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May 31, 2016

## Company sued bank too late over deposits

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An Illinois employment agency waited too long to sue its former bank over checks that were incorrectly deposited, a state appeals panel ruled Friday.

State law typically limits breach-of-contract claims to a 10-year statute of limitations. But another part of state law limits certain banking-related claims to just three years.

Friday's ruling follows a 2002 1st District decision in *Continental Casualty Co. v. American National Bank & Trust Co. of Chicago*, which held that the more specific three-year limit for breach-of-contract claims surrounding checks — formally known as “negotiable instruments” — trumps the more general 10-year rule.

From December 2007 to November 2010, three corporations — Placement Solution Inc., Legal Solutions Inc. and Technical Solutions Inc. — maintained separate demand-deposit accounts with Cole Taylor Bank.

The three corporations used PSI Resources as the assignee of their claims. The panel noted all four of the entities appeared to be run by the same two individuals.

PSI Resources sued Cole Taylor in February 2014 for breach of contract, alleging Cole Taylor incorrectly deposited checks from its assignee companies into the wrong accounts for three years.

For instance, a check written to Placement Solutions would be deposited in one of the other companies' accounts. In total, PSI Resources alleged Cole Taylor's failure to care for the accounts caused them to sustain \$380,343.09 in damages.

MB Financial Inc. acquired Cole Taylor's parent company in August 2014 and merged the two banks under the MB Financial banner.

Cook County Associate Judge James E. Snyder granted summary judgment in favor of MB Financial Bank after finding the three-year statute of limitations applied and had passed before the plaintiffs filed their suit. The panel affirmed.

“We noted that a primary purpose of a statute of limitations was to promote certainty and finality in the administration of affairs,” Justice Robert E. Gordon wrote, before directly citing *Continental Casualty*. “... We accordingly held that the corporation’s common-law breach of contract action was governed by the three-year limitations statute because it was more specific than the [c]ode’s 10-year limitations period,” Gordon added.

The panel noted that the underlying case is very similar to *Continental* — both are “predicated on allegations pertaining to a bank’s failure to exercise ordinary care in maintaining a corporation’s deposit account.”

Before the trial court, MB Financial argued the statute of limitations had expired on PSI’s claims. PSI, in response, argued its claim was timely filed because it did not discover Cole Taylor’s incorrect deposits until June 2011.

PSI said the controller of the corporations had committed malfeasance that was not detected until PSI hired an independent accountant in summer 2011.

Snyder initially dismissed MB Financial’s motion for summary judgment in July 2014, instead finding PSI successfully tolled the three-year statute of limitations on their claim because they raised facts in their response brief.

MB Financial asked Snyder to reconsider, arguing the plaintiff did not actually disclose any facts. Snyder granted the motion and asked PSI to file an amended complaint with the necessary facts.

According to PSI, it discovered in June 2011 its corporate controller, Stan C. Cavagnetto, had been embezzling funds from the companies and took numerous steps to cover his tracks, including falsifying reports and removing hard drives filled with accounting records.

It was through an independent audit of Cavagnetto’s activities that PSI discovered Cole Taylor had deposited checks into the wrong accounts. The three-year statute of limitations should be tolled until that discovery in 2011, PSI argued.

In response, MB Financial argued the pleadings in PSI’s lawsuit only established the fact that PSI did not do a sufficient job overseeing its own operations.

MB Financial also contended that Cole Taylor provided PSI with monthly statements which would have communicated to them that certain checks were not deposited correctly.

Snyder ruled in favor of MB Financial the second time around, granting their motion for summary judgment in March 2015.

On appeal, PSI argued the 10-year statute of limitations applied in this instance and that, even if three years was the correct limit, it was tolled to start in 2011.

The panel noted PSI did not argue fraudulent concealment had taken place as a result of Cavagnetto’s activities; instead PSI argued the monthly statements Cole Taylor provided did not disclose enough information.

The justices agreed the statements could contain more information, but they noted the threshold of the law is much lower: It's not when the plaintiff had "absolute clarity," but when it had "sufficient information."

Gordon wrote that, in one month, one of the corporations had \$20,000 more at the beginning of the month than at the end, which "certainly should have raised a red flag for plaintiff to inquire further."

PSI Resources was represented by Epaminondas Eddie Manelis, a sole practitioner. Manelis said he believed the panel was not the right arbiter for deciding the opacity of Cole Taylor's monthly statements.

Manelis said his client has not decided whether it will appeal.

MB Financial was represented by Nathan H. Lichtenstein and Benjamin E. Haskin of Aronberg, Goldgehn, Davis & Garmisa.

Lichtenstein said they are pleased with the decision as it affirms the obligation of the account holder to review the statement and timely notify the bank of any errors.

Justices Jesse G. Reyes and Bertina E. Lampkin concurred with the opinion.

The case is *PSI Resources LLC v. MB Financial Bank, National Association*, 2016 IL App (1st) 152204.

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