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Summary of C. Nicholas Pereos, Ltd. v. Bank of America, N.A., 131 Nev. Adv. Op. 61553 (July 2, 2015)

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TORTS: UNAUTHORIZED BANK ACTIVITY

Summary

The Court considers an appeal from a district court summary judgment in a tort case concerning losses sustained due to unauthorized activity in a customer's bank account. The Court reversed the grant of summary judgment because genuine issues of material fact exist regarding whether respondent Bank of America acted reasonably in delivering bank statements, and also because the appellant's suit was not time barred under a one year period of repose.

Facts and Procedural History

Appellant, the Nicholas Pereos, Ltd. law firm, removed employee Mary Williams as a signator to the firm's operating account with respondent Bank of America in September of 2006. Pereos instructed Williams to let the Bank of America account cover any outstanding checks, but did not close the account. Nearly four years later, Pereos learned Williams embezzled money from that account since 2006, and notified Bank of America on January 28, 2010. The following month, Pereos sued Bank of America for allowing William's unauthorized signatures to withdraw funds, and for failing to make the statements available as required by NRS 104.4406(1).²

Bank of America moved for summary judgment arguing that Pereos' claim for unauthorized transactions were time-barred either because they were not reported within 30 days as per NRS 104.4406(4)(b) or within the one-year period of repose under NRS 104.4406(6) because the acts of wrong-doing were committed by the same person. Bank of America also alleged Pereos was on notice because the firm had at least some bank statements, but Pereos maintained they were insufficient to provide notice because they showed only check numbers and the amount of the check, and not a copy of the canceled checks or the date.

The district court granted summary judgment in favor of Bank of America, finding that NRS 104.4406(1) does not require check images and that the statements were sufficient to notify him of unauthorized activity on the firm's account. Pereos appealed.

¹ By Stacy Newman.

² NEV. REV. STAT. § 104.446(1) reads: "A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount and date of payment."

Discussion

This case is governed by NRS 104.4406, which regulates the relationship between banks and bank customers when unauthorized activity occurs in a customer's bank account. Generally, banks can use this statute to avoid liability for unauthorized activity when it provides customers with information that allows the customer to identify the unauthorized activity but the customer fails to timely act. The Court reviews a grant of summary judgment de novo, with all evidence viewed in a light most favorable to the non-moving party.

Summary Judgment is inappropriate because a genuine issue of material fact remains as to whether the account statements Bank of America provided to Pereos were sufficient to trigger Pereos, Ltd.'s duty to act.

To trigger NRS 104.4406's duty for customers to examine an account for unauthorized activity, a bank must either return or make available copies of canceled checks to the customer or furnish an account statement to the customer. The latter option requires the bank to provide the customer with enough information for the customer to reasonably identify the items paid on the account, such as the item number, amount and date of payment.

The Court finds summary judgment was inappropriate because there are genuine issues of material fact as to the manner of delivery and content of the statements Bank of America allegedly provided Pereos.

The district court erred in dismissing Pereos, Ltd.'s claims for embezzlement that occurred between January 2009 and January 2010.

The Court examined the interplay between the subsections of NRS 104.4406 to determine whether the 30 day and one year time bars apply differently depending on who is committing the unauthorized acts. Bank of America argues that the time bar occurs only to acts after the first account statement containing forged transactions because the subsequent wrongdoing was committed by the same person.

The Court disagrees and finds the one year time bar applies whether it is the same wrongdoer or not because NRS 104.4406(6) does not differentiate between a single forgery and multiple forgeries by the same wrongdoer. Thus, the one year statute of repose begins to run anew with each successive forgery.

Conclusion

Because there were genuine issues of material fact as to the content and delivery of Bank of America's account statements to Pereos, Ltd., and because Pereos was within the one year statute of repose, the Court reversed the grant of summary judgment and remanded the case to the district court for further proceedings.