# JOSEPH MANDOLFO, APPELLANT, V. MARIO MANDOLFO AND AMERICAN NATIONAL BANK, APPELLEES.

___ N.W.2d ___

Filed May 6, 2011. No. S-09-1175.

1. **Summary Judgment: Appeal and Error.** An appellate court will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.
2. ____: ____. In reviewing a summary judgment, an appellate court views the evidence in the light most favorable to the party against whom the judgment is granted and gives such party the benefit of all reasonable inferences deducible from the evidence.
3. **Uniform Commercial Code: Claims.** Whether common-law claims are displaced by the Uniform Commercial Code presents a question of law.
4. **Limitations of Actions.** Which statute of limitations applies is a question of law.
5. **Judgments: Appeal and Error.** An appellate court reaches a conclusion regarding questions of law independently of the trial court's conclusion.
6. **Pretrial Procedure: Appeal and Error.** Determination of an appropriate sanction for failure to comply with a proper discovery order initially rests with the discretion of the trial court, and its rulings on appropriate sanctions will not be disturbed on appeal absent a showing of an abuse of that discretion.
7. **Uniform Commercial Code.** Often, the common law will supplement the Uniform Commercial Code.
8. ____. The common law will not supplement the Uniform Commercial Code when it is displaced by particular provisions of the code.
9. **Uniform Commercial Code: Actions.** When a provision of the Uniform Commercial Code applies, a litigant cannot rely on common-law causes of action.
10. **Uniform Commercial Code: Limitations of Actions: Conversion.** When dealing with Neb. U.C.C. § 3-420 (Reissue 2001) claims, courts generally hold that the cause of action "accrues" at the time the instrument is converted.
11. **Actions: Conversion.** Each conversion constitutes its own cause of action.
12. **Limitations of Actions: Negotiable Instruments.** The overwhelming majority rule is that the discovery rule does not apply to cases involving negotiable instruments.
13. **Uniform Commercial Code: States.** One of the purposes of the Uniform Commercial Code is to make uniform the law among the various jurisdictions.
14. **Uniform Commercial Code: Limitations of Actions: Conversion: Negotiable Instruments: Fraud.** In cases for conversion of a negotiable instrument under the Uniform Commercial Code, the plaintiff may benefit from the discovery rule when the defendant has engaged in fraudulent concealment.
15. **Appeal and Error.** A party that assigns error in a proceeding must point out the factual and legal bases that show the error.

16. **Judges: Words and Phrases.** A judicial abuse of discretion exists when a judge, acting within effective limits of authorized judicial power, elects to act or refrain from action, but the selected option results in a decision which is untenable and unfairly deprives the litigant of a substantial right or a just result.
17. **Motions for New Trial: Appeal and Error.** An appellate court reviews the denial of a motion for new trial or to alter or amend the judgment for an abuse of discretion.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge. Affirmed.

Theodore R. Boecker, Jr., of Boecker Law, P.C., L.L.O., for appellant.

James B. Cavanagh and Brittney J. Krause, of Lieben, Whitted, Houghton, Slowiaczek & Cavanagh, P.C., L.L.O., for appellees.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

Joseph Mandolfo (Joe) sued his brother Mario Mandolfo and American National Bank (ANB). Joe alleged that Mario had, with the assistance of ANB, wrongfully deposited checks into his own account. The district court granted summary judgment to Joe against Mario. The court, however, granted summary judgment to ANB, concluding that the statute of limitations barred Joe's claims. We conclude that Joe's common-law claims are displaced by the Uniform Commercial Code (U.C.C.) and are thus subject to a 3-year statute of limitations. Further, we conclude that the application of a discovery rule is inappropriate to these claims. In sum, Joe's claims against ANB were untimely. We affirm.

## BACKGROUND

Joe, at one time, owned several businesses, some of which had accounts with ANB. These businesses included grocery stores and franchise restaurants. After his brother Mario lost his job as a teacher, Joe hired Mario to work for him.

Betraying his benefactor, Mario eventually opened his own accounts at ANB and began depositing checks made out to Joe or Joe's companies into these accounts. Based on the record

before us, it appears that Mario misappropriated checks from December 1995, until July 20, 2000. Joe contends that Mario embezzled about $1.2 million.

Joe did not discover Mario's misappropriations until 2003, when the Internal Revenue Service contacted him about some "irregularities" that it had uncovered. Within a year of this discovery, on March 19, 2004, Joe sued Mario and ANB. Joe alleged that Mario misappropriated checks belonging to Joe and his companies. He alleged that ANB had assisted Mario's misappropriations by failing to exercise reasonable care in allowing Mario to deposit unendorsed or improperly endorsed checks. In other words, Joe alleged that through its negligence, ANB allowed Mario to collect on checks that did not belong to him.

In October 2004, the court granted Joe summary judgment on his claims against Mario. Mario—who had asserted his Fifth Amendment right not to incriminate himself—did not deny the allegations in Joe's complaint and offered no evidence to refute Joe's claims. The court awarded Joe damages of $678,430.86. Joe's claims against Mario are not at issue in this appeal.

In April 2009, Joe moved to compel discovery for his claims against ANB. Joe had previously served requests for production and interrogatories on ANB, but ANB had not timely responded. Because ANB took more than 30 days to answer Joe's requests, the court awarded Joe attorney fees for the motion to compel as a sanction against ANB.

In May 2009, ANB moved for summary judgment. ANB argued, among other things, that Joe's claims were time barred under Neb. U.C.C. § 3-118(g) (Cum. Supp. 2010), which provides for a 3-year statute of limitations for conversion claims. Joe moved to strike ANB's summary judgment motion. In support of his motion, Joe cited ANB's alleged failures to cooperate with his discovery requests.

The court granted ANB's motion for summary judgment. The court concluded that although Joe had couched his claims against ANB in negligence, he was asserting a claim for conversion under the U.C.C.[1] Because the court concluded that

[1] See Neb. U.C.C. § 3-420 (Reissue 2001).

Joe was asserting a conversion claim, it agreed with ANB that the 3-year statute of limitations under § 3-118(g) applied. The court also concluded that the discovery rule did not apply to toll the time limit for actions for conversion under the U.C.C. Because Mario converted the last check in July 2000 and Joe did not file his complaint until March 2004, the court ruled that Joe's claims were untimely.

Joe moved for a new trial or, in the alternative, to alter or amend the judgment. His arguments mirror his arguments in his present appeal. He argued that the court erred in (1) allowing ANB to proceed to summary judgment when it had failed to comply with discovery orders, (2) concluding that Joe had alleged only U.C.C. conversion claims, and (3) applying the wrong statute of limitations. The court denied Joe's motion.

## ASSIGNMENTS OF ERROR

Joe assigns, restated and renumbered, that the district court erred as follows:

(1) in granting ANB summary judgment;

(2) in failing to strike ANB's motion for summary judgment as a sanction for ANB's failure to comply with discovery orders; and

(3) in failing to grant Joe's motion for new trial or to alter or amend the judgment.

## STANDARD OF REVIEW

[1,2] We will affirm a lower court's grant of summary judgment if the pleadings and admitted evidence show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from the facts and that the moving party is entitled to judgment as a matter of law.[2] In reviewing a summary judgment, we view the evidence in the light most favorable to the party against whom the judgment is granted and give such party the benefit of all reasonable inferences deducible from the evidence.[3]

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[2] See *Andres v. McNeil Co.*, 270 Neb. 733, 707 N.W.2d 777 (2005).

[3] *Id.*

[3-5] Whether common-law claims are displaced by the U.C.C. presents a question of law.[4] Which statute of limitations applies is also a question of law.[5] We reach a conclusion regarding questions of law independently of the trial court's conclusion.[6]

[6] Determination of an appropriate sanction for failure to comply with a proper discovery order initially rests with the discretion of the trial court, and its rulings on appropriate sanctions will not be disturbed on appeal absent a showing of an abuse of that discretion.[7]

## ANALYSIS

### JOE'S COMMON-LAW CLAIMS OF CONVERSION AND NEGLIGENCE ARE DISPLACED BY U.C.C.

In granting ANB summary judgment, the court began by noting that Joe alleged that ANB allowed Mario to improperly deposit checks belonging to Joe and his companies into Mario's account. Joe claimed that ANB failed to exercise reasonable care in its practices, which, if exercised, would have prevented Mario's misappropriations. The court noted that although Joe tried to characterize this as negligence, what he was really asserting was a claim for conversion under § 3-420. Joe claims the court erred in this conclusion. Citing a number of our cases[8] as well as federal courts applying Nebraska law,[9] Joe argues that the court erred in concluding that the U.C.C.

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[4] See *Schlegel v. Bank of America, N.A.*, 271 Va. 542, 628 S.E.2d 362 (2006).

[5] *Corona de Camargo v. Schon*, 278 Neb. 1045, 776 N.W.2d 1 (2009).

[6] See *Wilson v. Fieldgrove*, 280 Neb. 548, 787 N.W.2d 707 (2010).

[7] *Booth v. Blueberry Hill Restaurants*, 245 Neb. 490, 513 N.W.2d 867 (1994).

[8] *Hecker v. Ravenna Bank*, 237 Neb. 810, 468 N.W.2d 88 (1991); *PWA Farms v. North Platte State Bank*, 220 Neb. 516, 371 N.W.2d 102 (1985); *Hydroflo Corp. v. First Nat. Bank*, 217 Neb. 20, 349 N.W.2d 615 (1984); *Travelers Indemnity Co. v. Center Bank*, 202 Neb. 294, 275 N.W.2d 73 (1979).

[9] *Wymore State Bank v. Johnson Intern. Co.*, 873 F.2d 1082 (8th Cir. 1989); *Progress Rail Services v. Western Heritage Credit*, 506 F. Supp. 2d 285 (D. Neb. 2007).

displaced common-law causes of action such as conversion and negligence.

[7-9] Joe is correct in his claim that some of our earlier cases recognized that common-law claims may exist alongside U.C.C. claims. This remains true. The drafters of the U.C.C. set out to preserve and, when necessary, clarify and conform the law merchant with modern commercial practice.[10] But it does not seek to codify the entire body of law regulating commercial transactions.[11] So often, the common law will supplement the U.C.C.[12] This, however, is not so when the common law is "displaced by . . . particular provisions of the [U.C.C.]"[13] In other words, when a provision of the U.C.C. applies, a litigant cannot rely on common-law causes of action.[14] Thus, to determine whether Joe's claims of common-law conversion and negligence are displaced, we consider whether any specific provision of the U.C.C. covers those claims.

The U.C.C. has undergone substantial revision since we decided the earlier cases that Joe cites. Neb. U.C.C. § 3-419 (Reissue 1980), the previous section governing conversion of instruments, was replaced with § 3-420.[15] Section 3-420 defines conversion differently than § 3-419 did. And because § 3-420 applies in different situations than § 3-419 did, it follows that § 3-420 will displace common-law claims that § 3-419 did not. Section 3-420 provides, in relevant part:

> (a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a *bank makes or obtains payment with respect to the*

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[10] *C-Wood Lumber Co. v. Wayne County Bank*, 233 S.W.3d 263 (Tenn. App. 2007).

[11] *Id.*

[12] Neb. U.C.C. § 1-103 (Reissue 2001).

[13] *Id.*

[14] See *Stefano v. First Union Nat. Bank of Virginia*, 981 F. Supp. 417 (E.D. Va. 1997).

[15] 1991 Neb. Laws, L.B. 161.

> *instrument for a person not entitled to enforce the instrument or receive payment.*

(Emphasis supplied.)

As noted, Joe's allegations are essentially that ANB allowed Mario to obtain payment on checks for which he was not entitled to receive payment. The facts that Joe alleged mirror the last clause of § 3-420. In other words, on the facts before us, a specific provision of the U.C.C. covers what would otherwise be a common-law claim for conversion or negligence. Thus, the U.C.C. displaces those claims. We conclude that Joe's allegations are claims for conversion under § 3-420. And our approach is consistent with the majority rule.[16]

## STATUTE OF LIMITATIONS

Having concluded that the U.C.C. displaces Joe's common-law claims, we now determine whether he filed his claims for conversion within the applicable statute of limitations. Section 3-118(g) sets out the statute of limitations: "Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion . . . must be commenced within three years after the cause of action accrues."

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[16] *Berhow v. The Peoples Bank*, 423 F. Supp. 2d 562 (S.D. Miss. 2006); *Metz v. Unizan Bank*, 416 F. Supp. 2d 568 (N.D. Ohio 2006); *Stefano, supra* note 14; *ASP Enterprises, Inc. v. Guillory*, 22 So. 3d 964 (La. App. 2009); *C-Wood Lumber Co., supra* note 10; *Gallagher v. Credit Union*, 132 N.M. 552, 52 P.3d 412 (N.M. App. 2002); *Halla v. Norwest Bank Minnesota, N.A.*, 601 N.W.2d 449 (Minn. App. 1999); *Orecchio v. Connecticut River Bank, N.A.*, No. 1:08-CV-164, 2009 WL 4931354 (D. Vt. Dec. 14, 2009) (unpublished opinion); *Promissor, Inc. v. Branch Bank and Trust Co.*, No. 1:08-CV-1704-BBM, 2008 WL 5549451 (N.D. Ga. Oct. 31, 2008) (unpublished opinion); *Contour Industries, Inc. v. U.S. Bancorp*, No. 2:07-CV-234, 2008 WL 2704431 (E.D. Tenn. July 3, 2008) (unpublished opinion); *Mack v. CTC Ill. Trust Co.*, No. Civ.A. 04-00083, 2004 WL 1631398 (E.D. Pa. July 20, 2004) (unpublished opinion); *Peters Family Farm, Inc. v. Sav. Bank*, No. 10CA2, 2011 WL 497476 (Ohio App. Jan. 28, 2011) (unpublished opinion); *Murphy & Maconachy, Inc. v. Preferred Bank*, No. B206784, 2009 WL 1639528 (Cal. App. June 12, 2009) (unpublished opinion); 2 James J. White & Robert S. Summers, Uniform Commercial Code § 18-4 (5th ed. 2008 & Supp. 2010). But see *Ross v. Bank of America N.A.*, 693 F. Supp. 2d 692 (S.D. Tex. 2010).

[10,11] When dealing with § 3-420 claims, courts generally hold that the cause of action "accrues" at the time the instrument is converted.[17] It follows that each of Mario's many conversions constituted its own cause of action.[18] Further, the record shows that the last check was deposited July 20, 2000. Joe filed his complaint on March 19, 2004. So Joe filed his complaint more than 3 years after Mario converted the last check. The statute of limitations thus bars his claims.

But Joe argues that the discovery rule saves his claims. The discovery rule tolls a statute of limitation when the plaintiff did not discover the injury and could not have discovered the injury within the applicable statute of limitations.[19] The reasoning behind the discovery rule is that, in some cases, the injury is not obvious and it would be unfair to allow the statute of limitations on a claim to run out before an injured party had a chance to seek relief.[20] When the discovery rule applies, the statute of limitations does not begin running until the plaintiff discovers, or reasonably should have discovered, the injury.[21] Joe claims that he did not learn of Mario's misappropriations until 2003 and that we should apply the discovery rule. We decline.

[12] Although some courts do apply the discovery rule,[22] the overwhelming majority rule is that the discovery rule

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[17] E.g., *Rodrigue v. Olin Employees Credit Union*, 406 F.3d 434 (7th Cir. 2005); *Stefano, supra* note 14; *New Jersey Lawyers' v. Pace*, 374 N.J. Super. 57, 863 A.2d 402 (2005); *Pero's Steak and Spaghetti House v. Lee*, 90 S.W.3d 614 (Tenn. 2002).

[18] See, *Rodrigue, supra* note 17; *Copier Word Processing v. WesBanco Bank*, 220 W. Va. 39, 640 S.E.2d 102 (2006).

[19] See *Shlien v. Board of Regents*, 263 Neb. 465, 640 N.W.2d 643 (2002).

[20] *Id.*

[21] *Id.*

[22] *Gallagher, supra* note 16; *Stjernholm v. Life Ins. Co. of N. Amer.*, 782 P.2d 810 (Colo. App. 1989); *Fine v. Sovereign Bank*, No. 06cv11450-NG, 2010 WL 3001194 (D. Mass. July 28, 2010) (unpublished opinion); *YF Trust v. JP Morgan Chase Bank*, No. CV 07-567-PHX-MHM, 2008 WL 4277902 (D. Ariz. Sept. 18, 2008) (unpublished opinion); *Geraldo v. First Dominion Mut. Life Ins. Co.*, No. L-01-1210, 2002 WL 31002770 (Ohio App. Sept. 6, 2002) (unpublished opinion).

does not apply to cases involving negotiable instruments.[23] That is, courts hold that the cause of action accrues and the limitations period begins running when the instruments are converted, regardless of when the plaintiff actually learns of the conversion.

In applying this majority rule, courts promote the U.C.C.'s purpose of promoting swift resolution of commercial disputes. A "discovery rule would be inimical to the underlying purposes of the [U.C.C.], including the goals of certainty of liability, finality, predictability, uniformity, and efficiency in commercial transactions."[24] Further, these courts conclude that "'[t]he finality of transactions promoted by an ascertainable definite period of liability is essential to the free negotiability of instruments on which commercial welfare so heavily depends.'"[25]

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[23] *John Hancock Financial Servs. v. Old Kent Bank*, 346 F.3d 727 (6th Cir. 2003); *Menichini v. Grant*, 995 F.2d 1224 (3d Cir. 1993); *Kuwait Airways Corp. v. American Sec. Bank, N.A.*, 890 F.2d 456 (D.C. Cir. 1989); *Metz, supra* note 16; *Calex Exp., Inc. v. Bank of America*, 401 F. Supp. 2d 407 (M.D. Pa. 2005); *Gress v. PNC Bank, Nat. Ass'n*, 100 F. Supp. 2d 289 (E.D. Pa. 2000); *Mattlin Holdings, L.L.C. v. First City Bank*, 189 Ohio App. 3d 213, 937 N.E.2d 1087 (2010); *Peak Perfor. Phy. Therapy v. Hibernia Corp.*, 992 So. 2d 527 (La. App. 2008); *Kidney Cancer Ass'n v. North Shore Comm.*, 373 Ill. App. 3d 396, 869 N.E.2d 186, 311 Ill. Dec. 512 (2007); *AmerUS Life Ins. Co. v. Bank of America*, 143 Cal. App. 4th 631, 49 Cal. Rptr. 3d 493 (2006); *Auto-Owners Ins. Co. v. Bank One*, 852 N.E.2d 604 (Ind. App. 2006), *vacated in part on other grounds* 879 N.E.2d 1086 (Ind. 2008); *New Jersey Lawyers', supra* note 17; *Hollywood v. First Nat. Bank of Palmerton*, 859 A.2d 472 (Pa. Super. 2004); *Pero's Steak and Spaghetti House, supra* note 17; *Yarbro, Ltd. v. Missoula Fed. Credit Union*, 310 Mont. 346, 50 P.3d 158 (2002); *Smith v. Franklin Custodian Funds, Inc.*, 726 So. 2d 144 (Miss. 1998); *Haddad's of Illinois v. Credit Union 1*, 286 Ill. App. 3d 1069, 678 N.E.2d 322, 222 Ill. Dec. 710 (1997); *Palmer Mfg. & Supply v. BancOhio Natl.*, 93 Ohio App. 3d 17, 637 N.E.2d 386 (1994); *Husker News Co. v. Mahaska State Bank*, 460 N.W.2d 476 (Iowa 1990); *Wang v. Farmers State Bank of Winner*, 447 N.W.2d 516 (S.D. 1989); *Fuscellaro v. Industrial Nat'l Corp.*, 117 R.I. 558, 368 A.2d 1227 (1977). See, also, *Rodrigue, supra* note 17.

[24] *Rodrigue, supra* note 17, 406 F.3d at 445-46.

[25] *Haddad's of Illinois, supra* note 23, 286 Ill. App. 3d at 1075, 678 N.E.2d at 326, 222 Ill. Dec. at 714, quoting *Fuscellaro, supra* note 23.

In rejecting the discovery rule, many courts reason that the victim of conversion is often in the best position to prevent or detect the loss.[26] Watchful victims of conversion should be able to quickly realize when they have been wronged. Courts applying such a rationale believe that "the public would be poorly served by a rule that effectively shifts the responsibility for careful bookkeeping away from those in the best position to monitor accounts and employees."[27] Joe would have discovered Mario's conversions much quicker had he not given Mario unsupervised power over the books of his companies.

[13] We agree with these courts' reasoning and add further that one of the purposes of the U.C.C. is "to make uniform the law among the various jurisdictions."[28] In the light of this policy and the almost universal consensus, we adopt the majority rule.

[14,15] We note, however, that there is one exception to this rule. The plaintiff may benefit from the discovery rule when the defendant has engaged in fraudulent concealment.[29] Joe's complaint, however, makes no allegation of fraudulent concealment by ANB that would toll the statute of limitations. Moreover, his brief before this court points to nothing that creates a genuine issue of material fact regarding fraudulent concealment. A party that assigns error in a proceeding must point out the factual and legal bases that show the error.[30] Finally, in his deposition, Joe acknowledged that he knew at the time that funds were disappearing. He stated that because he had someone he trusted, Mario, in charge of the books, he assumed the embezzlement was being perpetrated by other employees. He stated that because of the missing funds, "at least a hundred" lower employees were disciplined, by either being reported to the police or losing their jobs. So, Joe knew facts that could

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[26] See *Haddad's of Illinois, supra* note 23.

[27] *Husker News Co., supra* note 23, 460 N.W.2d at 479.

[28] Neb. U.C.C. § 1-102(1)(c) (Reissue 2001).

[29] See, e.g., *Rodrigue, supra* note 17; *Peak Perfor. Phy. Therapy, supra* note 23; *Kidney Cancer Ass'n, supra* note 23; *Pero's Steak and Spaghetti House, supra* note 17; *Haddad's of Illinois, supra* note 23.

[30] See *Stiver v. Allsup, Inc.*, 255 Neb. 687, 587 N.W.2d 77 (1998).

have reasonably led to the discovery of his cause of action. He cannot rely on the doctrine of fraudulent concealment.[31]

We hold that when bringing a claim for conversion of a negotiable instrument under § 3-420, a plaintiff is not entitled to the benefit of the discovery rule in the absence of fraudulent concealment. And Joe has failed to plead or create a genuine issue of fact regarding fraudulent concealment. We conclude that the U.C.C.'s 3-year statute of limitations bars Joe's claims.

### COURT'S FAILURE TO STRIKE MOTION FOR SUMMARY JUDGMENT FOR FAILING TO COMPLY WITH DISCOVERY ORDERS

Joe argues that the court erred in not striking ANB's motion for summary judgment for ANB's alleged failure to comply with discovery orders. Joe argues ANB withheld documents that Joe had requested and that would have helped Joe prosecute his case. ANB responds that it fully complied with the discovery orders and that, even if it did not, the court did not abuse its discretion by allowing ANB to move for summary judgment.

[16] We review the imposition of a discovery sanction for abuse of discretion.[32] A judicial abuse of discretion exists when a judge, acting within effective limits of authorized judicial power, elects to act or refrain from action, but the selected option results in a decision which is untenable and unfairly deprives the litigant of a substantial right or a just result.[33]

Joe claims that ANB failed to comply with the court's discovery order. The only order in the record about discovery did not order ANB to comply, but, rather, made a finding that "discovery was answered." The order shows that the court did not sanction ANB at that time for not answering at all, but, rather, for answering too late, which implies that ANB did answer. Later, ANB even went further and supplemented its responses after it had moved for summary judgment.

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[31] See *Gering - Ft. Laramie Irr. Dist. v. Baker*, 259 Neb. 840, 612 N.W.2d 897 (2000).

[32] *Booth, supra* note 7.

[33] *Id.*

But Joe continued to insist that ANB was not complying with discovery. He moved to strike ANB's motion for summary judgment, because he believed that ANB was not complying. He attached an affidavit to his motion claiming as much.

The district court's decision acknowledged that Joe had moved to strike ANB's summary judgment motion and implicitly overruled it. Because of the court's earlier discovery order finding that "discovery was answered," albeit untimely, and ANB's subsequent supplementary responses, we conclude that the court did not abuse its discretion in failing to strike the motion for summary judgment.

### MOTION TO ALTER OR AMEND JUDGMENT

[17] Finally, Joe claims that the trial court erred in denying his motion for new trial or, in the alternative, to alter or amend the judgment. We review such a denial for an abuse of discretion.[34]

Joe's argument is essentially that the lower court erred in determining that the U.C.C. displaced his common-law claims and that the statute of limitations barred his claims. We have, however, already determined that the lower court correctly concluded that the statute of limitations barred Joe's claims. Accordingly, it was not an abuse of discretion to deny Joe's motion.

## CONCLUSION

We conclude that the U.C.C. displaces Joe's claims for common-law conversion and negligence. The 3-year U.C.C. statute of limitations applies. Because of the underlying policies of the U.C.C., we decline to apply the discovery rule to toll the statute of limitations. Joe's claims were thus untimely. We affirm the district court's grant of summary judgment.

AFFIRMED.

WRIGHT, J., not participating.

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[34] See, *Poppe v. Siefker*, 274 Neb. 1, 735 N.W.2d 784 (2007); *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).