

STATE OF MICHIGAN  
COURT OF APPEALS

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MID AM CREDIT CORPORATION,

Plaintiff-Appellant,

v

JOINT MILITARY & VETERANS CREDIT  
UNION,

Defendant-Appellee,

and

DELLOYD T. HILL,

Defendant.

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UNPUBLISHED

November 13, 2001

No. 216508

Oakland Circuit Court

LC No. 97-000070-CK

Before: Talbot, P.J., and Doctoroff and White, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I concur in the majority's resolution of the conversion claim. I also concur in the affirmance with respect to all claims pertaining to the first check. I would reverse, however, with respect to certain claims regarding the second check.

Although my reasoning differs from the majority's, I agree that the negligence claim based on a common law duty to freeze the account upon receiving notice of plaintiff's claim was properly dismissed as to both checks. Plaintiff's assertion that such a common law duty existed is accurate. I conclude, however, that defendant was properly granted the protection of MCL 487.691, which modified the common-law duty, and that negligence claims based on mere notice to defendant were properly dismissed. See *LaValley v Pere Marquette Emp Credit Union*, 342 Mich 639; 70 NW2d 798 (1955).

I dissent from the affirmance with regard to other claims regarding the second check. There were genuine issues of material fact regarding plaintiff's claim that defendant negligently discharged its undertaking to place a stop payment on the second check, and plaintiff's claim of innocent or negligent misrepresentation based on communications between plaintiff's counsel and defendant's counsel in which defendant's counsel allegedly led plaintiff's counsel to believe that a stop payment hold had been placed on the second check and that the funds were available,

and on defendant's failure to determine and notify plaintiff that the check had been paid. Plaintiff presented evidence in support of these claims, and defendant did not conclusively refute them. Further, whether defendant was responsible for the failed stop payment order was a matter of dispute. Lastly, I conclude that there were genuine issues of material fact regarding plaintiff's indemnity claim based on the injunction. The second check cleared after defendant had notice of the injunction. Apparently defendant took no action upon receiving such notice because it was under the impression that the second check was already subject to the stop payment order. Again, there were questions of fact regarding why the stop payment order failed. Plaintiff also presented evidence that defendant would have been notified that the check cleared by the following day, and that the transaction could have been reversed.

/s/ Helene N. White