

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

EXPERI-METAL INC.,  
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-cv-14890

Hon. Patrick J. Duggan

COMERICA BANK,

Defendant.

---

Richard B. Tomlinson (P27604)  
Daniel R. Boynton (P 30359)  
Joseph W. Thomas (P33226)  
DRIGGERS, SCHULTZ & HERBST, P.C.  
Attorneys for Plaintiff  
2600 West Big Beaver Road, Suite 550  
Troy, MI 48084  
Telephone: 248.649.6000  
Facsimile: 248.649.6442  
[rtomlinson@driggerschultz.com](mailto:rtomlinson@driggerschultz.com)

Todd A. Holleman (P57699)  
Lara Lenzotti Kapalla (P67667)  
MILLER, CANFIELD PADDOCK AND  
STONE, PLC  
Attorneys for Defendant  
150 W. Jefferson, Suite 2500  
Detroit, MI 48226  
Telephone: 313.963.7420  
[holleman@millercanfield.com](mailto:holleman@millercanfield.com)  
[kapalla@maillercanfield.com](mailto:kapalla@maillercanfield.com)

---

**EXPERI-METAL'S SUPPLEMENTAL FILING  
IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

On June 23, 2010, this Court heard oral argument on Comerica's Motion for Summary Judgment. Comerica has submitted a supplemental filing in support of its motion, claiming that its supplemental filing provides the court with additional information with respect to issues that arose during oral argument.

Comerica has submitted Exhibit 13, a document entitled "Treasury Management Implementation Worksheet," which was signed on November 21, 2003 in connection with the Comerica Net Vision system through which Comerica offered electronic banking and wire

transfer services to Experi-Metal. Comerica argues that Exhibit 13 authorizes Keith Maslowski to initiate on-line wire transfers in response to issues raised during oral argument.

A careful reading of Exhibit 13 demonstrates that the document proffered by Comerica did not authorize Keith Maslowski to initiate electronic, on-line wire transfers. The document was prepared by Comerica and presented to Valiena Allison, President of Experi-Metal for signature in November of 2003 (see Allison Supplemental Affidavit attached hereto). At the time the document was presented to Allison for signature, she was advised that the document authorized her and Mr. Maslowski to initiate wire transfers by telephone. In fact, page 3 of the document makes it clear that the document and the authorization applied to wire transfers initiated by telephone (Allison Supplemental Affidavit). The document contains no language to suggest or to authorize Mr. Maslowski to initiate electronic or on-line wire transfers as alleged by Comerica (Allison Supplemental Affidavit). In fact, Comerica's own document, Exhibit 8, which was attached to Comerica's Motion, and which is also attached hereto, shows as of December 1, 2007, the only two individuals at Experi-Metal with any wire transfer authorization were Valiena A. Allison and Gerald King. Comerica is well aware that as of December 1, 2007, Mr. Maslowski was not authorized to initiate any wire transfers for Experi-Metal.

As this Court is well aware, in April of 2008, Comerica advised Experi-Metal that beginning in May, 2008, on-line banking and wire transfer services would be through a new system called TM Connect Web ("TMC Web") rather than the old Net Vision Wire Transfer Services. With the new system imposed by Comerica, Comerica also advised Experi-Metal that the security technology used by Comerica was changed from the prior "digital certificate" security system to the new "secured token" methodology. When Comerica instituted the wire transfer service through TMConnect Web in May of 2008, it is undisputed that Keith Maslowski

was not authorized by Experi-Metal to initiate wire transfers on behalf of Experi-Metal with respect to the account from which the wire transfers in this case were made (Allison Supplemental Affidavit).

### **CONCLUSION**

In spite of Comerica's efforts to cloud this record, mislead the Court, and to mischaracterize Exhibit 13, it is clear that Keith Maslowski was not authorized to initiate electronic on-line wire transfers on behalf of Experi-Metal on January 22, 2009. Accordingly, the wire transfers paid by Comerica in this case, should never have been paid. For this reason as well as all of the other reasons outlined in Experi-Metal's Response to Comerica's Amended Motion for Summary Judgment, Comerica's motion must be denied.

Respectfully submitted,

DRIGGERS, SCHULTZ & HERBST, P.C.

By: s/Richard B. Tomlinson

Richard B. Tomlinson (P27604)

Daniel R. Boynton (P30359)

Joseph W. Thomas (P33226)

Attorneys for Plaintiff

2600 W. Big Beaver Road, Suite 550

Troy, MI 48084

Telephone: 248.649.6000

Fax: 248.649.6442

[rtomlinson@driggerschultz.com](mailto:rtomlinson@driggerschultz.com)

Dated: July 7, 2010

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 7, 2010, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system, which will send notification of such filing to the following ECF participants: Todd A. Holleman (P57699) and Lara Lenzotti Kapalla (P67667).

Richard B. Tomlinson

2600 W. Big Beaver Rd., #550

Troy, Michigan 48084

Phone: (248) 649-6000

E-mail: [cmacpherson@driggerschultz.com](mailto:cmacpherson@driggerschultz.com)

P27604