

## **Aronberg Goldgehn Wins Appeal Creating Precedent That Receipt of Account Statement Is Sufficient To Put an Account Holder on Notice of Discrepancies or Wrongful Activity**

Aronberg Goldgehn litigation attorneys **Nathan H. Lichtenstein** and **Benjamin E. Haskin** obtained a victory in the Illinois Appellate Court that affirmed the dismissal of a breach of contract claim against a financial institution based on the expiration of the three-year statute of limitations.

The appellate court decision, which can be read by [CLICKING HERE](#), is the first in Illinois to hold that the receipt of an account statement provides a customer sufficient information to be put on notice of any wrongful activity with respect to their account. The decision affirms the obligation of the account holder to review the statement and timely notify the bank of any errors.

### **Background**

The plaintiff, the assignee of the claims of three affiliated corporations, alleged that a bank breached its account agreements and failed to exercise ordinary care by permitting checks to be deposited into the wrong corporate account. According to the complaint, the controller for the three corporations deposited client checks into the wrong bank account during the period from December 1, 2007, through November 18, 2010.

The plaintiff alleged that the controller falsified reports to management, to the outside accountant, and to the corporations' insurance company in order to mask his diversion and misappropriation of amounts paid to the corporations. Plaintiff admitted that the corporations received monthly account statements, but alleged that these statements did

not contain sufficient information to allow the corporations to discover the allegedly misapplied checks.

The bank, represented by Aronberg Goldgehn, moved to dismiss the complaint based on the expiration of the three-year statute of limitations prescribed by Section 4-111 of the Uniform Commercial Code governing bank deposits and collections.

The bank argued that the claim was barred because the last check was alleged to have been deposited more than three years prior to the filing of the complaint, and the account statements were sufficient to put a reasonable person on notice whether certain checks were, or were not, deposited into specific accounts.

The circuit court agreed and dismissed the complaint with prejudice.

### **The Appeal**

On appeal, the plaintiff argued: (1) that its claim should be governed by the 10-year limitations period relating to written contracts; and (2) that it pled sufficient facts supporting the tolling of the limitations period pursuant to the discovery rule.

In a case of first impression, the appellate court agreed with the bank on both issues and affirmed the trial court's dismissal. The appellate court held that the three-year statute of limitations prescribed by Section 4-111 of the Uniform Commercial Code more specifically relates to

plaintiff's cause of action and is the correct limitations period to apply.

The court also held that the corporations' receipt of monthly account statements provided sufficient information to be put on notice that wrongful conduct had occurred. The court rejected plaintiff's argument that a question of fact existed whether the account statements provided sufficient information because they did not contain images of the allegedly wrongfully deposited checks. The court held that the information within the account statement, including the ending balance and list of deposits, is enough to put a reasonable person on inquiry to determine whether actionable conduct had taken place.

The court rejected plaintiff's contention that the discovery rule should apply to toll the statute of limitations because the corporations did not become aware that the checks had been incorrectly deposited until June 2011, when an independent accountant performed an audit of the corporations' accounts and records after the resignation of the corporations' controller.

The court's opinion is consistent with long-standing precedent that fraud perpetrated by one's own employee does not toll the statute of limitations against a third party.

The decision is the first in Illinois to extend an account holder's obligation to review their account statements to identify any wrongful conduct relating to deposits. Section 4-406 of the Uniform Commercial Code states that if a bank makes available to a customer a statement of account,

the customer must exercise reasonable promptness in examining the statement to identify and report forgeries and unauthorized payments.

The holding in *PSI Resources v. MB Financial* extends this rule to any discrepancies or unauthorized transactions concerning deposits. A financial institution's issuance of an account statement can now be used as an absolute defense against a customer's attempt to toll the statute of limitations on a claim arising from unauthorized or wrongful activity with their account.

*Nathan Lichtenstein is Co-Chair of the firm's Commercial Litigation Group. He focuses his practice on complex commercial litigation, including Uniform Commercial Code matters, breach of contract claims, fraud and consumer fraud actions, trademark and copyright infringement cases, shareholder derivative suits and unfair competition claims. He has extensive experience in banking, insurance, real estate, employment, viaticals and life settlements, as well as corporate matters.*

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