

NOTICE

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2014 IL App (4th) 130735-U

NO. 4-13-0735

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 16, 2014

Carla Bender
4th District Appellate
Court, IL

CHARLES L. PALMER, Administrator To Collect for)	Appeal from
the Estate of Martha L. Hayden,)	Circuit Court of
Plaintiff-Appellant,)	Cumberland County
v.)	No. 06L3
EDWARD D. JONES & CO., LP, d/b/a EDWARD)	
JONES; and DWIGHT ERSKINE,)	Honorable
Defendants-Appellees.)	Katherine M. McCarthy,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.

Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's grant of summary judgment in the defendants' favor, concluding that the plaintiff's fraud claim was time barred by the Uniform Commercial Code.

¶ 2 In January 2006, plaintiff, Charles L. Palmer, acting as administrator to collect for the estate of Martha L. Hayden, sued defendants, Edward D. Jones & Company, L.P. (Jones), a licensed brokerage firm, and Dwight Erskine, a Jones employee. Palmer's suit alleged that defendants willfully and intentionally defrauded Martha based on an August 10, 1988, check made payable to Martha for \$188,473, which contained Martha's forged endorsement to Jones. Jones later deposited the proceeds into a new investment account for the drawer of the check.

¶ 3 In November 2012, Jones filed a motion for summary judgment under section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2012)), which Erskine adopted. In its supporting memorandum, Jones urged the trial court to grant summary judgment because

(1) Palmer could not show that Jones had breached a special or fiduciary relationship with Martha to substantiate a fraud-by-omission claim and (2) Palmer's claim was barred by the three-year statute of limitations under section 3-118(g) of the Uniform Commercial Code (UCC) (810 ILCS 5/3-118(g) (West 2012)).

¶ 4 In May 2013, the trial court granted summary judgment in defendants' favor, rejecting Palmer's interpretation of the common-law "Good Samaritan" exception. That exception provides that liability attaches when a financial institution fails to determine the validity of a check—made out by the drawer to the financial institution—when such a check is presented for payment to someone having no affiliation with the financial institution. *Conder v. Union Planters Bank, N.A.*, 384 F.3d 397, 399 (7th Cir. 2004).

¶ 5 Palmer appeals, arguing that the trial court erred by granting summary judgment in defendants' favor. In particular, Palmer takes exception to the court's finding that the Good Samaritan exception did not apply to impose a duty on defendants to verify the validity of the check at issue. Because we agree with defendants that Palmer's claim is barred by the three-year statute of limitations provided by section 3-118(g) of the UCC, we affirm.

¶ 6 (Following the November 6, 2014, oral arguments in this case, Justice Lisa Holder White recused herself, and Justice John W. Turner was added as a panelist. Justice Turner has listened to the recording of the parties' oral arguments.)

¶ 7 I. BACKGROUND

¶ 8 The following information was gleaned from the parties' pleadings and other supporting documents filed in the trial court.

¶ 9 A. The Undisputed Facts

¶ 10 In May 1985, Jay E. Hayden—Martha's son—died. Shortly thereafter, a probate

court appointed Robert B. Cochonour executor of Jay's estate. In June 1985, Jay's will was admitted to probate in Cumberland County case No. 1985-P-21. On August 10, 1988, Cochonour, acting in his fiduciary role, drafted a check for \$188,473, made payable from Jay's estate to Martha, which represented a portion of the \$400,000 inheritance Jay had bequeathed to her. The reverse side of that check contained the following instructions: "Pay Edward D. Jones and Company." Although Martha's endorsement appeared below the instructions, Cochonour had forged that signature. Cochonour presented the forged check to Erskine. The next day, Jones tendered the check for payment and deposited the funds into an investment account in Cochonour's name.

¶ 11 In July 1989, Cochonour filed a report detailing the income and expenditures of Jay's estate that occurred from June 1988 to June 1989. The "disbursements" section of that report listed the August 10, 1988, transfer of \$188,473 to Martha.

¶ 12 In December 2001, Martha died. During Martha's lifetime (1) she did not have a business relationship with Jones and (2) neither Jones nor Erskine communicated with her. In January 2003, the trial court assigned Palmer as the administrator to collect for Martha's estate. (After Martha's death but prior to Palmer's appointment, the court appointed an executor who later resigned; thereafter the court appointed an administrator to collect, who voluntarily relinquished his appointment.)

¶ 13 B. The Suit Filed by the Administrator To Collect

¶ 14 In January 2006, Palmer sued Jones and Erskine, alleging fraud. Specifically, Palmer claimed that defendants willfully and intentionally defrauded Martha by (1) not communicating with Martha to confirm the validity of the \$188,473 check, (2) not providing any information regarding Cochonour's investment account despite being served with a February 2005 subpoena requesting that information in a bankruptcy case pertaining to Jay's estate, (3) disavow-

ing any knowledge of Cochonour's investment account, and (4) concealing the fraudulent transfer from "August 1988 through at least July 2005." Because Palmer premised his fraud claims on defendants' purported omissions, he was required to show that defendants had a special or fiduciary duty to Martha. See *Hatchett v. W2X, Inc.*, 2013 IL App (1st) 121758, ¶ 62, 993 N.E.2d 944 (" 'The intentional omission or concealment of a material fact may be the basis of a fraud action if a special or fiduciary relationship exists which gives rise to the duty to speak.' ") (quoting *State Security Insurance Co. v. Frank B. Hall & Co.*, 258 Ill. App. 3d 588, 592, 630 N.E.2d 940, 943 (1994)). Relying, in part, on *Travelers Casualty & Surety Co. of America v. Wells Fargo Bank, N.A.*, 374 F.3d 521, 527 (7th Cir. 2004), Palmer contended that the aforementioned Good Samaritan exception imposed a duty upon defendants to ask Martha—the payee and purported endorser of the August 1988 check—about the validity of that instrument.

¶ 15 C. Defendants' Motion for Summary Judgment

¶ 16 In November 2012, Jones filed a motion for summary judgment pursuant to section 2-1005 of the Code, which Erskine later adopted. In its supporting memorandum, Jones urged the trial court to grant summary judgment in its favor because (1) Palmer could not show that Jones had breached a special or fiduciary relationship with Martha to substantiate a fraud-by-omission claim and (2) Palmer's claim was barred by the three-year statute of limitations provided by section 3-118(g) of the UCC.

¶ 17 D. The Trial Court's Determination

¶ 18 Following the May 2013 hearing on defendants' motion for summary judgment, the trial court entered a written order granting summary judgment in defendants' favor. In so finding, the court distinguished *Travelers Casualty & Surety Co. of America*—the case Palmer relied upon—by noting that the Seventh Circuit applied the Good Samaritan exception to a neg-

ligence claim brought by the drawer of the check against the bank who was both the depositor and named payee of the check at issue. The court also noted that approximately two months later, the Seventh Circuit clarified its decision in *Travelers Casualty & Surety Co. of America* by concluding that absent a customer or contractual relationship, the Good Samaritan exception does not impose upon a financial institution a general common-law duty of care. *Conder*, 384 F.3d at 399.

¶ 19 This appeal followed.

¶ 20 II. THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT

¶ 21 A. The Motion for Summary Judgment and the Standard of Review

¶ 22 "Summary judgment is properly granted when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' "

Bridgeview Health Care Center, Ltd. v. State Farm Fire & Casualty Co., 2014 IL 116389, ¶ 12, 10 N.E.3d 902 (quoting 735 ILCS 5/2-1005(c) (West 2010)). We review *de novo* a trial court's summary-judgment ruling. *Bartlow v. Costigan*, 2014 IL 115152, ¶ 17, 13 N.E.3d 1216.

¶ 23 B. Palmer's Good Samaritan Claim

¶ 24 Palmer argues that the trial court erred by granting summary judgment in defendants' favor because the Good Samaritan exception applied to impose a duty on defendants to contact Martha—as payee—to verify the validity of the check at issue. Defendants respond that this court should reject Palmer's claim because the Good Samaritan exception (1) applies to negligence claims and not fraud claims and (2) imposes only a duty to the drawer of the check and not the payee. Although defendants' arguments appear well-taken and the trial court's rationale for granting summary judgment appears well-reasoned, we decline to address the merits of Palmer's

Good-Samaritan-exception claim. See *Canada Life Assurance Co. v. Salwan*, 353 Ill. App. 3d 74, 79, 817 N.E.2d 1021, 1026 (2004) (Because this court's review is focused on the propriety of the trial court's judgment and not the underlying rationale, we can affirm the court's decision on any grounds which the record supports regardless of whether the circuit court relied on that rationale.). Instead, we find dispositive defendants' argument that section 3-118(g) of the UCC barred Palmer's claim.

¶ 25 C. The Time Constraints Imposed by the UCC

¶ 26 Section 3-118(g) of the UCC provides, in pertinent part, as follows:

"Unless governed by other law regarding claims for indemnity or contribution, an action *** for conversion of an instrument, for money had and received, or like action based on conversion *** must be commenced within [three] years after the cause of action accrues." 810 ILCS5/3-118(g) (West 2012).

¶ 27 As previously noted, Palmer's claim arises from an August 10, 1988, check for \$188,473 that the parties do not dispute (1) Martha had the right to possess; (2) Cochonour forged; and (3) Jones converted. Thus, as provided by section 3-102(a) of the UCC (810 ILCS 5/3-102(a) (West 2012)), the check at issue was a negotiable instrument subject to the provisions of the UCC. See *Hawkins v. Nalik*, 2012 IL App (5th) 110553, ¶ 11, 975 N.E.2d 793 ("Checks are negotiable instruments and are subject to the provisions of the UCC."). Therefore, pursuant to section 3-118(g) of the UCC, Palmer's complaint was subject to the UCC's three-year statute of limitations. See *Haddad's of Illinois, Inc. v. Credit Union 1 Credit Union*, 286 Ill. App. 3d 1069, 1072, 678 N.E.2d 322, 324 (1997) (where this court held that "[t]he proper statute of limitations for actions for conversion of negotiable instruments is three years as specifically set forth

in the [UCC]").

¶ 28 " 'Generally, a limitations period begins to run when facts exist that authorize one party to maintain an action against another.' " *Kidney Cancer Ass'n v. North Shore Community Bank & Trust Co.*, 373 Ill. App. 3d 396, 399, 869 N.E.2d 186, 189-90 (2007) (quoting *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278, 798 N.E.2d 75, 85 (2003)). Here, the record shows that on August 11, 1988, Jones deposited the check at issue into its bank account. As a consequence, the three-year statute of limitations imposed by section 3-118(g) of the UCC expired on August 11, 1991. Because Palmer did not file suit until January 2007, section 3-118(g) operates to bar Palmer's claim from our consideration.

¶ 29 In so concluding, we adhere to our holding in *Haddad's of Illinois, Inc.*, 286 Ill. App. 3d at 1073, 1075, 678 N.E.2d at 324, 326, that absent fraudulent concealment on the part of defendants, the discovery rule—which delays the commencement of the relevant statute of limitations—does not apply to causes of action for conversion of negotiable instruments. Here, even if we were to agree with Palmer that defendants fraudulently concealed their involvement with regard to the check at issue (on which we express no opinion) that concealment did not occur—according to Palmer's complaint—until February 2005, which was well past the August 1991 expiration of the applicable three-year statute of limitations under section 3-118(g) of the UCC.

¶ 30 Accordingly, we affirm the trial court's judgment.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.