23-1945

United States Court of Appeals
for the
Fourth Circuit

In re: ESTATE OF LARRY W. COOK, Deceased

JANINE SATTERFIELD, in her capacity as Administrator for the Estate of Larry W. Cook, Deceased,

Plaintiff/Appellant,

– v. –

WELLS FARGO BANK, N.A.; NAVY FEDERAL CREDIT UNION,

Defendants/Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

PETITION FOR REHEARING/ REHEARING EN BANC

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INTRODUCTION

Janine Satterfield ("Ms. Satterfield"), as Administrator of the Estate of Larry W. Cook, petitions for rehearing, both by the panel and the Court *en banc*.

Rehearing by Panel

The panel should reconsider its decision, based on the following points of law and fact, overlooked by the panel, to wit:

A. Article 4A of the U.C.C. does not preempt causes of action that lie outside the **mechanics** of a wire transfer, since banks owe their customers a duty of care, and chose to act outside of the provisions of Article 4A when making a report to Adult Protective Services pursuant Va. Code § 63.2-1606, but took no other actions even after being told that Larry Cook was an adult in need of services.

B. The panel suggested that since Mr. Gray was listed in the Fairfax APS report, which Ms. Satterfield possessed prior to filing, she could have secured Mr. Gray's affidavit not just before judgment, but before filing her Complaint, except that he left the employ of Fairfax APS, and stated in his Affidavit that he was a former employee who came forward after an NBC4 broadcast. JA 711 ¶¶3 5.

Rehearing En Banc

The full court should review the panel's decision because it involves questions of exceptional importance for the elderly and victims of international scams, which is whether a bank can be held liable for ignoring warning signs of a fraudulent scheme, directions from Adult Protective Services and an elderly person's prior banking history to continue to process wires - 74 times for a total of $3,631,200. This case also involves a question of conflicts with decisions of other United States Courts of Appeals, to wit: *Patco Constr. Co. v. People's United Bank*, 684 F.3d 197, 215-16 (1st Cir 2012); *Ma v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 597 F.3d 84, 89-90 (2nd Cir. 2009); and *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267, 1276 (11th Cir. 2003).

BACKGROUND

Larry W. Cook ("Larry") was a highly decorated United States Navy veteran. He retired from military service as a Commander in 1992, after a 34-year career. JA 213 ¶¶ 13(a) and (d). He was a nuclear submarine officer, having received numerous service awards. JA 213 ¶¶ 13(d)-(e). He had a thriving post-retirement career as a civilian government contractor. JA 214 ¶ 13(f). He was highly intelligent and capably managed his own affairs before his health declined. JA 214 ¶ 14.

Before 2019, he was a meticulous record keeper who managed both his affairs and his mother's. JA 214 ¶¶ 14, 18, 19; JA 215 ¶ 27. That all changed on July 15, 2019 when, at age 74, he suffered an acute stroke. JA 215 ¶ 28. The stroke produced cognitive deficits unlikely to significantly improve over time, and left him highly vulnerable to undue influence and financial exploitation. JA 216 ¶ 37.

On October 5, 2020, Larry received an unsolicited email indicating that it came from the company "Amazon". JA 216-217 ¶ 42; JA 321-325. Over the next two months, he began falling for an elaborate and fraudulent scam. This was the very scam that appellee Navy Federal Credit Union ("NFCU"), where Larry maintained a large account, flagged to its depositors in a customer alert. JA 217 ¶ 43; JA 326-327.

The next day, October 6, Larry sent out a wire from his NFCU checking account. JA 217 ¶ 45. That same day, he contacted NFCU to check his account balance and stated, "We're moving money around due to an infraudulent [sic] charge on another system, and I need to validate what the current balance is." JA 217 ¶ 46. No one at NFCU noticed the variation in his language. On November 10, five days after Wells Fargo Bank ("Wells Fargo") denied a wire request, Larry was able to successfully send the same wire, and many more, through NFCU. JA 219 ¶ 57; JA 328-486.

On December 15, after 28 more wires went out, a representative of NFCU finally reported Larry to Fairfax County Adult Protective Services ("Fairfax APS"). JA 219 ¶ 58; JA 494-507. At no time did NFCU stop wiring money out; it instead continued sending documents to continue wire transfers. JA 220 ¶¶ 66 and 67. In all, $3,631,200 vanished from Larry's account, sent to individuals maintaining accounts with a bank in Thailand.

Sean C. Gray ("Mr. Gray") was a social worker with Fairfax APS, and was assigned the Larry W. Cook matter. JA 710 ¶¶3, 4 & 8. Mr. Gray stated that he tried to explain to Larry that he was the victim of financial exploitation. JA 711 ¶11. Larry did not believe Mr. Gray, and told him so. JA 711 ¶ 12. But Larry did not seem to know reality; he was unable to explain what the transfers were for and was not able to identify who he was wiring money to. JA 711 ¶ 13.

Mr. Gray perceived that Larry was incapable of understanding what was happening. JA 711 ¶ 14. He then spoke with NFCU, saying that Larry had a mental-capacity issue; he believed Larry to be incapacitated. JA 711 ¶¶16, 17. But despite its knowledge that Larry was incapacitated and the victim of financial exploitation, NFCU refused to act to protect Larry. JA 711 ¶ 19.

REASONS FOR GRANTING THE PETITION

I. THE RULING IN THIS CASE IS A QUESTION OF EXCEPTIONAL IMPORTANCE IN THAT ARTICLE 4A DOES NOT AND SHOULD NOT PREEMPT EVERY CAUSE OF ACTION AGAINST A BANK, ESPECIALLY GIVEN THE FACTS PRESENT IN THIS ACTION.

Article 4A of the U.C.C. does not preempt causes of action that lie outside the **mechanics** of a wire transfer, notwithstanding the Panel's decision that this case lies within the ambit of Article 4A. Article 4A of the U.C.C. was intended to provide a cohesive body of law involving the **transactional side** of processing wires:

> The rules of the article are transactional, aimed essentially at resolving conflicts created by erroneous instruction or execution of payment orders, whether by the originator, by an intermediary or receiving bank, or by the beneficiary's bank. A major objective is to reduce and control risks that arise in payment systems by defining when and how rights and obligations are incurred and discharged. As organized by the article, funds transfer errors fall into three main categories . . . None of these three areas, nor any of Article 4-A's miscellaneous provisions, directly addresses the allegations here.
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> *Sheerbonnet, Ltd. v. American Exp. Bank, Ltd*., 951 F. Supp. 403, 412 (S.D.N.Y. 1995)

A. EVENTS THAT OCCUR OUTSIDE OF THE TRANSACTING THE WIRE TRANSFER MAY FORM THE BASIS FOR A CAUSE OF ACTION AGAINST A BANK.

In this case, there were no incorrect instructions. There were no incorrect account numbers written on the requests for wires. But, there were industry warnings, red flags, multiple indicia of fraud, an incapacitated customer and other events that occurred. The events before and after a wire transfer are not covered by the U.C.C.:

> However, to the extent plaintiffs' claims are based on MidFirst's actions before and after the processing of the wire transfer, such claims are not preempted. Indeed, "the UCC does not displace all common law actions based on all activities surrounding funds transfers." *Venture Gen. Agency, LLC*, 2019 U.S. Dist. LEXIS 129032, 2019 WL 3503109, at *4 (internal quotation marks and citation omitted).
>
> Here, plaintiffs maintain that "[t]he focus of [plaintiffs'] claims against MidFirst is what it did or failed to do both before and after the fraudulent wire transfers," and "[t]he U.C.C. wire transfer provisions do not address a bank's duties outside of the mechanics of administering a wire transfer." (Dkt. No. 29 at 6-7.) Specifically, plaintiffs point to MidFirst's conduct purportedly taken before and after the wire transfers: Accepting these allegations as true, and construing them in the light most favorable to them, plaintiffs' claims are not preempted.

Pedersen v. MidFirst Bank, 527 F. Supp. 3d 188, 193-194 (N.D.N.Y. 2021).

None of the facts, which happened either before or after the wires were sent, fit within the parameters of Article 4A:

- The Consumer Financial Protection Bureau Recommendations and Report for Financial Institutions on Preventing and Responding to Elder Financial Exploitation (JA 513 to574) dated March 2016, warning and explaining what financial exploitation is, explaining why it is a problem and identifying best practices for financial institutions to employ in order to identify and stop elder financial exploitation;
- Larry called NFCU warning, "We're moving money around due to an infraudulent [sic] charge on another system, and I need to validate what the current balance is", with NFCU not picking up on language variation or "we're" (JA 217 ¶ 46);
- Larry was a customer and account holder with NFCU and Wells Fargo since the 1970's, and given this long history of Larry's daily transactions and standard purchases, should have seen that prior to October 6, 2020, Larry had never previously sent any international or domestic wire (JA 218 ¶53);
- NFCU warned its customers against the fraud Larry fell victim to (JA 217 ¶ 43; JA 326-327);

- The Federal Trade Commission Consumer Advice Consumer Alert Dated December 3, 2020 (JA 325-327) warning of susceptibility of elderly to scams;
- Wells Fargo refused Larry's wires but continued to process as the intermediary bank (JA 212 ¶ 8; JA 218 ¶¶ 54-56; JA 219 ¶ 57; JA 328-486);
- The wire transfers were to different people, with locations that were storefronts or back alleys or most likely fictitious, and what were the chances that an individual with a clean banking and creditor background like Larry's would all of a sudden have 74 creditors, all out of the country and for virtually the same amount every time ($49,500) (JA 222 ¶ 76 & 77; JA 328-493);
- NFCU reported Larry's wires to Fairfax APS for investigation (JA 219 ¶ 58; JA 494-507);
- NFCU participated in the investigation;
- NFCU received correspondence from Fairfax APS that Larry was an adult in need of services.

While the particular fraud scheme that victimized Larry involved wire transfers, that fact alone does not, *ipso facto*, force this issue into the narrow confines of Article 4A. If it does, then there really are no exceptions to Article

4A, which is contrary to the Virginia Supreme Court's holding in *Schlegel v. Bank of Am., N.A.*, 271 Va. 542, 552, 628 S.E.2d 362 (2006).

B. WHEN A BANK TAKES ACTIONS OUTSIDE OF THE CONFINES OF ARTICLE 4A OF THE U.C.C., THERE CAN BE NO PREEMPTION.

The Supreme Court of Virginia held, "While Article 4-A should be the first place parties look for guidance when they seek to resolve claims arising out of a funds transfer, 'the article has not completely eclipsed the applicability of common law in the area." *Schlegel v. Bank of Am., N.A.*, 271 Va. 542, 552, 628 S.E.2d 362 (2006). The question in this case is whether the banks' actions in continuing to send wires, while simultaneously cooperating with a voluntary report under Va. Code § 63.2-1606 brings this situation out of those contemplated by Article 4A. It is Appellant's contention that it, indeed, does.

The issue in this case centers on what duty the banks owed to Larry before issuing the transfers. A Virginia circuit court has held, in interpreting the comment, that

> The Official Comment of Virginia Code Section 8.4A-102 ... sets forth that principles of law or equity may not be relied upon in order to create rights, duties, and liabilities which contradict those stated in Article 4A. **The Comment, however, does not state the drafters intended to completely prohibit a party's reliance on law and equity claims. They merely meant to narrow and restrict their application.**

> *AG4 Holding, LLC v. Regency Title & Escrow Servs*., 98 Va. Cir. 89, 98 (Fairfax Cir. 2018) (emphasis added).

As the Northern District of Texas District Court held, if the record shows that a party knew or should have known of additional facts when it took the complained-of action, then courts are more likely to find that preemption does not apply. *Consorcio Indus. De Construccion Titanes, S.A. DE C.V. v. Wells Fargo Bank, N.A.*, No. 3:10-CV-2111-K, 2012 U.S. Dist. LEXIS 200382, at *7 (N.D. Tex. July 12, 2012) (N.D. Tx. July 12, 2012).

Banks owe a duty of care to their customers. *See, e.g., Valente v. TD Bank, N.A.*, 92 Mass. App. Ct. 141, 82 N.E.3d 1082, 1087 (Mass. Ct. App. 2017). In *Doe v. Deutche Bank Aktiengesellsschaft*, No. 22-cv-10018 (JSR), 2023 U.S. Dist. LEXIS 75503, at *50-51 (S.D.N.Y. May 1, 2023), a district court ruled that banks owe duties of reasonable care: "JP Morgan and Deutsche Bank, like everyone else, owed both Jane Does the ordinary duty of reasonable care. This duty can extend to actions undertaken by third parties. R4A-211(f): Phys. & Emot. Harm § 19 …." The court continued, "Banks are not exempt from this duty," and that the plaintiffs "plausibly assert" that two major banks owed them a duty in connection with the crimes of Jeffrey Epstein. *Id*.

In a recent opinion, this Court defined the conduct of "undoing" wire transfers as falling within Article 4A. *Blue Flame Med. LLC v. Chain Bridge*

Bank, N.A., Nos. 21-2218, 21-2219, 2023 U.S. App. LEXIS 6547, at *18-20 (4th Cir. Mar. 20, 2023), cert. denied 2023 U.S. LEXIS 3152 (U.S., Oct. 2, 2023) In this case, the banks are alleged to have engaged in actions outside of Article 4A. NFCU invoked Va. Code § 63.2-1606, and reported Larry to Fairfax APS, participated in the investigation, and "monitored" the accounts. The U.C.C. provides for no consideration of Title 63.2.

This is consistent with a previous holding by this Court that "**Subpart B does not address the duties, obligations and liabilities applicable to bank functions having nothing to do with a Fedwire transfer**." *Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220, 224 (4th Cir. 2002) (emphasis added). The *Eisenberg* Court concluded on the same page of the opinion,

> State law claims premised on conduct not covered by Subpart B cannot create a conflict with or duplicate the rules established in Subpart B. . . . . The two findings would touch on distinct and independent conduct by Wachovia. We hold that Eisenberg's negligence claims . . . are not preempted by Regulation J.

Here, the banks permitted a demonstrably incapacitated individual – about whom NFCU was sufficiently concerned to report to Fairfax APS– to continue to process payments, knowing he was being financially exploited. It is clear that reports to Adult Protective Services, etc. fall outside of the definition of "funds transfer." Va. Code § 8.4A-104. This case should be reversed and remanded.

C. WIRE FRAUD SCAMS OF THE TYPE LARRY FELL VICTIM TO WERE CLEARLY NOT SCENARIOS CONTEMPLATED BY ARTICLE 4A.

When the U.C.C. was adopted, there were no fraud schemes quite like the well-orchestrated one to which Larry fell victim. The banks themselves warned of the fraud schemesand knew Larry's fifty year banking history. The First Circuit Court of Appeals allowed claims to go forward in a similar situation:

> This language does not, on its face, displace Patco's Count III for breach of contract or Count IV for breach of fiduciary duty. We adopt the test, as set forth in the commentary, that Article 4A embodies an intent to restrain common law claims only to the extent that they create rights, duties, and liabilities inconsistent with Article 4A.
>
> The common law claims of breach of contract and breach of fiduciary duty are not inherently inconsistent with Patco's Article 4A claim. At least in theory, there could be, either by contract or through assumption of fiduciary duties, higher standards which are imposed on the bank. Indeed, courts have held that plaintiffs may turn to common law remedies to seek redress for an alleged harm arising from a funds transfer where Article 4A does not protect against the underlying injury or misconduct alleged. We vacate the dismissal and leave the issue of these two causes of action open on remand to be considered anew.
>
> *Patco Constr. Co. v. People's United Bank*, 684 F.3d 197, 215-216 (2012).

This situation – seventy-five (75) international wires – being sent over a truncated time period of just seven months, labeled as "loan repayments" by

an individual who was clearly believed to be the victim of financial exploitation (thereby meriting a report to Adult Protective Services pursuant to Va. Code § 63.2-1606), is a situation not contemplated by any part of Article 4A. NFCU voluntarily reported Larry and took steps for his protection pursuant to Va. Code § 63.2-1606. The argument is not that they should not have – the argument is that upon taking that step and learning he was an adult in need of services, they took an action not contemplated by Article 4A, and thus, the claims should continue forward to trial.

D. ARTICLE 4A PRESUMES THE SENDER IS COMPETENT TO MAKE A PAYMENT ORDER.

If the Court accepts that every transaction initiated by Larry is governed solely by Article 4A because Larry meets the definition of a "sender," who instructed the Banks, which are "receiving banks," thus constituting a "payment order" as those terms are defined in Va. Code. § 8.4A-103(a), there must be consideration of the fact that Larry was incapacitated at all relevant times and therefore, he was not competent to make a payment order. Article 4A was created to govern complex financial transactions, often involving large sums of money. Implicit in these transactions is that the sender is a competent person who is making the payment order of their own free will. Larry was not just a victim of a scam, he suffered from cognitive defects rendering him

incapacitated. JA 216 ¶ 37. He lacked the ability to make rational decisions about his banking.

Perhaps a financial institution that is unaware of its customer's cognitive defect or incapacity can fully cloak itself in the protections Article 4A, but that is not the case here. NFCU had actual knowledge that Larry was vulnerable. JA 494-507. NFCU reported Larry's wire transfers to Fairfax APS for investigation on December 15, 2020 and received confirmation from Fairfax APS that he was at risk for exploitation on January 27, 2021, when Fairfax APS spoke directly with an NFCU employee to explain the situation and request that NFCU monitor Larry's wire transfers. JA 219 ¶ 58-59; JA 494-507. At some point prior to cessation of the wire transfers due to Larry's death, NFCU was on notice that Larry was not competent to be a "sender" as contemplated by Article 4A. Whether that date is when Fairfax APS instructed NFCU to monitor Larry's transfers, when NFCU made the report to Fairfax APS, or some other date is up to the trier of fact because once Larry lacked the capacity to be a "sender," he was incapable of making a "payment order." Thus, this matter should be reversed and remanded.

II. OTHER CIRCUITS HAVE RULED DIFFERENTLY THAN THE FOURTH CIRCUIT IN THIS SPECIFIC CASE.

The First Circuit in *Patco Constr. Co. v. People's United Bank*, 684 F.3d 197 (1st Cir 2012), vacated the district court's dismissal of claims for breach of contract and breach of fiduciary duty on the grounds that such claims are not inherently inconsistent with Article 4A. *See* i*d*. at 216. Even though the dismissal of the negligence claim was affirmed, the First Circuit's decision was based on the particular facts of the case. *See id*. *Patco Constr. Co.* involved a series of fraudulent wire transfers that the bank's own security measures flagged as "high risk" due to the fact that the transfers originated from non-authenticated devices, from an IP address the Bank's customer had never used before, were of amounts exceeding the past known practices of the customer, and were directed to accounts in the name of individuals to whom the customer had never sent money before. Similar and identical "red flags" are present here with Larry's case.

Further, in *Regions Bank v. Provident Bank, Inc.*, 345 F.3d 1267 (11th Cir. 2003), the Eleventh Circuit found that it was not the intent of Article 4A to be used as a shield for fraudulent activity. *See id.* at 1276. Therefore, if a receiving bank knew or should have known that funds it received were fraudulently obtained, state law claims seeking a bank to disgorge those funds could not be

inconsistent with the goals or provisions of Article 4A. *See id*. Why is this Court willing to interpret Article 4A in an entirely different manner? Why is it permissible for NFCU, who clearly knew there was fraudulent activity afoot due to its report to Fairfax APS, be permitted to use Article 4A as a shield, throwing the intent of the drafters of Article 4A out the window, when the Eleventh Circuit was unwilling to allow that?

Finally, the Second Circuit also has been unwilling to establish a blanket rule that Article 4A precludes all common law claims or to find that all common law claims are per se inconsistent with the regime of Article 4A. In *Ma v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 597 F.3d 84 (2009), while the district court's granting of summary judgment on statute of limitations ground was affirmed, the Second Circuit unequivocally recognized that claims that are "not about the mechanics of how a funds transfer was conducted may fall outside" of Article 4A; and Article 4A is not intended to shield banks from all fraud claims or other common law claims. *Id*. at 89. Rather, "the critical inquiry is whether [Article 4A's] provisions protect against the type of underlying injury or misconduct alleged in a claim." *Id*. at 89-90. Given the divergent views of the circuits, this case should be granted rehearing.

III. THE PANEL RELIED HEAVILY UPON THE VIRGINIA COURT OF APPEALS' DECISION IN LENTZ INSTEAD OF HARMONIZING *LENTZ*, *SCHLEGAL* AND THE PARTICULAR FACTS OF THIS CASE.

In addition to the other reasons stated herein, the Panel's reliance upon *Navy Fed. Credit Union v. Lentz* is somewhat misplaced. First, the Lentz decision is from the Virginia Court of Appeals, Virginia's intermediate appellate court. *See Navy Fed. Credit Union v. Lentz*, 78 Va. App. 250, 890 S.E.2d 827 (Va. Ct. App. 2023). The *Lentz* case is distinguishable from this case, and more importantly, falls within the ambit of *Schlegal*, a Supreme Court of Virginia decision. First, and most importantly, Lentz complained that NFCU did not report the fraud per Va. Code § 63.2-1606, which is a voluntary statutory provision. *See Lentz*, 78 Va. App. at 258. In this case, NFCU did make the report. By making the report, NFCU knew or had a suspicion of financial exploitation. This fact alone distinguishes the present case from *Lentz*, and thus, this case should have been reversed and remanded for trial on the merits.

In addition, the Court of Appeals left the door open by stating, "we assume without deciding that a common law duty of care may have been owed to Lentz by NFCU." *Lentz*, 78 Va. App at 259. Because Lentz did not allege any fact that brought the matter outside of Article 4A, the Virginia Court of Appeals ruled preemption prevented Lentz from pursuing her complaint.

Here, many steps were taken to bring NFCU outside of Article 4A – steps not contemplated by the statute. Once those steps were taken, Article 4A should cease providing cover to the banks. Thus, this case should have been reversed and remanded.

JANINE SATTERFIELD, Individually and in Her capacity as Administrator for the Estate of LARRY W. COOK

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Dated: August 20, 2025 /s/ Kimberley Ann Murphy
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