STATE OF MICHIGAN

COURT OF APPEALS

ARKAD HAWTHORN VENTURE, L.L.C.,

Plaintiff-Appellant,

v

FRANKLIN BANK, N.A.,

Defendant/Third-Party Plaintiff-Appellee,

v

METRO CREDIT UNION,

Third-Party Defendant/Third-Party Plaintiff-Appellee,

v

TINA KEILANI,

Third-Party Defendant.

UNPUBLISHED
April 22, 2004

No. 243137
Wayne Circuit Court
LC No. 00-037984-CZ

Before: Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of dismissal in this case involving a dispute over a commercial paper. Plaintiff contends that the trial court erred in granting summary disposition in favor of defendant Franklin Bank and third-party defendant Metro Credit Union and against plaintiff. We affirm.

As noted by plaintiff on appeal, "[t]he operative facts are not in dispute." Plaintiff purchased a cashier's check from Franklin in the amount of $185,000, payable to plaintiff. A member of plaintiff signed the check and endorsed it as follows: "Pay to the Order of SKMV

Development L.L.C."[1] A member of SKMV, Samir Keilani, physically handed the check to his wife, Tina Keilani, who endorsed it and deposited into her account at Metro. Franklin transferred the $185,000 to Metro.

Plaintiff, suspecting fraud with respect to how the Keilanis used the funds, filed a lawsuit against Franklin, demanding repayment of the $185,000. Plaintiff argued, inter alia, that Franklin should not have honored the check without an endorsement by SKMV. Franklin, in turn, filed a third-party complaint against Metro, alleging, inter alia, that Metro should not have accepted the check without an endorsement by SKMV. Plaintiff moved for summary disposition against Franklin, and, after several intervening proceedings and orders, Metro moved for summary disposition against plaintiff. Franklin joined in Metro's motion. The trial court granted Metro and Franklin's joint motion, ruling, in part:

> In this case, it is clear the [sic] Sam Keilani was given the check as the representative of SKMV. Therefore, he became a holder of that check. When he gave the check to Tina to deposit into her account, she became a holder, and Metro because a holder in due course. Therefore, Metro was entitled to cash the check and is not obligated to Arkad for any fraud or misappropriation of those funds by Tina Keilani and Sam Keilani.
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> That being the situation, summary disposition is granted in favor of Metro and that being the situation, summary disposition is also granted in favor of Franklin Bank.

On appeal, plaintiff argues that the trial court erred in granting summary disposition to Franklin and Metro because neither Sam Keilani nor Tina Keilani was a "holder" of the cashier's check and because Sam Keilani was not the intended payee of the check. We need not address these arguments, however, because we find dispositive an issue raised on appeal by Franklin and Metro.[2] Specifically, Franklin and Metro argue that MCL 440.4401(1) and (3), on which plaintiff based its lawsuit, do not apply to cashier's checks.

This resolution of this issue involves statutory interpretation. We review issues of statutory interpretation de novo. *Roberts v Mecosta Co General Hosp,* 466 Mich 57, 62; 642 NW2d 663 (2002). The rules of statutory construction require the courts to give effect to the Legislature's intent. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand),* 217 Mich App 7, 12; 551 NW2d 199 (1996). "This Court should first look to the specific statutory language to determine the intent of the Legislature," which is "presumed to intend the meaning that the statute plainly expresses." *Id.* If the language is clear and unambiguous, "the plain meaning of the statute reflects the legislative intent, and judicial construction is not

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[1] Plaintiff and SKMV were working together to develop a hotel in Warren, and plaintiff had agreed to loan money to SKMV.

[2] An appellee may advance an alternative basis for affirmance without filing a cross-appeal as long as he does not obtain a decision that is more favorable than the one rendered by the trial court. *Middlebrooks v Wayne County,* 446 Mich 151, 166 n 41; 521 NW2d 774 (1994).

permitted." *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). If reasonable minds could differ regarding the meaning of a statute, judicial construction is warranted. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998). A court must not read into a statute anything "that is not within the manifest intent of the Legislature as gathered from the act itself." *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998).

MCL 440.4401(1) and (3) state that a bank may "charge against the account of a customer" an item or check that is properly payable from the account. As stated in *Pamar Enterprises, Inc, v Huntingon Banks of Michigan*, 228 Mich App 727, 735; 580 NW2d 11 (1998), "[i]mplicit in this rule is the notion that a bank may not charge against the account of its customer a check or item that is *not* 'properly payable'" (emphasis in original). "Accordingly, the drawer of a check has a remedy against the drawee bank for recredit of the drawer's account for the unauthorized payment of the check in the amount of the improper payment." *Id*. at 736. Seeking this remedy described in *Pamar*, Arkad instituted the instant lawsuit.

However, the plain language of MCL 440.4401(1) and (3) indicates that the statutes do not apply to cashier's checks. Indeed, the statutes refer to a bank charging an item "against the account of a customer." As noted in Black's Law Dictionary (5th ed), a cashier's check is "[a] check drawn by the bank upon itself[.]" See also *Casarez v Garcia*, 99 NM 508, 511; 660 P2d 598 (1983). Accordingly, when accepting a cashier's check, a receiving bank is not charging the account of the purchaser of the check (who has already paid the amount designated on the check) but is charging the issuing bank itself. It is plainly evident from the language in MCL 440.4401(1) and (3), therefore, that the statutes do not apply to cashier's checks. In light of the clear language, judicial construction is not permitted. *Tryc, supra* at 135.

In its appellate reply briefs, plaintiff cites the following cases, arguing that they support applying MCL 440.4401(1) and (3) to cashier's checks: *Kosic v Marine Midland Bank*, 430 NYS2d 175; 76 AD2d 89 (1980), *Jerman v Bank of America*, 87 Cal Rptr 88; 7 Cal App 3d 882 (1970), and *Casarez, supra*. We disagree that these cases support plaintiff's position. Indeed, *Kosic*, although employing the phrase "cashier's check," did not involve a true cashier's check. Instead, the panel repeatedly referred to *charging the customer's account*, see, generally, *Kosic, supra* at 176-178, which does not occur in the case of a true cashier's check, as discussed earlier. Moreover, *Jerman* and *Casarez*, while apparently involving true cashier's checks, did not involve any application of MCL 440.4401(1) and (3) or its out-of-state Uniform Commercial Code (UCC) equivalents.

MCL 440.4401(1) and (3) simply do not apply to this case. Plaintiff based its lawsuit on an untenable theory, and therefore we affirm the grant of summary disposition against it. See, generally, *Newman v Manufacturers Nat'l Bank of Detroit*, 7 Mich App 580, 589; 152 NWd 564 (1967) ("[plaintiff] fails to cite any authority applying to the facts of this case which would hold defendant liable other than under the UCC[, and s]ince we have determined that there was no liability under the UCC, plaintiff cannot succeed on this appeal").

We note that plaintiff unquestionably emphasizes on appeal and emphasized below the "properly payable" provisions of MCL 440.4401(1) and (3). For example, in an August 2001 brief filed in the trial court, plaintiff stated that its motion for summary disposition "relies on MCL 440.4401, a section of Article 4 of the [UCC]." To the extent that plaintiff might be premising liability on a theory apart from MCL 440.4401(1) and (3), however (such as a breach

of contract theory independent from MCL 440.4401), we conclude that it has provided insufficient legal support for such a theory. Indeed, it cites only out-of-state cases, such as those mentioned above, that might support an alternative theory. These cases are not strictly binding on us, and we find them insufficiently persuasive for purposes of the instant appeal.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Patrick M. Meter