

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

ALAN'S AUTO CENTER and LEASING COMPANY,	:	March Term 2010
	:	
Plaintiff,	:	No. 420
v.	:	
KING CHECK CASHING, INC.,	:	COMMERCE PROGRAM
ET.AL.,	:	
Defendants.	:	Control Number 10051189

OPINION

Presently before the court are defendant King Check Cashing, Inc.'s (hereinafter "King") preliminary objections to plaintiff Alan's Auto Center and Leasing Company's (hereinafter "Alan's Auto") amended complaint. The amended complaint alleges that between February 14, 2008 and May 6, 2008, Susan Davids, a bookkeeper working for Alan's Auto, wrote 58 company checks totaling \$82,681.40 and forged the signature of one of the company's principals on each check. The checks were made out either to Susan Davids, Timothy Smith, or Susan Eckert. The forged checks made payable to Susan Davids were taken to defendant King, a check cashing agency, to be cashed. King paid the value of the checks to Susan Davids, in the amount of \$62,486.40, then indorsed them and collected their value from defendant T.D. Bank (formerly Commerce Bank), where Alan's Auto has a company checking account. Alan's Auto demanded defendants to recredit their account. Defendants refused to pay.

On March 2, 2010, Alan's Auto filed a complaint against defendant King and T.D. Bank asserting claims for common law negligence and conversion as well as claims under Article III of the UCC, 13 Pa. C. S. A. §§ 3403, 3405, 3406 and 4401. On March 12, 2010, King filed preliminary objections to all counts in the complaint. On April 22, 2010, the preliminary objections were sustained and Alan's Auto was granted leave to amend the complaint.

On May 5, 2010, Alan's Auto filed an amended complaint. The amended complaint alleges claims for common law conversion and negligence as well as statutory claims under Article III of the UCC, 13 Pa. C. S. A. §§ 3403, 3405, 3406, 3420 and 4401.¹ On May 25, 2010, defendant T.D. Bank filed a cross-claim against King alleging breach of warranties under the Article III of the UCC. King has now filed preliminary objections to the amended complaint asserting legal and factual insufficiency.

DISCUSSION

Count I purports to state claims for common law conversion and common law negligence. In general, principles of law and equity supplement the UCC unless they are displaced by particular UCC provisions.² 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 laws of the various jurisdictions.³ The common law negligence and conversion claims are displaced by UCC provisions respecting wrongful payment of negotiable instruments.⁴ Based on the foregoing, the common law claims of negligence and conversion contained in Count I of the amended complaint are dismissed.

¹ The claims against King are alleged in Count I of the amended complaint. Count I alleges causes of action for common law negligence and conversion as well as the statutory claims under the UCC for conversion and negligence. Pleading more than one cause of action in a single count violates Pa. R. Civ. P. 1020(a). Notwithstanding this pleading irregularity, the court will address the merits of defendant King's preliminary objections.

² 13 Pa. C.S. § 1103. *See also* Peled v. Meridian Bank, 710 A.2d 620, 625 n.16 (Pa. Super. 1998) ("To the extent the UCC is silent as to the parties' rights, the UCC may be supplemented by general principles of law and equity. . . .").

³ 13 Pa. C. S. A. § 1102(b).

⁴ *See*, 13 Pa. C. S. § 1103; Metro Waste, Inc. v. Wilson Check Cashing, Inc., 2003 Phila.Ct.Com.Pl. LEXIS 56 (2003)(Jones, J.); United States Steel Corp. v. Express Enterprises of Pennsylvania, Inc., 2006 Phila. Ct. Com. Pl. LEXIS 149, (Philadelphia County, March 22, 2006); Travelers Indem. Co. v. Citibank Del., 2007 Pa. Dist. & Cnty.

Count I of the amended complaint also purports to state claims for conversion and negligence pursuant to the UCC. With respect to the conversion claim, 13 Pa. C. S. § 3420 incorporates the common law of conversion with respect to negotiable instruments, but limits the types of person who may bring such claims. Section 3420 provides as follows:

(a) General Rule.- 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 instrument for a person not entitled to enforce the instrument or receive payment. **An action for conversion of an instrument may not be brought by the issuer or acceptor of the instrument or a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a copayee.** (emphasis added).

An “issuer” is the maker or drawer of an instrument.⁵ A “drawer” is a person who signs or is identified in a draft as a person ordering payment.⁶ In this case, Alan’s Auto is the drawer, and therefore the issuer, so it may not bring a claim against King for conversion. The Official Comment to U.C.C. §3-420 explains:

“There is *no reason* why a drawer should have an action in conversion. The check represents an obligation of the drawer rather than property of the drawer. The drawer has an adequate remedy against the payor bank for recredit of the drawer’s account for unauthorized payment of the check.” (emphasis added).

Alan’s Auto was the drawer and the issuer. The signature on the company check identified a company principal as the “person ordering payment,” despite the fact that the

Dec. LEXIS 314 (Pa. County Ct. 2007) (Sheppard, J.) and Gress v. PNC Bank N.A., 100 F. Supp. 2d 289 (E. D. Pa. 2000).

⁵ 13 Pa.C.S.A. §3105(c).

⁶ 13 Pa.C.S.A. §3103(a).

signature was forged.⁷ Based on the foregoing, King's preliminary objections are sustained as it pertains to the conversion claim under § 3420.

With respect to the UCC negligence claim, the UCC contains its own comparative negligence provisions with respect to forged signatures.⁸ The U.C.C. recognizes that if Alan's Auto's conduct substantially contributed to the forgery, than Alan's Auto is precluded from asserting the forgery against King. However, the UCC also recognizes that if King failed to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to the loss, than the loss should be allocated between King and Alan's Auto.⁹

Here, the amended complaint alleges as follows:

20. Defendant "King" owed a duty to act in good faith to Plaintiff to act in good faith and only cash checks which were properly payable.
21. Defendant "King" owed a duty to act in good faith toward Plaintiff and to only cash Checks which contained an authorized signature.
22. Defendant "King's" principal was, at all times material hereto, personally acquainted with the principals of Plaintiff and its business.
23. Defendant King had cashed properly signed checks from Plaintiff to Susan Davids prior to February 14, 2008 and familiar with the usual amounts and frequency of such checks.
24. Defendant "King" negligently cashed the aforementioned checks which contained the forged signature of Mr. Dennis Winokur.
25. The forged signatures were ineffective.
26. The number and amounts of the Plaintiff's checks cashed by Susan Davids at Defendant King's facility put said Defendant on actual and/or constructive notice of a fraud being perpetrated against Plaintiff.

Since Alan's Auto alleges that King failed to exercise ordinary care in cashing the forged check based on the alleged existing relationship between King and Alan's Auto, a claim for

⁷ 13 Pa.C.S.A. §3103(a).

⁸ 13 Pa. C. S. A. §3406.

⁹ Id.

negligence under the UCC is adequately plead and the preliminary objection is overruled.

CONCLUSION

Based on the foregoing, the preliminary objections are sustained as to the common law claims of negligence and conversion, and as to the UCC conversion claim and overruled as to the UCC negligence claim.

BY THE COURT,

MARK I. BERNSTEIN, J.

