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DELIGHT BVUNZAWABAYA,

Index No. 400434/2014

Plaintiff

- against -

DECISION AND ORDER

JPMORGAN CHASE & CO. VLADIMIR P.
GUERRERO, DENISE GONZALEZ, and BEN
VENTURA,

Defendants

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LUCY BILLINGS, J.S.C.:

I. INTRODUCTION

Defendant bank and its defendant employees move to dismiss this action because plaintiff lacks standing to maintain his claims and fails to state a cognizable claim for relief.

C.P.L.R. § 3211(a)(3) and (7). Plaintiff alleges he endorsed a check from his employer payable to him for \$3,450.00 over to his friend Chris Ann Wright, a customer at defendant bank, with the expectation that she would cash the check and remit its proceeds to him, as he did not hold an account at any bank and lacked adequate identification to cash a check. Wright deposited the check into her account, but the bank never accepted the check. Rather than returning the check to Wright, the bank held the check for six months before ultimately repaying the \$3,450.00 to her, who then repaid plaintiff that amount, reduced by the bank's fees of \$20.12 charged to her account. Although plaintiff thus eventually received the check's proceeds, reduced by the fees, he

alleges that during the months the bank held the check he was deprived of funds essential to his basic sustenance, causing him hunger, malnutrition, adverse effects on his health, and inhumane living by resorting to trash receptacles, soup kitchens, and redeeming empty cans to sustain himself.

II. PLAINTIFF'S CLAIMS

While the complaint raises a claim that defendants wrongfully dishonored the check, N.Y.U.C.C. (UCC) § 4-402, the overriding thrust of plaintiff's claims is that, once defendants did not accept the check, they were obligated to return it promptly, so it might be cleared and cashed through another bank, and not cause an extended deprivation of its proceeds. Plaintiff claims that, since the depository bank was not the payor bank, defendant bank's function was not to honor or dishonor the check, but to forward it to the issuing and payor bank, which, recognizing its account holder as the drafter of the check, would have honored it. Instead, defendants were usurping the payor bank's function and preventing the payor bank from clearing the check.

Absent evidence of the payor's bank's dishonor in the record and, even in that event, given defendants' failure to return the check, there well may be merit in the claims plaintiff raises, but they do not provide a remedy to him. The fallacy in the claims when raised by him is that, once he endorsed the check to Wright, as his complaint repeatedly admits, he transferred the check to her and lost all rights in it. Aff. in Supp. of Brian

C. Avello Ex. A ¶¶ 21, 24, 25, 34, 46. See UCC § 3-201(1). Wright may have maintained a viable claim against her bank for holding her check unduly long, without either accepting it and crediting her account with the check's amount or returning the check, thus depriving her its proceeds temporarily and reducing the proceeds she ultimately received by unwarranted fees.

Plaintiff's rights, nevertheless, were based on whatever agreement plaintiff entered with Wright to pay him \$3,450.00 in exchange for him endorsing the check to her. At whatever point she agreed to pay him, even if it was before the check cleared, he was entitled to enforce that payment, and her remedy was against the bank. If her agreement was to cash the check, then her failure to take all necessary steps to do so would be a breach of the agreement that plaintiff might enforce through damages in the amount of the check. If Wright's bank failed to take all required steps to clear the check and make its funds available, then Wright might enforce her right to the funds against the bank.

While plaintiff insists that, until defendants paid the check, he retained a right to the check, not only does his complaint allege to the contrary, but, more significantly, he cites no statute, regulation, or contractual provision that supports such a claim. His endorsement of the check was without reservation of any right to the check until it was paid. The only memorandum accompanying the endorsements on the check was Wright's instruction on the deposit slip to deposit the funds in

her account.

III. STATUTES AND REGULATIONS ON WHICH PLAINTIFF RELIES

First, plaintiff relies on New York Banking Law § 9-p, which provides that: "No banking institution . . . shall refuse to accept as a deposit made with a teller by an account holder a check for the sole reason that it contains two endorsements." Thus, when defendant bank's account holder Wright presented the check endorsed by plaintiff to her and then by her, defendants were not permitted to refuse to deposit the check from Wright, the bank's customer, simply because it bore plaintiff's endorsement as well as hers. Even if the bank did not accept Wright's deposit because of plaintiff's endorsement, this provision's very terms confers any rights only on Wright, the bank's account holder and customer, as plaintiff acknowledges.

Next, plaintiff relies on 12 C.F.R. § 229.12(c), which required the depository bank to make the funds deposited in Wright's account available for withdrawal within five business days after the funds were deposited. Again, as Wright was the owner and depositor of the funds deposited into her account and the only person who might withdraw them from her account, and plaintiff maintained no connection to the funds, the deposit, the account, or any potential withdrawal, this provision confers no rights on him.

Plaintiff also claims that defendants maintained their hold on the check because he failed to meet their demands that he verify his identity with satisfactory documentary identification

and show that he was the check's original owner. In urging that defendants were not to be concerned with his identity, but only Wright's, plaintiff points to 31 C.F.R. § 1010.312, which requires that: "Before concluding any transaction . . . , a financial institution shall verify . . . the name and individual presenting a transaction, as well as the identity, account number, and the social security or taxpayer identification number, if any, of any person or entity on whose behalf such transaction is to be effected." If, as plaintiff insists, he was a person on whose behalf the transaction was to be effected, this regulation would authorize defendants' verification of his identity. Assuming, however, that those terms are limited, at most, to Wright, the payee, and plaintiff's employer, the drawer, of the check presented, so defendants' verification of plaintiff's identity was unauthorized, again the regulation confers no right on plaintiff to claim the unauthorized verification was holding up the transaction. Thus, even if, as plaintiff claims, the only grounds for defendants to hold the check would have been evidence of fraud, the lack of such evidence would not affect his rights.

No provision of UCC Article 3 avails plaintiff further. When plaintiff endorsed and delivered the check to Wright, she became the holder of the check. UCC § 3-202(1). See, e.g., UCC § 3-204; Mortgage Elec. Registration Sys., Inc. v. Coakley, 41 A.D.3d 674, 674 (2d Dep't 2007). UCC § 3-301 entitles the holder of a check, which was Wright, to negotiate and enforce payment of

the check.

Since plaintiff alleges that defendants confiscated the check, he relies on UCC § 3-804, pertaining to recovery for a lost or destroyed check, which entitles a person to recover the value of a lost or destroyed check upon establishing ownership of the check when its loss occurred. Here the loss occurred when Wright gave the check to defendants, and they held onto it, failed to forward it to the issuing and payor bank to be honored and cleared or to be dishonored, and yet failed to return the check. At that point, as discussed, Wright and not plaintiff was the owner of the check and hence was entitled to recover its value.

Finally, in opposition to defendants' motion, plaintiff alludes to an allegation by their attorney that the drawer of the check accused plaintiff of stealing it, suggesting a claim of defamation. His complaint includes no such allegation of defamation, however, by defendants, or by their attorney or the drawer, neither of whom plaintiff sues.

IV. CLAIMS AGAINST THE INDIVIDUAL DEFENDANTS

As the complaint admits, defendants Guerrero, Gonzalez, and Ventura were defendant bank's employees and represented the bank in its operations at the branch where the transaction complained of occurred. Avello Aff. Ex. A ¶ 3. Plaintiff dealt with the bank through them. They, in turn, dealt with him according the job duties the bank had assigned to its employees.

Thus all plaintiff's claims against these three defendants

pertain only to their conduct within the scope of their employment and in carrying out their duties for defendant bank. Plaintiff's allegations provide no basis for the individual defendants' liability apart from any basis for their employer bank's liability. Since his allegations reveal no act or omission by defendants Guerrero, Gonzalez, or Ventura personally that caused plaintiff's alleged injury, so as to impose personal liability on them, the court grants defendants' motion to the extent of dismissing the complaint against these three defendants. C.P.L.R. § 3211(a)(7); Joseph R.C. v. Bronx Underground LLC, 118 A.D.3d 583, 584 (1st Dep't 2014); Padilla v. Edison Transp., Inc., 104 A.D.3d 518, 518-19 (1st Dep't 2013); Palomo v. 175th Street Realty Corp., 101 A.D.3d 579, 580 (1st Dep't 2012).

V. CONCLUSION

In sum, the complaint admits that plaintiff endorsed his paycheck over to Chris Ann Wright, so that from that point the check's proceeds belonged to her. He maintained no interest in the check after he endorsed it to her. Therefore any injury caused by defendants wrongfully retaining the check and temporarily preventing access to the check's proceeds are Wright's injuries, not plaintiff's, for which the law may provide her a remedy. Plaintiff's remedy for any deprivation of funds he suffered lies in his agreement with Wright regarding her repayment of the amount of the check to him. For these reasons, as fully explained above, the court grants defendants' motion to

dismiss the complaint against defendant JPMorgan Chase & Co. as well as against defendants Guerrero, Gonzalez, and Ventura. C.P.L.R. § 3211(a)(3) and (7).

DATED: January 6, 2015



LUCY BILLINGS, J.S.C.

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