

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

THE KANSAS BANKERS SURETY)	
COMPANY,)	
)	
Plaintiff,)	8:07CV226
)	
v.)	
)	
MINDEN EXCHANGE BANK & TRUST)	ORDER
CO.,)	
)	
Defendant.)	
_____)	

This matter is before the Court on cross motions for summary judgment (Filing Nos. 79 and 82) and on plaintiff's motion to strike defendant's amendment and supplement to its brief in opposition to plaintiff's motion for summary judgment and in the alternative motion for leave to file response out of time and memorandum in support (Filing No. 97). Upon review of the motions, the briefs and evidentiary submissions of the parties, and the applicable law, the Court finds that genuine issues of material fact, including witness credibility issues, exist which preclude summary judgment.¹ Accordingly,

¹ In addition, the Court finds that both parties have not fully complied with the local rules of this Court. Counsel are admonished to review in particular NECivR 7.1. However, because the Court finds that neither party was prejudiced by these lapses, and that further briefing of this issue would not be helpful, the plaintiff's motion to strike defendant's amendment and supplement to its brief in opposition to plaintiff's motion for summary judgment and in the alternative motion for leave to file response out of time and memorandum in support (Filing No. 97) will be denied.

IT IS ORDERED:

1) Plaintiff's motion for summary judgment (Filing No. 79) and defendant's motion for partial summary judgment (Filing No. 82) are denied.

2) Plaintiff's motion to strike defendant's amendment and supplement to its brief in opposition to plaintiff's motion for summary judgment and in the alternative motion for leave to file response out of time and memorandum in support (Filing No. 97) is denied.

DATED this 6th day of October, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court