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BRAMNICK FOR SENATE, Plaintiff, v. VALLEY NATIONAL BANCORP, JPMORGAN CHASE BANK, JOHN DOES 1-10, XYZ CORPORATIONS 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, UNION COUNTY Docket No.: UNN-L-3147-23 Hon. Mark P. Ciarrocca, P.J.Cv.

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Defendant, JPMorgan Chase Bank, N.A. ("Chase"), by and through its attorneys, Sherman Atlas Sylvester & Stamelman, LLP, respectfully submits this Reply Memorandum of Law in further support of Chase's Motion to Dismiss (the "Motion") the Complaint filed by plaintiff, Bramnick for Senate ("Plaintiff"), in its entirety as against Chase, for failure to state a claim.

PRELIMINARY STATEMENT

Plaintiff's flimsy opposition to the Motion all but confirms that Chase's Motion is meritorious and should be granted, and the Complaint dismissed. At the core of Plaintiff's opposition papers, Plaintiff readily admits that Chase complied with the applicable law in accepting the wire transfer at issue, which is the dispositive issue to be determined on this Motion.

Although Plaintiff acknowledges, as it must, that Chase fully complied with Article 4A of the UCC, which expressly sets forth a bank's obligations with regard to processing and canceling wire transfers, Plaintiff improperly argues that this Court should foist upon Chase a novel common-law duty unsupported by any applicable authority, and effectively set aside the UCC in doing so. Nevertheless, for the reasons discussed herein, this Court should decline Plaintiff's invitation to ignore Article 4A and applicable law, and instead grant Chase's Motion.

This Court should also reject Plaintiff's inappropriate attempt to submit documentary evidence that is not referenced in the Complaint, as well as a certification of a representative of Plaintiff, which is patently improper in connection with a pre-answer motion to dismiss under Rule 4:6-2(e). However, even were the Court to consider Plaintiff's inappropriately submitted documentary and certification -- which it should not -- the Court must still grant the Motion on the ground that Plaintiff has

failed to establish that Chase had any legal obligation to cancel the wire transfer, or recover the transferred monies from the beneficiary. Significantly, contrary to the certification improperly submitted by Plaintiff, Plaintiff has, in actuality, presented evidence that Chase was unaware of Plaintiff's alleged transposition error in the wire transfer instructions until after the money had been withdrawn from the beneficiary's account.

Further, although Plaintiff claims that it is a "customer" of Chase (as defined under the UCC), and, therefore, Chase owed a duty to Plaintiff to retrieve and return the money, Plaintiff offers no legal support for its position, since none exists. Moreover, regardless of whether Plaintiff is a customer of Chase, UCC Article 4A requires Chase to make the proceeds of a wire transfer available to the beneficiary of the transfer, and Plaintiff has identified no authority for this Court to set aside the prevailing law simply to accommodate Plaintiff's wishes.

Accordingly, for the reasons set forth here, Chase respectfully requests that the Court issue an Order, pursuant to Rule 4:6-2(e), dismissing the Action against Chase in its entirety, with prejudice.

LEGAL ARGUMENT

I. PLAINTIFF CONCEDES, AS IT MUST, THAT CHASE COMPLIED WITH ITS OBLIGATIONS UNDER THE UCC

In its opposition papers, Plaintiff admits that Chase was permitted under Article 4A to accept the wire transfer authorized by Plaintiff:

> ***Chase goes to great lengths in its brief in purporting to have handled the mistaken wire transfer in compliance with the law*** (emphasis added), claiming that "Chase, as the beneficiary bank was permitted to accept the wire transfer as identified and authorized by the Plaintiff, notwithstanding any alleged discrepancy between the named beneficiary of the transfer and the name of the owner of the account maintained at Chase." ***While this may indeed be true***

> (emphasis added), Chase's argument – understandably – fails to address the elephant in the room: that Chase, despite being on notice of the mistaken wire transfer, sat on its hands for *a week* (emphasis in original) while the Plaintiff's $36,000 sat in an incorrect account.

(*See* Plaintiff's Brief in Opposition, p. 4). Thus, since Plaintiff has acknowledged that Chase "handled the mistaken wire transfer in compliance with the law," Plaintiff has effectively conceded that its claims are unsupported, and such claims must therefore be dismissed, as a matter of law.

Notwithstanding its admission that Chase complied with its obligations under the law, Plaintiff claims - incorrectly – that, contrary to the express language set forth in UCC § 4A-211, Chase was somehow required to recover the transferred monies from the beneficiary after Chase received notice of Plaintiff's alleged error. (*Id*. at p. 5). However, in doing so, Plaintiff inappropriately seeks to have this Court rewrite the express language set forth in UCC § 4A-211, to include an obligation where none exists in the statute itself. *See* UCC § 4A-211(c)(2).

As much as Plaintiff wishes it not to be true, Chase has established that (i) UCC § 4A-207(2) unequivocally permits Chase to have relied on the account number provided by Plaintiff as sufficient identification of the proper beneficiary of the transfer, and (ii) Chase is not obligated to recover the transferred monies under UCC § 4A-211. Further, although UCC § 4A-211(c) provides that "[a]fter a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank," there are no allegations set forth in the Complaint to support a conclusion that Valley National Bank ("Valley") agreed to the cancellation of the payment order. Indeed, as Plaintiff admits, Plaintiff did not notify Valley of

Plaintiff's alleged transposition error *until nine days* after the transfer had been authorized. (*See* Plaintiff's Complaint, ¶¶ 5, 6).

Finally, Plaintiff's improperly submitted documentary evidence and certification[1] do not refute the unavoidable -- and undisputed -- fact that Chase has fully complied with its obligations under the UCC. Significantly, although Plaintiff claims that Valley received notice from Plaintiff of its alleged mistaken wire transfer instructions, Plaintiff has failed to allege any facts to support a conclusion that Chase received notice of the error at that time. In actuality, as the documentary evidence makes clear, Chase was not aware of Plaintiff's error until July 4, 2023. (*See* Albano Cert., ¶ 3 and Exhibit B annexed thereto).

II. PLAINTIFF IS NOT A CUSTOMER OF CHASE AND THEREFORE CHASE OWES NO DUTY TO PLAINTIFF

Plaintiff next argues, once again, incorrectly, that Plaintiff may assert a common law negligence claim against Chase on the grounds that Plaintiff is a "customer" of Chase, as defined under UCC § 4A-105.[2] (*See* Plaintiff's Brief in Opposition, p. 6). Plaintiff's interpretation of this provision is simply wrong, since Chase did not agree to receive payment orders directly from Plaintiff, nor does Plaintiff submit any facts to establish otherwise.

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[1] Plaintiff attempts to introduce evidence outside of the Complaint in opposition to Chase's Motion to Dismiss by attaching the Certification of Michelle Albano (the "Albano Cert.") and other documentary evidence. Plaintiff's submissions are patently improper under the rules governing pre-answer motions to dismiss, and should be rejected. *See* Rule 4:6-2 and *see also Rieder v. State Dep't of Transp.*, 221 N.J. Super. 547, 552 (App. Div. 1987) (Inquiry under R. 4:6-2(e) is limited to the legal sufficiency of the alleged facts apparent on the face of the challenged claim and "the court may not consider anything other than whether the complaint states a cognizable cause of action." (*citing P. & J. Auto Body v. Miller*, 72 N.J. Super. 207, 211 (App. Div. 1962))).

[2] Pursuant to UCC § 4A-105, a customer is defined as "a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders."

Thus, as Chase established in its moving papers, a bank does not owe any duties to a non-customer, such as Plaintiff, in the absence of demonstrable evidence that a special relationship exists. *See, e.g., City Check Cashing, Inc. v. Mfrs. Hanover Trust Co.,* 166 N.J. 49 (2001) ("[A]bsent a special relationship, courts will typically bar claims of non-customers against banks."); *Brunson v. Affinity Fed. Credit Union*, 199 N.J. 381, 400 (2009) (same); *Wolens v. Morgan Stanley Smith Barney, LLC*, 449 N.J. Super. 1, 4 (App. Div. 2017) (same); *De Fazio v. Wells Fargo Bank Nat'l Assoc.*, No. 2020 WL 1888252, at *5 (D.N.J. April 16, 2020) (finding bank did not owe non-customer duty in processing wire transfer and maintaining account).

Curiously, Plaintiff simultaneously attempts to distinguish, and rely upon, the decision in *City Check Cashing, Inc.* by mischaracterizing the New Jersey Supreme Court's decision in that case to argue that Chase owes a duty to investigate the errors of Plaintiff, a non-customer of Chase, under the circumstances present in this action. (*See* Plaintiff's Brief in Opposition, pp. 7-8). In doing so, Plaintiff cites the following passage from the Court's decision: "In actions based on nonfeasance, as is the case here, it is necessary to find some definite relationship between the parties, of such a character that social policy justified the imposition of a duty to act." (*See* Plaintiff's Brief in Opposition, p. 7). Plaintiff also acknowledges that the Supreme Court further stated that, "unless the facts establish a special relationship between the parties created by agreement, undertaking or contact, that gives rise to a duty, the sole remedies available are those provided in the [UCC]." *Id.*

Here, Plaintiff contends that the sole fact on which the Court could find that a special relationship existed between the parties, as the Court found in *City Check Cashing, Inc.*, is an alleged communication on or about June 21, 2023 from *Valley*

National Bank,[3] not Plaintiff, to Chase advising of Plaintiff's alleged transposition error. (*Id*. at p. 8). Plaintiff claims that the alleged June 21 communication between Valley and Chase constitutes a "contact" that establishes a special relationship between the parties. (*Id*). However, unlike in the plaintiff in *City Check Cashing*, which established evidence of a telephone conversation directly between plaintiff and the bank, here, Plaintiff fails to identify any alleged "contact" between Plaintiff and Chase that could even arguably give rise to a finding of a special relationship.[4]

Plainly stated, Plaintiff, a non-customer of Chase, has failed to, and cannot allege facts sufficient to support a finding that a special relationship existed between the parties.[5] Accordingly, Plaintiff's common law negligence claim against Chase must be dismissed, as a matter of law.

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[3] Plaintiff has failed to identify the alleged June 21, 2023 communication between Valley and Chase, nor has Plaintiff submitted any evidence that such communication occurred. In fact, as discussed, *infra* at n. 4, the documentation inappropriately submitted by Plaintiff in opposition to the Motion reflects only that Chase received notice of the alleged mistaken wire transfer from Valley on July 4, 2023.

[4] Although the improperly submitted Albano Cert. includes a statement that Ms. Albano "then corresponded with both banks in an effort to decipher the whereabouts of the mistaken wire transfer," Ms. Albano fails to identify the content of the alleged "correspondence," or the date(s) thereof. Instead, Ms. Albano attaches, again, improperly, a copy of a letter from Chase, dated July 11, 2023, that does not reference any such correspondence from Ms. Albano, or that Chase was aware of Plaintiff's error until Chase received Valley's recall request on July 4, 2023, thirteen days after the wire transfer was accepted and 7 days after the beneficiary withdrew the transferred monies. (Albano Cert., Exhibit B). Clearly, even were the Court to consider the inappropriately submitted Albano Cert., it is patently insufficient to withstand dismissal of Plaintiff's negligence claim.

[5] Although not alleged in the Complaint, Plaintiff inappropriately includes an argument in its opposition seeking to have this Court blame Chase for refusing to disclose the beneficiary's information. However, even assuming, *arguendo*, that Plaintiff had alleged such a claim in the Complaint, it would nevertheless be meritless. Chase is not obligated to voluntarily disclose confidential account information of its customers, and is instead required to maintain such confidentiality.

CONCLUSION

For all of the foregoing reasons, defendant, JPMorgan Chase Bank, N.A., respectfully requests that Plaintiff's Complaint be dismissed as against it, in its entirety and with prejudice, pursuant to Rule 4:6-2(e).

Respectfully Submitted,

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By: */s/Tyler J. Kandel*
Tyler J. Kandel

DATED: March 8, 2024