

ROBERT J. TRIFFIN, : **SUPERIOR COURT OF NEW JERSEY**
Plaintiff, : **APPELLATE DIVISION**
 : **DOCKET NO. A-2715-22 T2**
v. :
 : **CIVIL ACTION**
KAISER A. PATHAN, :
(Appearing Defendant) : **ON APPEAL FROM:**
 :
(AND) :
 : **THE SUPERIOR COURT /**
SHABANA PATHAN, : **HUNTERDON COUNTY /**
(Appearing Defendant) : **SPECIAL CIVIL PART**
 :
(AND) :
 : **TRIAL COURT / DOCKET NO.**
ANMOL SARFARZ, : **DC: 000579-22**
(Non-Appearing Defendant) :
 : **APPEAL FROM THE TRIAL**
(AND) : **COURT'S ORDERS OF**
 : **MARCH 6, 2023, AND MARCH 26, 2023**
HARIS ZAMAN :
(Non-Appearing Defendant) : **SAT BELOW:**
 : **THE HONORABLE,**
(AND) : **HAEKYOUNG SUH, J.S.C.,**
 :
AH786 CONTRACTORS, LLC : **AND**
(Non-Appearing Defendant) :
 : **THE HONORABLE,**
(AND) : **STEPHEN B. RUBIN, J.S.C.**
 :
ABC, LLC :
 :
(AND) :
 :
JANE AND JOHN DOE, LLC :

**CORRECTED BRIEF, WITH APPENDIX,
OF APPELLANT ROBERT J. TRIFFIN**

(SUBMISSION DATE: FEBRUARY 6, 2024)

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committed plain and reversible error when they failed to apprehend under the drawer’s warranty in 12 N.J.S.A. 3 414: Triffin was entitled to recover as a matter of course from the Pathans as the joint, or individual, drawers of their dishonored check.

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PRELIMINARY STATEMENT:

In this appeal, Triffin seeks under the check drawer's warranty in 12 N.J.S.A. 3:414 to enforce a dishonored \$12,000.00 personal check that defendants Kaiser A. Pathan, or Shabana Pathan, hereinafter the Pathans, jointly or individually, issued on April 14, 2021, to "AH786 Contractors, LLC".

On April 14, 2021, "AH786 Contractors" cashed the Pathans' \$12,000.00 check upon the authority of "AH786 Contractors, LLC's, Corporate Resolution, Pa 50-51", and as required by 17 N.J.S.A. 15A 30 - 17 N.J.S.A. 52 of the New Jersey Check Cashers Regulatory Act of 1993. The referenced corporate check cashing resolution is attached hereto Pa50-51.

Confirming "Checks-2-Cash, Inc.'s" compliance with the requirements of "AH786 Contractors, LLC's check cashing resolution, Triffin's check casher assignor "Checks-2-Cash, Inc." redacted photocopied, and as appears at Pa 23, through Pa 24, the New Jersey Photo-Drivers licenses of the two individuals: Haris Zaman, and Annol Sarfaraz, as designated in "AH786 Contractors, LLC's" corporate check cashing resolution; as the sole individuals who "AH786 Contractors, LLC" authorized to cash AH786 Contractors, LLC's checks with Checks-2-Cash, Inc.

Upon Checks-2-Cash, Inc.'s deposit of the Pathans' check for payment, it was dishonored and returned to Checks-2-Cash, Inc., with the legal notion

required by 12 U.S.C.A. 5003, “This is a LEGAL COPY of your check. You can use it the same way you would use the original check.” In this regard, 12 U.S.C. 5003 expressly states it applies for all purposes of Federal and State law; and for all persons.

As such, the legal notation on the Pathans’ dishonored check, “ALTER/FICT” triggers the Appellate Division’s published landmark holding of first impression in Triffin v. Quality Urban Housing Partners, 352 N.J. Super. 538, wherein the Appellate court expressly stated: “Even in a Special Civil Part Action such as this; the material facts of a party’s claim or defense may never be assumed; and for any court to do is a reversible error”.

As such, the undefined “Alter/Fict” phrase on the Pathans’ PNC dishonored check at Pa6 violates, both 12 N.J.S.A. 3-104’s definition of a Negotiable Instrument, as well as the Appellate Division’s long published holding in Quality Urban Partners supra.

Consequently, given that this Court found in Quality Uban Partners supra: the material facts of a party’s claim or defense may never be assumed; so too, this Appellate court must vacate and remand for trial; Triffin’s 12 N.J.S.A. 3:314 recoupment claim upon the Pathans’ dishonored check in this matter.

PROCEDURAL HISTORY:

Although the Pathans not dispute, or set forth any facts to question, that Triffin's assignor's "Checks-2-Cash, Inc." did not comply with all the requirements in "AH786 Contractors, LLC's" Check Cashing Resolution; Pa 50-51; motion Judges Shu held at Pa 176: "While there is a genuine issue of material fact as to whether there was fraud or illegality affecting the dishonored check, plaintiff does not satisfy the requirements to establish he is a holder in due course pursuant to N.J.S.A. 12A:3-302(a)(2), because plaintiff acknowledges he was assigned the dishonored check."

Yet in this Appellate Division's seminal published decision of first impression in Triffin v. Cigna Ins. Co. 297 N.J. Super. 199, (App Div. 1997) this Appellate Court held: a check casher's holder in due course rights in its customers' dishonored checks are freely assignable.

Accordingly, it is irrefutable that: the Honorable, Haekyoung Suh, J.S.C, committed prejudicial and reversible error when she found at Pa. 176; Triffin was not entitled to the rights of a holder in due course, because – as Judges Suh mistakenly assumed - at the time Triffin purchased the Pathans' check, Triffin, or his assignor Checks -2 Cash, knew it was previously cashed.

STATEMENT OF FACTS

On April 14, 2021, Kaiser Pathan, or Shabana Pathan; “Pathans”, issued their \$12,000, personal check to “AH786 Contractors, LLC”; “AH786 Contractors”. In turn, on the same day the Pathans issued their \$12,000.00 personal check to AH786 Contractors. On the same day, AH786 Contractors, operating through its written check Cashing Resolution, cashed the Pathans’, \$12,00.00 check with Checks-2 Cash, Inc.; “Checks-2-Cash”.

Through the attached assignment agreement at Pa81-82, on August 18, 2021, Checks-2-Cash assigned to Triffin all of Checks-2-Cash’s rights in the Pathans’ \$12,00.00 dishonored check, and as it existed when the check was dishonored and returned to “Checks-2-You” by the Pathans drawer bank, PNC Bank as an “ALTER/FCT” check. In turn, Triffin commenced this civil action complaint on June 6, 2022.

STANDARD FOR APPELLATE REVIEW

This is an appeal from the motion court’s grant of Pathans’ motion for summary judgment. The standard of review is de novo, and which legal standard requires this reviewing court to apply the same legal standard as the trial court. Conley v. Guerrero. 228 N.J. 339, 346 (2017).

In this regard, the Court stated: this court must determine, and as the trial Judges was required: to determine, “whether the evidence presents a sufficient disagreement to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law.” Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 536 (1995)).

Summary Judgment must be granted “if the pleadings, depositions, answers to the interrogatories and admissions on file, together with the affidavits, if any, shows that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.” Templo Fuente De Vida Corp. V. Nat’s Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).

Moreover, court Rule 4:46-2(c) succinctly states: summary judgment should be only granted when there is “no genuine issue as to any material fact challenged and that a moving party is entitled to a judgment or order as a matter of law.” R. 4:46-2(c). In this regard, the motion court must decide “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the disputed issue in favor of the non-moving party.”

Davis v. Brickman Landscaping, Ltd. 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

If a genuine issue of material fact exists, this court expressly stated: the inquiry then turns to “whether the trial court correctly interpreted the law.” DepoLink Ct. Reporting & Litig. Support Servs. V. Rochman, 430 N.J. Super. 325 333 (App. Div. 2013).

TRIFFIN’S LEGAL ARGUMENTS:

POINT ONE:

The dispositive legal question in this appeal is s whether: At the time Triffin’s assignor -Checks-2-Cash cashed the Pathans’ \$12,000.00 check, did Checks-2-Cash either know, or did Checks 2 Cash have reason to know, that the Pathans’ \$12,00.00 was a paid check?

(Judges Suh raised this threshold fact issue in her opinion at Pa 118.)

POINT TWO:

Given that the Pathans do not claim there is any admissible proof in the record that shows either Triffin, or his assignor Checks-2-Cash, had any knowledge of any defenses to the Pathans' repayment of their referenced dishonored check No. 152; it follows under the Appellate Division's published holding in Triffin v. Cigna Insurance Co. 297 N.J. Super. 1997: that Motion Judges Suh, and Rubin, committed plain and reversible error when they failed to apprehend under the check drawer's warranty in 12 N.J.S.A. 3 414: that Triffin was entitled to recover as a matter of course from the Pathans, either as the individual, or as the joint drawers, of their underlying dishonored check No. 152.

(Motion Judge Suh raised this dispositive act issue of fact and law in her opinion at Pa 118.)

CONCLUSION:

For all the facts and legal arguments cited herein, the referenced Motion Judges, Suh and Rubin, committed plain and reversible error when they dismissed Triffin's complaint with prejudice.

REQUEST RELIEF:

Triffin respectfully requests this Appellate court to reverse the dismissal of Triffin's complaint and to remand this matter to the trial court for its entry of judgment in favor of Triffin as requested in Triffin's complaint, together with statutory pre-judgment interest from the complaint filing date, and with all court costs to follow.

Date: February 6, 2024

RESPECTIVELY SUBMITTED,

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