

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

METRO WASTE, INC. and Automated Waste, Inc.,	:	March Term, 2003
	:	
Plaintiffs,	:	No.: 2117
	:	
v.	:	
	:	Control Number 051995
	:	
WILSON CHECK CASHING, INC. and John Doe, Joseph Lombardo and Republic First Bank,	:	Commerce Program
	:	
Defendants.	:	

ORDER and MEMORANDUM

AND NOW, this 23rd day of September, 2003, upon consideration of Defendants Wilson Check Cashing, Inc. and Republic First Bank's Preliminary Objections¹ to Plaintiffs' amended complaint, all responses in opposition, the respective memoranda, all matters of record, and in accordance with the attached contemporaneous Memorandum Opinion, it is hereby **ORDERED AND DECREED** that Defendants' Preliminary Objections are **Sustained** in part and **Overruled** in part as follows:

1. The Defendants' Preliminary Objections asserting that the amended complaint is insufficiently specific are **Overruled**.
2. Defendants Motion to Strike plaintiffs amended complaint for failing to attach a writing is **Overruled**.
3. Defendants Preliminary Objections asserting legal sufficiency to Counts IV, V, and VI are **Overruled** in part and **Sustained** in part.

¹Republic First Bank joined defendant Wilson Check Cashing in its preliminary objections.

4. Defendants Preliminary Objections to Counts I and II asserting legal sufficiency are **Overruled.**

5. Defendants Preliminary Objections to Count V is **Sustained.** Plaintiffs are granted twenty days from the date of this order to amend the amended complaint as it pertains to Count V, if they so wish.

6. Defendants Preliminary Objections to Plaintiffs request for punitive damages is **Sustained.**

7. Defendants Preliminary Objections to Plaintiffs demand for attorneys' fees are **Sustained.**

BY THE COURT:

C. DARNELL JONES, II, J.

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

METRO WASTE, INC. and Automated Waste, Inc.,	:	March Term, 2003
	:	
Plaintiffs,	:	No.: 2117
v.	:	
	:	Control Number 051995
WILSON CHECK CASHING, INC.	:	
and John Doe, Joseph Lombardo and Republic First Bank,	:	Commerce Program
	:	
Defendants.	:	

MEMORANDUM OPINION

JONES, J......

Before this court are the Preliminary Objections of Defendants Wilson Check Cashing, Inc. and Republic First Bank to Plaintiffs amended complaint. Plaintiffs amended complaint alleges seven separate causes of action against defendants. Count I alleges liability under 13 Pa. C.S. § 3405(b), Count II alleges liability under Pa. C. S. § 3306, Count III alleges civil conspiracy, Count VI alleges common law conversion, Count V alleges conversion under 13 Pa. C. S. § 3420, Count VI alleges negligent supervision and Count VII alleges violation of the Check Cashier Licensing Act. Defendants argue (1) that Plaintiffs' pleading is insufficiently specific, (2) that Plaintiffs' pleading must be stricken for its failure to attach a writing, (3) that Plaintiffs' amended complaint is legally insufficient, and (4) that plaintiffs' claim for attorney fees and punitive damages should be stricken. For the reasons that follow, defendants preliminary objections are overruled in part and sustained in part.

A. Plaintiffs' Amended Complaint is Sufficiently Specific

To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the allegations are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (Pa. Super.1991)(citation omitted). See also In re Barnes Foundation, 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (Pa. Super.1995)("a pleading should..... fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [a] cause of action is based"). Here, the allegations in the Amended Complaint are more than sufficient to allow the Defendants to prepare a defense.

B. Motion to Strike - Failure to Attach a Writing

Pa. R. Civ. P. 1019(i) requires a plaintiff to attach a copy of a writing on which his or her claim is based but if the writing or copy is not accessible to the pleader, it is sufficient so to state and to set forth the substance in writing. In the amended complaint, plaintiffs allege that the writing at issue here, the checks, are not in their possession and attempt to set forth the substance of the writing within the amended complaint. Based on the plaintiffs statement within the amended complaint that they are not in possession of the checks, the objection asserting failure to attach a writing is Overruled.

C. Legal Sufficiency

In this case, the parties dispute whether the Uniform Commercial Code (UCC) displaces plaintiffs' allegations of common law negligence, conversion and conspiracy. 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 WL 372945, *1 (Pa. Com. Pl. Jan. 18, 2002) (Sheppard)(quoting 13 Pa. Cons. Stat. Ann. § 1103). Although Pennsylvania

Courts have not spoken on the issue as to whether the UCC displaces plaintiffs' claims of negligence, conversion and conspiracy, the court finds the reasoning in Gress v. PNC Bank, National Association, 100 F. Supp. 2d 289 (E. D. Pa. 2000) persuasive. In Gress, the court predicted that Pennsylvania's Supreme Court would hold that common law claims of conversion and negligence would be displaced by 13 Pa. C S. A § 3420. In reaching its decision, the court compared the common law allegations of conversion to § 3420, entitled Conversion of Instrument, and concluded that the allegations asserted were covered by § 3420. The court agreed with other jurisdictions which have held that the UCC intends to produce inter jurisdictional uniformity as to the commercial activities it governs and that displacing common law tort liability with respect to such activities is vital to that project. Id. at 292 citing Miller-Rogaska, Inc. v. Bank One, Texas, N.A., 931 S.W. 2d 655, 662 (Tex. App. 1996) (finding conversion of negotiable instruments to have been displaced by the UCC); Roy Supply, Inc. v. Wells Fargo Bank, N.A. 39 Cal. App.4th 105146 Cal. Rptr.2d 309, 318(1995)(finding conversion and negligence actions concerning forged checks' payment to have been so displaced); D&G Equipment Co., Inc. v. First National Bank, 764 F.2d 950, 957 fn.4 (3d Cir. 1985) (noting that the UCC's conversion provision subsumed common law conversion). The court further reasoned that § 3420 is not confined to any particular legal theory and concluded that any negligence actions based on wrongfully paying a negotiable instrument to a person not entitled to possess the instrument were also displaced. Id.

Adopting the reasoning of Gress, this court concludes that §3420 displaces plaintiffs common law claims of conversion and negligence. In Counts IV(common law conversion) and

Count VI (common law negligent supervision)², plaintiffs primarily rely upon allegations that Wilson Check Cashing and Republic First Bank paid a check to a third person on the basis of a forged signature or endorsement. Such allegations are squarely covered by the terms of § 3420 of the Pa UCC entitled Conversion of Instrument which proscribes payment to a person not entitled to enforce the instrument or receive payment. Accordingly, since the UCC is to be liberally construed³ 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 laws of the various jurisdictions⁴, defendants preliminary objections to Count IV and Count VI⁵ are Sustained.

With respect to defendants remaining Preliminary Objections on legal sufficiency, defendants Preliminary Objections are overruled to Counts I, II and III. Defendants Preliminary Objections to Count V is Sustained. Plaintiffs are granted twenty days from the date of this order to amend the amended complaint as it pertains to Count V, if they so wish.

²Identified as Count IV in the amended complaint.

³13 Pa. C.S.A. § 1102(a).

⁴13 Pa. C.S.A. § 1102(b).

⁵Count VI, Negligent Supervision, of the amended complaint may also be dismissed pursuant to the economic loss doctrine. See IRPC, Inc. v. Hudson United Bancorp, supra.

D. Punitive Damages and Attorneys' Fees

Defendants Preliminary Objections to Plaintiffs request for punitive damages is Sustained.

With respect to defendants Preliminary Objections to Plaintiffs demand for attorneys' fees are Sustained. Under Pennsylvania law, "a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception." Snyder v. Snyder, 533 Pa. 203, 212, 620 A.2d 1133, 1138 (1993). Because plaintiffs have not provided any basis for their demand, it is improper and must be stricken.

Conclusion

For the reasons stated above, defendants preliminary objections to plaintiffs amended complaint are sustained in part and overruled in part.

The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT

C. DARNELL JONES, II, J.

Dated: September 23, 2003