

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

**H. KAY INTERIORS, INC. and** )  
**HENRY KACZMARCZYK,** )  
 )  
 ) C.A. No. 05C-12-181  
Plaintiffs, )  
 )  
v. )  
 )  
**PENINSULA UNITED METHODIST** )  
**HOMES, INC. t/a COKESBURY** )  
**VILLAGE, PNC BANK, INC. and Kevin** )  
**green t/a ROCK GENERAL** )  
**CONTRACTOR'S, INC.,** )  
 )  
Defendants. )

Submitted: June 12, 2006  
Decided: August 31, 2006

Upon Consideration of Defendant PNC Bank's Motion to Dismiss  
**GRANTED IN PART, DENIED IN PART.**

Memorandum Opinion

Willard F. Preston and Robert C. McDonald, Esquires, Silverman,  
McDonald & Friedman, Wilmington, Delaware, Attorneys for Plaintiffs.

Jeffrey S. Cianciulli, Esquire, Weir & Partners LLP, Philadelphia,  
Pennsylvania, Attorney for Defendant PNC Bank.

SCOTT, J.

## **I. INTRODUCTION**

Before the Court is Defendant PNC Bank, Inc.'s ("PNC Bank") Motion to Dismiss Count III of the Complaint for failure to state a claim upon which relief can be granted. Because Plaintiffs H. Kay Interiors, Inc. ("Kay Interiors") and Henry Kaczmarczyk ("Kaczmarczyk") are not entitled to a recovery under the facts as pled PNC Bank's Motion to Dismiss is **GRANTED**.

## **II. FACTS**

In January 2004, Kay Interiors and Kaczmarczyk entered into an agreement with Defendant Peninsula United Methodist Homes, Inc. t/a Cokesbury Village ("Peninsula") to perform construction services to the promenade deck of Peninsula's building. Plaintiffs performed all work in a workman-like fashion pursuant to the agreement.

On February 10, 2004, Peninsula issued a check to Kay Interiors in the amount of \$83,452.00. The check was drawn on PNC Bank. Kaczmarczyk deposited the PNC Bank check to his business savings account at Wilmington Savings Society, FSB ("WSFS"). On February 11, 2004, the check cleared and all funds were identified as collected for use. Between February 10, 2004 and February 17, 2004, withdrawals totaling approximately \$24,671.95 were drawn against the collected funds. On

February 17, 2004, PNC Bank honored a stop payment order from Peninsula.

On December 21, 2005 Plaintiffs filed this action. Plaintiffs allege that PNC Bank wrongfully honored the stop payment order from Peninsula. They contend that PNC Bank breached its statutory duty to them under 6 *Del. C.* § 4-202 and improperly ordered the stop payment on a check beyond the provisions of 6 *Del. C.* § 4-303. Plaintiffs seek recovery against PNC Bank in the amount of \$46,783.87 in connection with its unlawful and negligent actions, \$576.00 in overdraft fees, pre-judgment and post judgment interest, punitive damages, reasonable attorney's fees, and court costs.

Before the Court is PNC Bank's motion to dismiss Count III of Plaintiffs' Complaint for failure to state a claim upon which relief can be granted. A hearing was held on June 12, 2006. Plaintiffs conceded that PNC Bank was a "payor bank," not a "collecting bank," and that they were not asserting a negligence claim against PNC Bank. Therefore, the Court will not address Plaintiffs' argument that PNC Bank breached its statutory duty pursuant to 6 *Del. C.* § 4-202.<sup>1</sup> The core issue before the Court,

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<sup>1</sup> 6 *Del. C.* § 4-202 provides:

- (a) A collecting bank must exercise ordinary care in:
  - (1) Presenting an item or sending it for presentment;

therefore, is whether Plaintiffs may bring the claims that PNC Bank improperly ordered a stop payment.

### III. DISCUSSION

A court may not dismiss a plaintiff's complaint for failure to state a claim unless it appears to a certainty that the plaintiff may not recover under any set of facts that would entitle him to relief.<sup>2</sup> In evaluating a motion to dismiss, the court's review is limited to the well-pleaded allegations in the complaint, which must be accepted as true.<sup>3</sup> In the instant case, accepting all of Plaintiffs' non-conclusory allegations in Count III as true, the claim that PNC Bank wrongfully honored a stop payment order from Peninsula fails as a matter of law.

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(2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be; and

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of any item in the possession of others or in transit.

<sup>2</sup> *Spence v. Funk*, 396 A.2d 967 (Del. 1978); *Nix v. Sawyer*, 466 A.2d 407 (Del. Super. Ct. 1983); *Battista v. Chrysler Corp.*, 454 A.2d 286 (Del. Super. Ct. 1982).

<sup>3</sup> *Barni v. Kutner*, 76 A.2d 801 (Del. 1950).

In actions against banks alleging wrongful dishonor of an item courts have held that under the Uniform Commercial Code, as adopted by Delaware, a ‘payor bank is liable to its customer for damages proximately caused by the wrongful dishonor.’<sup>4</sup> A ‘customer’ is defined as any ‘person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.’<sup>5</sup> Section 4-402 has been construed to preclude an action for wrongful dishonor by a plaintiff other than the bank’s customer. In the present case, Plaintiffs have not alleged a cause of action pursuant to 6 *Del. C.* § 4-402. Nonetheless, even if they had asserted a cause of action pursuant to 6 *Del. C.* § 4-402, Plaintiffs would not have been the proper party to bring an action against the bank. The account in question was that of Peninsula. Plaintiffs were not statutory “customer[s]” of PNC Bank with respect to the Peninsula account and, therefore, would not have a cause of action under 6 *Del. C.* § 4-402. Following the interpretation given to 6 *Del. C.* § 4-402, which limits the bank’s liability to its ‘customer’ for wrongful dishonor, the Court determines that it would be illogical to assume that an individual who is not a ‘customer’ could bring a cause of action against a bank for wrongfully honoring a stop payment order. No authority has been cited to show that

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<sup>4</sup> 6 *Del. C.* § 4-402.

<sup>5</sup> 6 *Del. C.* § 4-104(a)(5).

Plaintiffs have the right to bring such a cause of action against PNC Bank. Therefore, the Court finds that the Plaintiffs do not have a cause of action against PNC Bank for wrongfully honoring a stop payment order. In addition, Plaintiffs argue that PNC Bank failed to exercise the stop payment order within the time limits required by 6 *Del. C.* § 4-303.<sup>6</sup> 4-303 spells out scenarios in which the payor bank does not have to terminate stop payment orders.<sup>7</sup> It permits a safe harbor and priority protection to the payor bank. A stop payment order is effective for six months.<sup>8</sup> Section 4-403(b), not 4-303,

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<sup>6</sup> 6 *Del. C.* § 4-303 provides:

(a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

- (1) The bank accepts or certifies the item;
- (2) The bank pays the item in cash;
- (3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;
- (4) The bank becomes accountable for the amount of the item under Section 4-302 dealing with the payor bank's responsibility for late return of items; or
- (5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

<sup>7</sup> 6 *Del. C.* § 4-303, Uniform Commercial Code Comment 2; 2 White & Summers, Uniform Commercial Code § 21-7 (4th ed. 1995).

<sup>8</sup> 6 *Del. C.* § 4-303(b).

sets forth the time limits by which a bank must exercise the stop payment order. Plaintiffs' claims fail as a matter of law.

#### **IV. CONCLUSION**

For all the foregoing reasons, PNC Bank's Motion to Dismiss Count III of the Complaint is hereby **GRANTED**.

**IT IS SO ORDERED.**

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**Judge Calvin L. Scott, Jr.**