attempted to make due to its failure to comply with the court's post-trial brief orders. The court explained that the post-trial brief failed to apply law to the stated facts or show how it met its burden

of proof. In addition, the brief was disorganized, flawed, relied on materials not presented in trial or admitted into evidence, included conclusory statements rather than facts, and contained citations to non-binding citations. However, the court found four properly raised arguments on which it could address the merits; these arguments objected under various provisions of 11 U.S.C § 727(a) to the debtor's discharge. The court noted that the creditor had to show by a preponderance of the evidence that the debtor's discharge was ineligible.

First, the court found the creditor failed to prove the debtor's discharge should be denied under § 727(a)(2)(A). The bankruptcy provision prevents discharge when a debtor has concealed or disposed of property within a year of filing for bankruptcy or after filing for bankruptcy. The court explained that this provision requires a showing of an act and improper intent. A debtor has the kind of improper intent required by § 727(a)(2), and a court should deny a discharge under that statute, "only where the debtor has committed some act extrinsic to the conversion [of property] which hinders, delays or defrauds." *Smiley v. First Nat'l Bank of Belleville* (In re Smiley), 864 F.2d 562, 566-567 (7th Cir. 1989). Parties may use extrinsic signs of fraud, referred to as 'badges of fraud,' as circumstantial evidence for a debtor's improper intent. Most of the debtor's transfers that the creditor claimed had been fraudulent were outside of the year period and the court therefore could not deny discharge. The court then considered whether these transfers could serve as circumstantial evidence that the debtor made the sale of the Wisconsin property with improper intent. The court found, despite the plain benefits the debtor received from the sale and the circumstantial evidence, that the debtor had acted within his legal rights with respect to his property and no evidence existed that the debtor sold the property with improper intent.

Also, the court differentiated between a debtor using all exemptions available to him and a debtor acting with improper intent. The court considered the creditor's primary argument that the debtor engaged in settlement talks with the creditor to stall the state case from proceeding while he diverted his assets into exempt assets and "planned for bankruptcy." The debtor's actions appeared on the surface to allow a reasonable inference that he improperly intended to hinder, delay, and defraud the creditor. However, "Smiley [made] clear that a debtor's general knowledge and efforts to avail himself of exemptions under § 727(a)(2)(A)". The court explained it was not surprising that the debtor considered bankruptcy while being sued by the creditor for a significant amount; the planning did not amount to fraud. The creditor then argued the debtor's behavior, which resulted in delays, during the state court proceeding entitled it to denial of the discharge. However, the court considered the entirety of the state case and found that the debtor acted

in an ordinary and permissible manner with no evidence of improper intent. Finding the creditor did not meet its burden in proving the debtor acted with improper intent, the court refused its denial of discharge under § 727(a)(2)(A).

Second, the court found that creditor had waived its argument for denial of discharge under § 727(a)(3) because of the conclusory, undeveloped, and unsupported nature of the arguments. However, the court further found it would have failed on its merits regardless. Section 727(a)(3) allows for denial of discharge if a debtor has “concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information ... from which the debtor’s financial condition or business transactions might be ascertained.” The court found the creditor failed to show that the records provided were materially deficient; instead, it noted the “voluminous records” provided by the debtor appeared complete and accurate.

Next, the court found the creditor failed to prove it was entitled to denial of the discharge under § 727(a)(4)(A), which provides for denial if a debtor “knowingly and fraudulently, in or in connection with the case... made a false oath or account.” The creditor must prove that the debtor knowingly and fraudulently (acting with intent to deceive or with “reckless regard for the truth”) made a false material statement. The creditor argued the debtor (1) made false statements regarding the sale of his Wisconsin property to a “stranger” company, who was indebted to him, and the reason for purchasing the annuity; (2) falsely omitted from his statements the transfer of his Milwaukee property from the LLC to himself; and (3) inflated his post-petition expenses. The court found no evidence of “false statements,” stating that the creditor failed to point to statements that the debtor made that differed from the court’s finding of fact. Specifically, the court found the company he sold his Wisconsin property to was in fact a “stranger” to the debtor because no evidence provided indicated a different relationship between the two. The court then found no evidence that the debtor falsely omitted the transfer from his statement because he was asked to disclose only any transfers by him on the statement, not transfers made to him. Under Wisconsin law, even as a member of the LLC, the debtor did not transfer that property to himself, the LLC had made the transfer. In addition, the court found that while the debtor knowingly provided false, inflated expenses in his bankruptcy schedules, the creditor failed to show that the false statements had been material. The court stated, “[a] fact is material if it bears a relationship to the debtor’s business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor’s property.” *Lardas v. Grcic*, 847 F.3d. 561, 570 (7th Cir. 2017). The court explained in a Chapter 7 bankruptcy, a debtor’s expenses at the time of filing and after ordinarily do not matter because a “debtor’s post-petition income is usually not property of the

bankruptcy estate.”

Finally, the court found the creditor’s discharge objection under § 727(a)(5) did not meet the burden required to entitle it to denial of discharge. The creditor argued the debtor’s “bankruptcy planning had all the badges of fraud and crossed the line from permissible planning to acting with intent to deceive.” However, the court pointed out that fraud is not an element of this provision. Section 727(a)(5) provides for denial of discharge if a “debtor has failed to explain satisfactorily

... any loss of assets or deficiency of assets to meet the debtor’s liabilities.” The creditor argued the debtor did not adequately explain what he did with the sale proceeds from the original house. The court found the debtor’s explanation and documentation sufficient to erase any speculation of what happened to the money.

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EMPLOYMENT LAW

Discrimination Claims (Surprisingly) Require Evidence of Discrimination [5TH CIR]

A black male employee had worked for an employer since 2012 and had served in his last position since 2016. Throughout his time working, the employee consistently informed his employers that he struggled with depression and that his current workload worsened his mental condition. In 2018, the employee applied for a promotion but was not selected. The person selected for the promotion was a black woman with a bachelor’s degree. The employer’s promotion panel stated that her educational background, favorable interview, and work performance were the reasons for her selection. Following this promotion, the employee tendered his resignation, citing his workload and lack of promotion. Later, the employee met with his employers, again explained his grievances, and asked them to rescind his resignation; the employer refused. The employee then sued his employer, but the court dismissed all his claims on summary judgment. On appeal, the employee alleged claims under the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act of 1964 “for failure to accommodate retaliation, and failure to promote.”

In *Taylor v. Univ. of Miss. Med. Ctr.*, No. 23- 60246, 2024 WL 512559, 2024 U.S. App. LEXIS 3347 (5th Cir. Feb. 9, 2024) (unpublished opinion), the court dismissed each of the employee’s claims. First, the court stated that to claim failure to accommodate, the employee had to prove “(1) he was a qualified individual with a disability, (2) [the employer] knew

about the disability and its consequential limitations, and (3) [the employer] failed to make reasonable accommodations.” The court concluded that the employee’s claim must fail because, although the employee mentioned his depression and workload to his employer, he never tied his disability to suggested accommodations. In addition, the court clarified that the employer must be aware of the consequential limitations of the employee’s disability. Here, the employee offered no evidence that he ever identified the consequential limitations of his depression.

Second, the court dismissed the employee’s retaliation claim. The court held that because the employee had no evidence of retaliation he must meet the McDonnell Douglas burden-shifting test instead. The McDonnell Douglas test requires the employee to show “(1) engagement in a protected activity, (2) an adverse employment action, and (3) a causal connection between the two.” In addition, the employee must have “opposed” the employer’s discriminatory conduct which would serve as notice to the employer of its discriminatory practices. The employee’s retaliation claim failed because none of his complaints to his employers mentioned perceived discrimination, nor did the employee request accommodation. Finally, the court dismissed the employee’s failure to promote claim. The court stated that to succeed on this claim, the employee must show that the employer’s reason for promoting another employer over him was pretextual. The employer indicated that education, work performance, and a favorable interview were legitimate reasons for promoting the other employee. In contrast, the employee could not provide evidence showing the employer’s reasons were pretextual; therefore, the court dismissed the employee’s claim.

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Equitable Tolling Requires Circumstances That Prevent Timely Filing [5TH CIR]

The employee alleged that during her time with the employer, male coworkers harassed, discriminated against, and retaliated against her. The employee filed charges with the Equal Employment Opportunity Commission (EEOC), and the employee and her attorney received a letter stating that she had a right to sue. When the employee received the right to sue letter, she was seven months pregnant and on doctor-ordered bedrest for preeclampsia. The employee attempted to meet with her attorney to discuss her claim on three occasions; however, each meeting was cut short due to symptoms of the employee’s preeclampsia. After giving birth, the employee filed with her

employer for maternity leave, but the documentation contained no mention of the employee’s preeclampsia or symptoms. The employee then filed her gender discrimination claim one day after the limitation period ended. The district court dismissed the claim, refusing to employ equitable tolling.

In *Strunk v. Methanex USA, L.L.C.*, No. 23-30685, 2024 WL 366173, 2024 U.S. App. LEXIS 2163 (5th Cir. Jan. 31, 2024) (unpublished opinion), the Fifth Circuit affirmed the judgment of the district court. First, the court held that the employee met her first burden for filing a discrimination claim because she received a right to sue letter. However, the undisputed facts demonstrated that the employee’s claim was untimely. Second, the court articulated that equitable tolling only applies in “rare and exceptional circumstances.” The court stated that to apply equitable tolling the employee must establish (1) that the employee “continually and diligently pursued her rights,” and (2) that an extraordinary circumstance prevented a timely filing. The court found that because the employee and her attorney received the right to sue letter, despite the employee being sick, the employee and her attorney should have been able to gather enough information to file a timely complaint, especially considering the complaint could later be amended. The court found that the employee’s short-term disability benefit form, which held no mention of the employee’s condition, provided ample evidence that the employee could not work. However, the short-term benefit form was not enough evidence that the employee could not communicate with her attorney to provide enough information to file a claim. The court affirmed the district court’s order and dismissed the employee’s gender discrimination claim.

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FDCPA

Debt Collectors Selling Consumer Information to Third Parties is Insufficiently Similar to Public Disclosure of Private Information to be a Concrete Harm [3D CIR]

A collection agency contracted with a mailing company to mail debt collection notices. The mailing company mailed a debt collection notice to a debtor of the collection agency. The debtor had not consented to the collection agency’s release of her personal information to the mailing company. Subsequently, the debtor sued the collection agency for violating the Fair Debt Collection Practices Act (FDCPA).

The debtor alleged this violation of the FDCPA invaded her privacy and caused her embarrassment, stress, and emotional harm. The collection agency moved to dismiss on the basis that the debtor lacked standing. The debtor responded by focusing on the fact that the mailing company's employees had access to her records. She also argued she had standing due to the anticipated risk of future harm from the mailing company possessing her personal information. The district court sided with the collection agency and dismissed the debtor's complaint with prejudice for lack of standing. The debtor appealed.

In *Barclift v. Keystone Credit Servs., LLC*, 93 F.4th 136 (3rd Cir. 2024), the appellate court held the debtor lacked standing to sue the collection agency because she failed to show a concrete harm. The court began by explaining the intricacies of the standing issue before it on appeal. Although the FDCPA grants plaintiffs statutory standing to sue debt collectors for providing information to mailing companies, plaintiffs must still satisfy the injury-in-fact element of constitutional standing. Here, the court characterized the debtor's alleged injuries as intangible harms, harms that do not have an objective economic value. In *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), the Supreme Court had held an intangible injury satisfies the cause-in-fact element of standing if it bears "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." The court noted a federal circuit split exists on the application of *TransUnion*. The Eleventh and Seventh Circuits compare an intangible harm to a traditional harm protected by tort and analyze whether the intangible harm is "missing an element essential to liability" under the comparable tort whereas the Tenth Circuit analyzes whether the type of harm alleged is sufficiently similar to that of a traditional harm.

In this case, the court adopted the latter approach believing it more accurately reflected the "close relationship" standard of *TransUnion*, generally requiring plaintiffs to show similar-but not identical-elements. Employing this standard, the court held the debtor lacked standing. The court analogized the debtor's claim to the traditional tort of public disclosure of private information. However, the court thought the two harms were not comparable because the debtor alleged the mailing company had used her information solely within the company and had not disclosed it to the public (under the tort of public disclosure of private information, the information must be publicly disclosed). The court held the debtor did not have standing because the type of harm the debtor suffered from her information being available strictly to employees of a single company was not comparable to the harm suffered by public disclosure. The court additionally held the debtor's anticipation of future harm was not a concrete injury because the debtor did not provide facts showing "a sufficient likelihood" that

the mailing company would release the debtor's information publicly. Although the appellate court affirmed, it modified the district court's dismissal with prejudice because the appellate court believed dismissal without prejudice is the appropriate remedy where lack of standing is the basis for the dismissal.

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FDIC

The FDIC May Restrict Golden Parachute Payments from Financially Healthy Banks that Merge with Financially Troubled Institutions [D DC]

The executives worked for the troubled bank. The executives' employment contracts with the troubled bank entitled them to four types of compensation: (1) change-in-control benefits in which the troubled bank would pay the executives if the troubled bank "underwent a change in control, as through a merger," (2) severance packages which allowed the troubled bank to terminate the executives without cause upon sixty days' notice in exchange for giving the executives their base salaries for the unexpired term of the agreements, (3) attorneys' fees if the executives had to retain legal counsel to enforce the change-in-benefits agreement, and (4) ordinary salary and benefits for work completed. Additionally, the contracts contained assumption provisions that required any successor of the troubled bank to perform on the contracts. Following the Federal Deposit Insurance Corporation's (FDIC) finding that the troubled bank was "in a troubled condition," the troubled bank sought to merge with the financially healthy bank. The contract for the proposed merger limited the executives' roles and reduced their benefits. The executives refused to approve the merger, and the troubled bank subsequently fired the executives and completed the merger. Initially, the executives sued both banks in state court, and the parties sought formal guidance from the FDIC to resolve the issue. The FDIC decided all the benefits in the executives' contracts with the troubled bank were golden parachute payments: payments that the FDIC may prohibit. In response, the executives sued both banks and the FDIC in federal district court to challenge the FDIC's determination. Following a convoluted procedural history, the district court considered the parties' cross-motions for summary judgment.

In *Bauer v. FDIC*, No. 18-3047 (RJL) 2023 WL 6388814, 2023 U.S. Dist. LEXIS 174720 (D.D.C. Sept. 20, 2023) (unpublished opinion), the court held the FDIC had properly determined that all but the ordinary salary and benefits were golden parachute payments and entered summary judgment accordingly. As a threshold matter, the court addressed the parties' disagreement

over whether payments arising from settlements or damages' judgments would qualify as golden parachute payments which the FDIC could regulate. Because, hypothetically, the settlement or damages' amount would be calculated based on the employment agreements, the court ruled the FDIC had the power to determine if the payments were golden parachute payments. The court then reviewed the FDIC's decision for each of the four types of benefits under the arbitrary and capricious standard of review. Earlier in the opinion, the court identified a golden parachute payment in the context of banks as an agreement to make a payment to a business's high-ranking employee that "is contingent on the termination of such party's affiliation with the institution or covered company," and "is received on or after the date on which" the appropriate government agency (here, the FDIC) determines that the bank is a troubled financial institution.

First, concerning the change-in-control benefits, the court ruled the FDIC's definition of "termination" included any end of a worker's affiliation with a company, including through a merger that ends the company's existence. Because the change-in control benefits took effect upon the troubled bank ceasing to exist, which would have necessarily terminated the executives' association with the troubled bank had they not been fired, the court upheld the FDIC's decision that the change-in-control benefits were golden parachute payments. As the court explained, the agreement that the healthy bank would pay the benefits did not matter because the FDIC may limit the enforcement of golden parachute payments from banks which take over troubled banks, due to the policy interest in preventing bankers from performing mergers solely to obtain benefits for themselves. Second, concerning the severance packages, the court ruled the FDIC may apply golden parachute limitations to financially healthy banks which enter into agreements with troubled banks. Accordingly, the court found the FDIC had the authority to determine that any payment the financially healthy bank paid as a severance package pursuant to an agreement with the troubled bank was a golden parachute payment. Third, concerning the attorneys' fees, the court cited case law for the proposition that attorneys' fees are "plainly compensatory in nature" and noted any potential attorneys' fees were derivative of the change-in-control payments. Therefore, the court upheld the FDIC's determination that the fees were subject to golden parachute payment regulations. Finally, the court held the executives' request for at least sixty days of ordinary salary and benefits as provided for in their employment agreements were not golden parachute payments. Unlike the other damages the executives sought, their base salaries were not contingent on their termination with the troubled bank, thus failing to meet the elements of a golden parachute payment.

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FIRREA

In the Name of Justice, Please Transfer [CD CA]

A securities trader (the investor) purchased Signature Bank's (the bank) publicly traded securities after the bank made public statements, ensuring it remained financially strong despite the failure of Silicon Valley Bank. However, the bank's statements halted the bank's trading of its shares. Despite the statements, regulators took over the bank and later appointed the receiver (FDIC-R). The investor submitted an administrative claim with the FDIC-R under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), alleging tort damages. The investor then filed his first complaint against the bank and several individual members of the bank. In the investor's amended complaint, he alleged that (1) the bank represented it had a strong financial position before the regulator's takeover, (2) the bank failed to act to prevent the takeover, (3) the bank's officers misrepresented facts, and (4) the bank's officers failed to disclose that FDIC examiners had concerns. The investor offered these allegations to support his claims of fraudulent concealment, constructive fraud, conspiracy to defraud, breach of fiduciary duty, and breach of loyalty duty. The court dismissed the investor's claims for failure to exhaust administrative remedies. The investor extinguished those remedies and brought a new action containing the same claims. The FDIC-R filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6); however, before ruling on the motion, the court needed to determine whether it possessed subject matter jurisdiction under FIRREA.

In *Verdi v. FDIC*, No. 8:23-cv-02131-JVS KES, 2024 WL 649259, 2024 U.S. Dist. LEXIS 14572 (C.D. Cal. Jan. 26, 2024) (unpublished opinion), the court denied the FDIC-R's motion to dismiss and transferred the case to the United States District Court for the Southern District of New York. First, the court held it did not have subject matter jurisdiction over the investor's claims. The investor contended that the court had subject matter jurisdiction over his claims against the individual bank members because those claims do not require administrative procedures. The court refuted the argument by explaining that the scope of FIRREA is broad, and the investor's claims fall into that scope. FIRREA limits a court's jurisdiction over "any claim relating to any act or omission of an institution for which the FDIC has been appointed receiver." Second, the court considered dismissing the purchaser's claim or transferring the case to the proper venue. The court explained that a court may transfer venue when the case meets three requirements: (1) the transferee court would have had jurisdiction if the case had initially been filed there; (2) the transferor court does not have jurisdiction; and (3) the transfer is in the interest of justice. The FIRREA grants jurisdiction to

the Southern District of New York, meeting the first element. In addition, the FIRREA statute confers jurisdiction on the district court that encompasses the bank's principal place of business, which was found to be the Southern District of New York. The court determined it did not have jurisdiction, thus meeting the second element. Finally, the court held that the third element was met because a dismissal would have prejudiced the investor. The court stated that the investor brought the claims in good faith and that the investor would be in danger of having his claims time-barred if the court entered a dismissal. The court transferred the case to the Southern District of New York.

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WIRE TRANSFERS

Buyer Beware: A Wire Transfer Will Not be Cancelled After it is Sent, Even for Fraud [ED NY]

A bank's customer decided to invest in two cryptocurrency companies. The customer wired money to one company, and a week later, wired an additional amount of money to another company. The customer properly authorized each wire transfer. Furthermore, both companies had bank accounts at the same bank as the customer. After initiating the wire transfer, the customer learned that the companies were fraudulent and contacted the bank notifying it of the fraud and requesting an investigation. However, the wire transfers had already been processed (in fact, both were processed the same day the transfers were made) and the bank did not have the ability to cancel the transactions at that point. The customer claimed that because the bank was aware of the fraud between its own customers and did not reverse the transfers, it acted in a negligent and grossly negligent way, causing the customer to lose money. The bank claimed that the customer could not bring common law negligence claims because Article 4-A of New York's Uniform Commercial Code (UCC) preempts them; thus, the bank moved to dismiss the customer's claims entirely.

In *Jajati v. JPMorgan Chase Bank, N.A.*, No. 22-CV-07676 (HG), 2024 WL 99659, 2024 U.S. Dist. LEXIS 4703 (E.D.N.Y. Jan. 9, 2024) (opinion not yet released for publication), the court held that the customer was barred from bringing a common law negligence claim and dismissed the case. The court examined the wire transfer agreements between the customer and the bank, and determined the documents clearly outlined the process the bank would follow if a customer initiated a wire transfer. The court discussed that the bank completely followed the requirements found in the agreement, and that the customer

admitted that the bank carried out its contractual obligations. Nonetheless, the customer continued to urge the court to find the bank negligent in releasing the funds after learning of fraud. However, the court determined that the bank was at no fault for following the terms of the transfer agreement, and the court further stated that Article 4-A of the UCC preempts negligence claims. Article 4-A governs money transfers and dictates when a bank must refund a customer. Official comments to the article also state that the article is the "exclusive means of determining the rights, duties, and liabilities of the affected parties." Thus, the court reasoned that because Article 4-A does not include negligence, the customer's claims would not stand. The court granted the motion to dismiss and declined the customer's ability to amend.

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Wire Transfer Gone Wrong [D DC]

The U.S. Department of the Treasury's Office of Foreign Assets Control promulgated an order restricting U.S. financial institutions from participating in transactions involving specified Russian banks. Here, the beneficiary was expecting two wire transfers. However, the beneficiary's bank was initially a subsidiary of a prohibited bank. Although the prohibited bank sold the beneficiary's bank to an unrestricted bank, the beneficiary's bank failed to change its identifier code. Later, the intermediary bank received the wire transfers and subjected them to a screening process because the identifier code indicated this transfer was prohibited. Next, the intermediary bank reported that the funds would be sent back to the originator yet held the funds for over four months and screened them again. During this time, the intermediary bank was largely unresponsive to the concerns of both the beneficiary and the originator. The beneficiary then filed suit against the intermediary bank, alleging fraudulent misrepresentation, fraudulent concealment, conversion, intentional interference with a beneficial business relationship, and unjust enrichment claims. The intermediary bank filed a motion to dismiss.

In *Ekopel D.O.O. v. Citibank, N.A.*, No. 22-2554 (JDB), 2024 WL 519648, 2024 U.S. Dist. LEXIS 22952 (D.D.C. Feb. 9, 2024) (opinion not yet released for publication), the court granted the intermediary bank's motion to dismiss. First, the court rejected the intermediary bank's argument that it was immune from this suit due to its actions being in good faith with applicable sanction regulations. The court rejected this argument because the intermediary bank provided insufficient evidence to prove the defense. The court explained that the intermediary bank's compliance with the sanction regulation does not affirmatively establish good faith. Second, the court

accepted the intermediary bank's argument that the Uniform Commercial Code precluded some of the beneficiary's claims. The court stated that the U.C.C. § 4-A-402 "creates obligations only between the parties to each link in the transfer chain...not as to all parties involved in the funds transfer generally." Further, the court noted the U.C.C. precludes common law claims inconsistent with the liabilities in Article 4-A. The court held the beneficiary's claims for conversion and unjust enrichment fell within the U.C.C.'s purview because they related directly to the transfer and were therefore precluded. Third, the court held the beneficiary failed to state the remainder of its claims. The beneficiary's fraudulent misrepresentation claim failed because its allegation that the intermediary bank falsely informed it that the funds had been released is a generalized statement that does not satisfy the requirement to plead fraud with specificity. The fraudulent concealment claim failed because the beneficiary could not plead fraudulent misrepresentation, an element of the claim. In addition, the beneficiary could not provide the court with any regulation that imposes a fiduciary duty on the intermediary bank. Finally, the court explained the beneficiary's claim for tortious interference failed because the beneficiary did not allege that the intermediary bank intended to interfere with the beneficiary's business relationship. Ultimately, the court fully granted the intermediary bank's motion to dismiss..

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