

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

UNITED STATES STEEL CORPORATION,	:	March Term 2005
	:	
Plaintiff,	:	No. 0140
	:	
v.	:	
EXPRESS ENTERPRISES OF PENNSYLVANIA, INC. A/K/A EXPRESS ENTERPRISES, INC. D/B/A WEST CHESTER CHECK CASHING COMPANY: COMPANY, <i>et al.</i>	:	(Commerce Program)
	:	Control Number 020326
Defendants.	:	

ORDER

AND NOW, this 22nd day of March 2006, upon consideration of defendant, Express Enterprises of Pennsylvania, Inc.'s Preliminary Objections, plaintiff's response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion being filed of record, it is **ORDERED** that defendant's Preliminary Objections are **Sustained** as follows:

1. Counts I is dismissed.
2. Count II is dismissed solely as it pertains to the 13 Pa. C. S. § 3405 claim.

BY THE COURT,

ALBERT W. SHEPPARD, JR. J.

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OPINION

Albert W. Sheppard, Jr., J. March 22, 2006

This action arises from allegations that workers’ compensation checks issued by plaintiff, United States Steel Corporation (“Plaintiff”), were fraudulently obtained and cashed by Sylvia L. King and Sandra Robinson. A majority of the checks were allegedly cashed at a check cashing agency operated by Express Enterprises of Pennsylvania, Inc. (“Express Enterprises”). Plaintiff instituted this action against Express Enterprises alleging common law negligence (Count I) and claims for failure to exercise ordinary care pursuant to 13 Pa. C. S. §§ 3404 Imposters; Fictitious Payees and 3405 Employer's responsibility for fraudulent endorsement by employee (Count II). For the reasons discussed, the Preliminary Objections are sustained and Count I for common law negligence is dismissed.¹

¹ Express Enterprises also filed Preliminary Objections to Count II solely pertaining to 13 Pa. C. S. § 3405. Plaintiff does not oppose the dismissal of 13 Pa. C. S. § 3405 from Count II. Accordingly, the court will sustain that objection.

DISCUSSION

The parties dispute whether the UCC displaces plaintiff's allegations of common law negligence. In general, principals of law and equity supplement the UCC unless they are displaced by particular UCC provisions. IRPC , Inc. v. Hudson United Bancorp., 2002 Phila. Ct. Com. Pl. LEXIS 77 (Pa. Com. Pl. Jan. 18, 2002) (Sheppard, J.)(*quoting* 13 Pa. Cons. Stat. Ann. § 1103). Although the Pennsylvania Courts have not spoken on the issue of displacement, this court finds the reasoning in Gress v. PNC Bank, National Association, 100 F. Supp. 2d 289 (E. D. Pa. 2000) and Metro Waste, Inc. v. Wilson Check Cashing, Inc., 2003 Phila. Ct. Com. Pl. LEXIS 56 (2003)(Jones, J.) persuasive in finding that Count I of the amended complaint is displaced by the UCC. In Gress v. PNC Bank, National Association, predicting what the Pennsylvania Supreme Court would do if faced with this issue, the court held that § 3420 "displaces any negligence actions that are based on wrongfully paying a negotiable instrument to 'a person not entitled to enforce the instrument or receive payment.'" Gress, 100 F. Supp. 2d 289, 292 (E.D. Pa. 2000). The court cited cases from a variety of jurisdictions "which have held that the UCC intends to produce inter-jurisdictional uniformity as to the commercial activities it governs and, further, that displacing common law tort liability with respect to such activities is vital to that project." Id. Although not binding on this court, the Gress court's reasoning is instructive.

The court in Metro Waste, Inc. v. Wilson Check Cashing, Inc. found the reasoning in Gress convincing. In Metro, the court also examined Pennsylvania law in determining whether the UCC section 3404 precludes a common law negligence cause of action. In finding that the common law negligence claim was barred, the court concluded

that where the UCC provides a comprehensive remedy for the parties to a transaction, a common law action will be barred. Id. at. *5.

Accordingly, this court concludes that 13 Pa. C.S.A. § 3404 displaces plaintiff's common law claim of negligence. The UCC is to be liberally construed and applied to promote its underlying purposes and policies which include simplifying and clarifying the law governing commercial transactions, fostering an expansion of commercial practices and standardizing the law of the various jurisdictions. Metro Waste, Inc. v. Wilson Check Cashing, Inc., 2003 Phila. Ct. Com. Pl. LEXIS 56, *5 (2003)(Jones, J.). In Count I plaintiff alleges that Express Enterprises paid a check to a third party on the basis of a forged signature. Such allegations are covered by § 3404 of the UCC. Since § 3404 would provide a comprehensive remedy for the plaintiff, the court finds that in this instance the UCC displaces the common law negligence claim. Accordingly, Express Enterprises' Preliminary Objection is sustained and Count I is dismissed.²

CONCLUSION

For the foregoing reasons, Preliminary Objections of Express Enterprises are sustained and Count I is dismissed. It is further ordered that as it pertains to Count II the claim asserting violation of 13 Pa. C. S. § 3405 is also dismissed. An order consistent with this Opinion will be filed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

² IRPC, Inc. v. Hudson United Bancorp., 2002 Phila. Ct. Com. Pl. LEXIS 77 (Pa. Com. Pl. Jan. 18, 2002) (Sheppard) does not discuss the issue of displacement. Rather, the court addressed IRPC's objection concerning the failure to identify the relevant statute in the complaint. Id. at 8, 10. Thus, the holding of IRPC, Inc. v. Hudson United Bancorp. is not applicable here.