

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

IN RE: ESTATE OF LARRY W. COOK	)	
Deceased	)	
	)	
JANINE SATTERFIELD, in her capacity as	)	
Administrator for the Estate of Larry W.	)	
Cook,	)	
	)	
Plaintiff,	)	Civil Action No. 1:23-cv-00009-CMH-LRV
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A., et al.,	)	
	)	
Defendants.	)	

**DEFENDANT WELLS FARGO BANK, N.A.'S MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

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Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), by counsel, pursuant to Fed. R. Civ. P. 12(b)(6), submits this memorandum of law in support of its motion to dismiss the Amended Complaint (“Complaint”) filed by Plaintiff Janine Satterfield, in her capacity as Administrator of the Estate of Larry W. Cook (“Plaintiff”).

INTRODUCTION

Plaintiff’s claims arise out of a series of wire transfers made by Larry W. Cook (“Mr. Cook”), decedent and former customer of both Wells Fargo and Navy Federal Credit Union (“Navy Federal”), prior to his death. Plaintiff, Mr. Cook’s niece and the administrator of his Estate, contends that Mr. Cook was the victim of an elaborate scam and initiated the wires without knowledge that he was being victimized. Mr. Cook completed seventy-five wire transfers in total, amounting to \$3.6 million dollars; however, only a single wire transfer was carried out from Mr. Cook’s Wells Fargo checking account, in the amount of \$49,500.00.

As acknowledged in the Complaint, said wire transfer from Mr. Cook’s Wells Fargo checking account was processed in direct compliance with Mr. Cook’s instructions. Indeed, Wells Fargo carried out the transaction Mr. Cook initiated, the money belonged to Mr. Cook and was his money to transfer, and no liability whatsoever should attach to Wells Fargo.

Notwithstanding the foregoing, based on scant factual allegations, Plaintiff sets forth only Count II of the Complaint against Wells Fargo, contending that it breached the implied covenant of good faith and fair dealing under Virginia’s Uniform Commercial Code (“UCC”). In particular, Plaintiff contends that Wells Fargo “failed to adequately investigate the suspicious transactions and transfers coming from Mr. Cook’s account[.]” Consequently, Plaintiff seeks to recover the funds that Mr. Cook wired from his Wells Fargo account, plus interest, attorney’s fees and costs.

However, Plaintiff’s sole claim against Wells Fargo fails as a matter of law. Indeed, Plaintiff fails to set forth a viable claim against Wells Fargo, as Virginia does not recognize a

stand-alone claim for breach of the covenant of good faith and fair dealing. Likewise, to the extent that Plaintiff seeks to assert a common law claim for said breach against Wells Fargo, it would be preempted by the UCC and barred by the economic loss doctrine.

For these reasons, and as set forth more fully below, this Court should dismiss the Complaint as to Wells Fargo, with prejudice.

BACKGROUND¹

Plaintiff Janine Satterfield, niece of decedent Mr. Cook, a former customer of Wells Fargo, pursues these claims in her capacity as Administrator of the Estate of Mr. Cook. Compl. ¶¶ 1-4. Mr. Cook purportedly died intestate on April 21, 2021, at the age of 76. Compl. ¶¶ 1, 12. Plaintiff contends that Wells Fargo was one of the primary banks at which Mr. Cook held checking and savings accounts. Compl. ¶¶ 8, 20.

According to Plaintiff, on October 5, 2020, Mr. Cook received an unsolicited email from, “what appeared, the company ‘Amazon,’ informing him of his recent purchase of an iPad and even instructions for whom to call with questions regarding this recent purchase.” Compl. ¶ 42. Plaintiff contends that, unbeknownst to Mr. Cook, he fell prey to an elaborate and fraudulent scam. Compl. ¶ 43. In conjunction with said scam, Mr. Cook proceeded to send out a total of seventy-five (75) international wire transfers, to individuals holding accounts with Standard Chartered and the Bank of Bangkok, for a grand total of \$3,680,700. Compl. ¶ 50. Seventy-four (74) of those wires were sent by Defendant Navy Federal. Compl. ¶ 52.

Only one wire, in the amount of \$49,500.00, was sent through Mr. Cook’s accounts at Wells Fargo. *Id.* Plaintiff alleges that on November 3, 2020, Mr. Cook sent a single wire from his Wells Fargo checking account to the Bank of Bangkok. Compl. ¶ 54. Further, Plaintiff alleges

¹ Wells Fargo does not concede the veracity of any of the facts alleged in Plaintiff’s Complaint, however, will accept all facts as true for purpose of the Memorandum in Support of its Motion to Dismiss the Amended Complaint.

that sometime between November 3, 2020 and November 6, 2020, Mr. Cook attempted a second wire from his Wells Fargo checking account, but he was denied. Compl. ¶ 55. He ultimately ended up sending a domestic wire transfer from Wells Fargo to his Navy Federal checking account in the amount of \$100,000.00. *Id.*

Based on the foregoing, Plaintiff asserts a single cause of action against Wells Fargo for breach of the covenant of good faith and fair dealing. Compl. ¶¶ 95-101. Plaintiff contends that Wells Fargo “breached the covenant of good faith and fair dealing when they failed to adequately investigate the suspicious transactions and transfers coming from Mr. Cook’s accounts.” Compl. ¶ 99. Further, without factual support, Plaintiff alleges that said actions were “done intentionally, and in bad faith.” Compl. ¶ 101. As set forth more fully below, Plaintiff’s claim against Wells Fargo fails as a matter of law and should be dismissed by this Court.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint for “failure to state a claim upon which relief can be granted.” *See* Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to state a claim [for] relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (internal quotations omitted)). A plaintiff’s legal conclusions, however, are not accepted by the court as true. *Id.* Further, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft*, 556 U.S. at 677-678; *see also Papasan v. Allain*, 478 U.S. 265, 286 (1986) (noting that the Court is “not bound to accept as true a legal conclusion couched as a factual allegation.”). Indeed, the Fourth Circuit has concluded that the Supreme Court’s decision in *Twombly* establishes a regime that is “more favorable to dismissal of a complaint” at the earliest stages of a case. *See Giarratano v. Johnson*, 521 F.3d 298, 306 n.3 (4th Cir. 2008).

A plaintiff's claim must be dismissed if it fails to allege "enough facts to state a claim to relief that is plausible on its face" such that he has "nudged his claims across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw a reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 129 S. Ct. at 1949.

ARGUMENT

As set forth above, only Count II of the Complaint—asserting a cause of action for breach of the covenant of good faith and fair dealing—is directed at Wells Fargo. However, this claim fails as a matter of law and should be dismissed by the Court.

I. PLAINTIFF'S CLAIM FOR BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING UNDER VIRGINIA'S UNIFORM COMMERCIAL CODE FAILS AS A MATTER OF LAW.

Plaintiff alleges that Wells Fargo breached the implied duty of good faith and fair dealing imposed under the UCC. Compl. ¶¶ 51-56; Va. Code § 8.1 A-304. More specifically, Plaintiff contends that Wells Fargo "breached the covenant of good faith and fair dealing when [it] failed to adequately investigate the suspicious transactions and transfers coming from Mr. Cook's accounts." Compl. ¶ 99. Without more factual support, Plaintiff alleges these actions were "done intentionally, and in bad faith." Compl. ¶ 56.

However, Plaintiff's claim fails as a matter of law as Virginia courts do not recognize a separate cause of action in tort for a party's breach of the implied duty of good faith and fair dealing found in the UCC. Further, even if such a stand-alone cause of action was recognized in Virginia (it is not), Plaintiff has failed to adequately plead such a cause of action against Wells Fargo.

A. Virginia Does Not Recognize a Stand-Alone Cause of Action for Breach of the Implied Duty of Good Faith and Fair Dealing.

While Virginia law recognizes an implied covenant in certain contracts, Virginia courts do not recognize a stand-alone claim for breach of the implied covenant of good faith and fair dealing. *See, e.g., Skillstorm, Inc. v. Elec. Data Sys., LLC*, 666 F. Supp. 2d 610, 620 (E.D. Va. 2009) (citing *Ward's Equip., Inc. v. New Holland N. Am.*, 254 Va. 379, 385 (1997)); *Spiller v. James River Corp.*, 32 Va. Cir. 300, 307 (Va. Cir. Ct. 1993) (same). In other words, “the failure to act in good faith ... does not amount to an independent tort,” but instead “gives rise only to a cause of action for breach of contract.” *Charles E. Brauer Co. v. NationsBank of Va., N.A.*, 251 Va. 28, 33 (1996); *Washington v. Veritiss, LLC*, No. 1:14cv1250 (JCC/TCB), 2015 WL 965931, at *5 (E.D. Va. Mar. 4, 2015) (“[a] breach of the implied duty of good faith and fair dealing must be raised in a claim for breach of contract, as opposed to a claim in tort.”); *Albayero v. Wells Fargo Bank, N.A.*, 3:11CV201–HEH, 2011 U.S. Dist. LEXIS 114974, at *15, 2011 WL 4748341 (E.D.Va. Oct. 5, 2011).

Here, Count II of the Complaint is plainly a stand-alone cause of action for the “Breach of the Covenant of Good Faith and Fair Dealing” set forth against both defendants in this action. Compl. ¶¶ 95-101. Therein, Plaintiff seeks to advance an independent tort claim based on the purported breach by Wells Fargo of the covenant of good faith and fair dealing “when [it] failed to adequately investigate the suspicious transactions and transfers coming from Mr. Cook’s accounts.” Compl. ¶ 99. However, as the foregoing authority makes clear, such an independent cause of action is not recognized in Virginia. Plaintiff cannot create a claim where none exists. *Emanuel v. Bank of Am., N.A.*, 89 Va. Cir. 272, 273 (Richmond Cnty. 2014) (“[T]here is no Virginia authority that a cause of action of good faith and fair dealing exists.”); *Carr v. Federal Nat'l Mortg. Ass'n*, No. CL2012–391, at *6 (Hopewell City Cir. Ct. Oct. 8, 2013) (“It is well-

settled that Virginia law does not recognize an independent cause of action for breach of the implied warranty of good faith and fair dealing”)

Accordingly, on this basis alone, this claim should be dismissed and Wells Fargo’s motion to dismiss granted.

B. Even if Plaintiff Could Bring Such an Independent Claim, Plaintiff’s Claim is Not Adequately Plead.

Even if the Court were to recognize Plaintiff’s stand-alone cause of action for breach of the implied covenant of good faith and fair dealing (it should not), Plaintiff has not adequately plead such a cause of action against Wells Fargo.

As set forth above, “a complaint must contain sufficient factual matter, accepted as true, to state a claim [for] relief that is plausible on its face.” *Ashcroft*, 556 U.S. at 677-78 (quoting *Twombly*, 550 U.S. at 570 (internal quotations omitted)). A plaintiff’s legal conclusions, however, are not accepted by the court as true. *Id.* Further, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft*, 556 U.S. at 677-678. Here, Plaintiff’s threadbare allegations against Wells Fargo do not pass muster.

Rather, the only relevant allegations pertaining to Wells Fargo in the Complaint are that on November 3, 2020, its customer, Mr. Cook, sent out a single international wire transfer from his Wells Fargo checking account to the Bank of Bangkok in the amount of \$49,500.00. Compl. ¶¶ 52, 54. Plaintiff further alleges that sometime between November 3, 2020 and November 6, 2020, Mr. Cook attempted to send a second international wire at Wells Fargo using his checking account, but he was denied. Compl. ¶ 55. The remainder of the allegations in the Complaint are directed at Navy Federal, not Wells Fargo.² *See generally*, Compl. Indeed, Plaintiff includes no other

² In the Amended Complaint, Plaintiff added an additional allegation to Count II, contending that “[b]y continuing to perform transactions after affirmatively stating that the transactions were part of a fraudulent scheme, Defendants acted in bad faith and with actual knowledge of the fraudulent scheme...” Compl. ¶100. However, this allegation is

allegations regarding the conduct of Wells Fargo. However, based on these scant allegations, Plaintiff proceeds to allege in a purely conclusory fashion, that this conduct somehow amounts to the breach of an implied “obligation of good faith.” Compl. ¶¶ 53-55. Plaintiff continues by simply parroting the elements of the claim—contending that such conduct was “done intentionally, and in bad faith,” with no factual support or context for such a contention. *See generally*, Compl.

The aforementioned threadbare and conclusory allegations against Wells Fargo are insufficient to survive a motion to dismiss. Indeed, “[u]nadorned conclusory allegations like these are akin to no allegations at all.” *SD3, LLC v. Black & Decker (U.S.) Inc.*, 801 F.3d 412, 423 (4th Cir. 2015) (internal quotations omitted) (quoting *Viotl, S.A. v. Primerose Shipping Co.*, 708 F.3d 527, 543 (4th Cir. 2013) (“naked assertions of wrongdoing necessitate some factual enhancement within the complaint to cross the line between possibility and plausibility of entitlement to relief” (internal citations and quotations omitted))). Plaintiff’s Complaint fails to set forth adequate factual allegations against Wells Fargo to proceed on their claim. Rather, they merely include naked assertions of wrongdoing without “factual enhancement”—which is insufficient.

Furthermore, Plaintiff cannot attempt to re-write contractual terms by bringing such a claim. Under Virginia law, “when parties to a contract create valid and binding rights, an implied covenant of good faith and fair dealing is inapplicable to those rights.... Generally, such a covenant cannot be the vehicle for rewriting an unambiguous contract in order to create duties that do not otherwise exist.” *Ward’s Equip.*, 254 Va. at 385 (citations omitted). Indeed, “the covenant does not compel a party to take affirmative action not otherwise required under the contract, does not establish independent duties not otherwise agreed upon by the parties, and cannot be invoked to undercut a party’s express contractual rights.” *Monton v. America’s Servicing Co.*, No. 2:11-cv-

clearly directed at Navy Federal, as there is no contention that Wells Fargo affirmatively stated the transactions were part of a fraudulent scheme.

678, 2012 U.S. Dist. LEXIS 117259, at *21 (E.D. Va. Aug. 20, 2012). Rather, to survive dismissal, a plaintiff's allegations must demonstrate "dishonesty, bad faith, or misrepresentation regarding [existing] contractual rights." *Veritiss, LLC*, 2015 WL 965931, at *5 (emphasis added) (citations omitted). As set forth above, Plaintiff does not adequately allege any of the foregoing. Thus, Wells Fargo's motion to dismiss should be granted.

II. TO THE EXTENT PLAINTIFF SEEKS TO BRING A COMMON LAW BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING CLAIM, SAID CLAIM WOULD ALSO FAIL.

As set forth above, Plaintiff appears to only assert a claim for breach of the covenant of good faith and fair dealing pursuant to the UCC and Virginia Code § 8.1A-304. However, to the extent that Plaintiff also seeks to assert a common law claim for breach of the covenant of good faith and fair dealing, such a claim would be preempted and displaced by the UCC. Similarly, such a claim would be barred by the economic loss doctrine.

A. Any Common Law Claims are Preempted and Displaced by the Uniform Commercial Code.

Article 4A of the UCC, which has been codified under Virginia law as Va. Code § 8.4A *et. seq.*, applies to wire transfers. *See* Va. Code § 8.4A-102 (which states that the title "applies to funds transfers defined in § 8.4A-104"); Va. Code § 8.4A-104, cmt. 6 ("[M]ost payments covered by Article 4A are commonly referred to as wire transfers and usually involve some kind of electronic transmission...."). Article 4A contains detailed provisions on the obligations and rights surrounding wire transfers. *Nirav Ingredients, Inc. v. Wells Fargo Bank, N.A.*, No. 21-1893, 2022 WL 3334626, at *2 (4th Cir. Aug. 12, 2022). Indeed, Article 4A is intended to set forth all duties and rights between banks regarding wire transfers, and to preclude displacing its provisions with resort to common law claims. *Id.* As the Comments to Article 4A note, "resort to principles of law or equity outside of Article 4A is not appropriate to create rights, duties and

liabilities inconsistent with those stated in this Article.” Va. Code § 8.4A-102, cmt. In fact, the Comments to § 8.4A-102 expressly articulate the need for certainty in balancing rights, risks, and liabilities related to fund transfers as follows:

In the drafting of Article 4A, a deliberate decision was made to write on a clean slate and to treat a funds transfer as a unique method of payment to be governed by unique rules that address the particular issues raised by this method of payment. A deliberate decision was made to use precise and detailed rules to assign responsibility, define behavioral norms, allocate risks and establish limits on liability, rather than to rely on broadly stated, flexible principles. *In the drafting of these rules, a critical consideration was that the various parties to funds transfers need to be able to predict risk with certainty, to insure against risk, to adjust operational and security procedures, and to price funds transfer services appropriately.* This consideration is particularly important given the very large amounts of money that are involved in funds transfers.

§ 8.4A-102 cmt. (emphasis added).

Here, Plaintiff contends that Wells Fargo had a duty to “investigate the suspicious transactions and transfers coming from Mr. Cook’s accounts.” Compl. ¶¶ 95-101. However, Plaintiff’s attempt to manufacture a duty where there is not one is expressly rejected by Va. Code § 8.4A-212, which states that a “bank owes no duty to any party to the funds transfer except as provided in this title or by express agreement.” No provision of Section 8.4A imposes liability on a receiving bank³ that properly executes a duly authorized wire transfer by the sender, which is precisely what happened here. Compl. ¶ 54.

As noted above, Article 4A of the UCC provides the exclusive means of governing claims arising out of wire transfers and it is improper for courts to impose liability under the common law inconsistent with the UCC’s purposes and policies. *See Peter E. Shapiro, P.A. v. Wells Fargo Bank N.A.*, 795 F. App’x 741 (11th Cir. 2019) (affirming district court’s dismissal of common law

³ The “receiving bank” is defined as the “bank to which sender’s instruction is addressed.” Va. Code § 8.4A-103(a)(4).

negligence claim arising out of a wire transfer on Article 4A preemption grounds). Here, there can be no recovery under the UCC (or otherwise) because the wire from Mr. Cook's Wells Fargo checking account was authorized by Mr. Cook and the funds were transferred as instructed. Compl. ¶ 55. Thus, it would be improper for the court to impose liability on Wells Fargo for initiating a wire transaction for Cook when there can be no recovery under the UCC.⁴ See *Grain Traders, Inc. v. Citibank, N.A.*, 160 F.3d 97, 106 (2d Cir. 1998) (holding that the UCC precluded common law claims of conversion and money had and received because the liability sought to be imposed by plaintiff's common law claims "would be inconsistent with the provisions of Article 4A"); *Nirav Ingredients, Inc.*, 2022 WL 3334626, at *3 (affirming dismissal of plaintiff's negligence claim against bank in wire fraud case, applying preemption principles, and confirming that banks are not "insurers for...peoples' mistakes in falling for phishing scams").

Accordingly, to the extent that Plaintiff seeks to assert a common law claim for breach of the covenant of good faith and fair dealing against Wells Fargo, such a claim is precluded and should be dismissed by this Court.

B. Similarly, the Economic Loss Doctrine Would Bar Any Common Law Claim for Breach of the Covenant of Good Faith and Fair Dealing.

To the extent that Plaintiff seeks to assert a common law claim for breach of the covenant of good faith and fair dealing against Wells Fargo, such a claim would also be barred by the economic loss doctrine. Pursuant to Virginia's economic loss doctrine, if a duty arises solely by contract (like here), a breach does not give rise to an independent tort claim. *Augusta Mut. Ins. Co. v. Mason*, 274 Va. 199, 645 S.E.2d 290, 293–94 (2007); see also *Filak v. George*, 267 Va. 612,

⁴ In her Amended Complaint, Plaintiff includes additional allegations regarding Wells Fargo's purported role as intermediary bank for NFCU. Compl. ¶ 78. Plaintiff contends that "Wells Fargo had reason to believe that Mr. Cook was a vulnerable person, and a victim of financial abuse and potentially could have prevented [the Navy Federal] transactions." *Id.* However, Plaintiff does not assert any claims against Wells Fargo in connection with its role as intermediary bank (nor could it), and thus, such allegations are of no import and should be disregarded by this Court.

618, 594 S.E.2d 610, 613 (2004) (“[L]osses suffered as a result of the breach of a duty assumed only by agreement, rather than a duty imposed by law, remain the sole province of the law of contracts.”); *Condo. Servs., Inc. v. First Owners’ Ass’n of Forty Six Hundred Condo., Inc.*, 281 Va. 561, 574, 709 S.E.2d 163, 171 (2011) (“To recover for the tort of conversion, the duty tortiously or negligently breached must be a common law duty, not one existing between the parties solely by virtue of the contract.”).

The economic loss rule maintains a conceptual distinction between the underlying purposes of tort and contract law. The Supreme Court of Virginia provided the following guidance in the seminal construction-law case, *Sensenbrenner v. Rust, Orling & Neale, Architects, Inc.*:

The controlling policy consideration underlying tort law is the safety of persons and property – the protection of persons and property from losses resulting from injury. The controlling policy consideration underlying the law of contracts is the protection of expectations bargained for. If that distinction is kept in mind, the damages claimed in a particular case may more readily be classified between claims for injuries to persons or property on one hand and economic losses on the other.

236 Va. 419, 425 (1988) (emphasis added). Common law tort duties of care therefore relate to protection against personal injury and property damage, while negotiated contractual obligations govern parties’ economic expectations.

Here, Plaintiff alleges losses suffered by virtue of an alleged breach of a duty assumed only by agreement. Compl. ¶ 96. Plaintiff alleges an economic loss of \$49,500.00 stemming from Wells Fargo’s wiring of funds from Mr. Cook’s checking account as requested. Wells Fargo only assumed an obligation to pay (or not pay) funds from its members’ accounts by way of a contractual agreement. *Id.* Plaintiff’s claims are therefore premised on the relationship that Wells Fargo had with Mr. Cook, which was strictly contractual in nature.

Accordingly, any common law claim for breach of the covenant of good faith and fair dealing against Wells Fargo is also barred by the economic loss rule and should be dismissed.

CONCLUSION

For the reasons stated above, Wells Fargo respectfully requests that this Court grant its Motion to Dismiss, dismiss Plaintiff's Amended Complaint in its entirety as to Wells Fargo, with prejudice, and allow further relief as this Court deems just and proper.

Dated: February 14, 2023

Respectfully submitted,

WELLS FARGO BANK, N.A.

By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send a true and correct copy to all counsel of record.

/s/ Heather Britton Chaney

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