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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3043-21**

ROBERT J. TRIFFIN,

Plaintiff–Appellant,

v.

**SEVEN STAR HOLDINGS, LLC
and FRANCIS PETERPAUL,**

Defendants-Respondents,

and

JONATHAN ROSADO-LISBOA,

Defendant,

and

**SEVEN STAR HOLDINGS, LLC and
FRANCIS PETERPAUL,**

Defendants/Third-Party Plaintiffs,

and

**TWO RIVER BANK and/or
OCEAN FIRST BANK,**

Third-Party Defendants.

Argued October 10, 2023 — Decided November 1, 2023

Before Judges Marczyk and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. DC-013165-21.

Robert J. Triffin, appellant, argued the cause pro se.

Albert E. Cruz argued the cause for respondent (DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C., attorneys; John J. Russo, on the brief).

PER CURIAM

Plaintiff Robert J. Triffin appeals from the April 14, 2022 order granting summary judgment to defendant Seven Star Holdings, LLC, in which the court found defendant's liability for two dishonored checks discharged under N.J.S.A. 12A:3-414(c). We affirm.

Defendant issued two paychecks to its former employee, Jonathan Rosado-Lisboa¹: the first for \$218.79, and the second for \$361.78. Each check was first presented for payment by Rosado-Lisboa via electronic check deposit,

¹ Rosado-Lisboa was initially named as a co-defendant, but plaintiff dismissed the claims against him with prejudice on May 27, 2022, concurrent with filing notice of this appeal. Plaintiff also voluntarily dismissed claims against co-defendant Francis Peterpaul during the April 14, 2022 hearing.

and then presented for payment a second time to Ali's Check Cashing, LLC (Ali's). Seven Star's bank records reflect that in both instances, the check's amount was initially debited from the banks account, and the amount of the second, duplicate debit was credited back to defendant. The dishonored checks were returned to Ali's, bearing the following markings: "DUPLICATE" and "This is a LEGAL COPY of your check. You can use it the same as you would use the original check." Images of the checks returned to defendant by its bank did not bear the same markings. Approximately one year later, Ali's assigned its rights in the dishonored checks to plaintiff.

Plaintiff filed a complaint in the Special Civil Part, seeking to recover \$802.63 from defendant, for the amounts of both dishonored checks, pre-judgment interest, fees, and court costs. Defendant answered, raising the "previous payment" statutory affirmative defense under N.J.S.A. 12A:3-414(c).

Defendant then moved for summary judgment. In its statement of material facts, defendant asserted its account was initially debited twice for each of the two checks and later credited for the second presentment. To support these assertions, defendant attached to its brief an excerpt from its business checking account statement and three separate copies of the checks: the checks as they

were first presented, the checks as they were presented a second time; and the checks purchased by plaintiff, bearing the markings described supra.

When opposing defendant's motion, plaintiff replied, "[n]o response required" to the paragraphs detailing the debits and credits. In his counterstatement of facts, plaintiff stated only the copies of the checks in his possession, which bore the markings, could be considered legally admissible evidence. Plaintiff argued federal banking regulations under 12 U.S.C. 5003(b)(1)-(2) ("the Check 21 Act") required copies of checks to bear such markings in order to qualify as "substitute checks." Citing U.S. Const. art. VI, cl. 2 ("the Supremacy Clause"), plaintiff argued the Check 21 Act preempted state rules of evidence, and the copies of the checks in defendant's possession, lacking the markings, could not be used to support the previous payment defense.

At argument on the motion for summary judgment, the judge found each check was presented the first time electronically, cleared, presented a second time to Ali's, and then returned as dishonored. The judge also found defendant's bank statements independently proved each check's amount was debited from the account twice, and the duplicate amounts were subsequently credited. The judge concluded the Check 21 Act did not "deal with issues of evidence law,

and whether a photocopy of the front and back of the check can be admitted into evidence under New Jersey law." Finding no genuine issue of material fact as to whether defendant had proven its statutory defense, the judge granted summary judgment in defendant's favor. This appeal followed.

On appeal, plaintiff presents the following issue:

PURSUANT TO THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION ALL FEDERAL LAW CONSTITUTES THE SUPREME LAW OF THE LAND, AND WHICH IS BINDING UPON ALL FEDERAL AND [STATE] JUDGES, IRRESPECTIVE OF ALL STATE LAW TO THE CONTRARY.

Appellate review of an order for summary judgment is de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show 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." R. 4:46-2(c). The court must "consider 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 alleged disputed issue in

favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Applying these legal standards, we conclude the judge properly granted summary judgment in defendant's favor.

A party opposing a motion for summary judgment is required to respond to the movant's statement of material facts by "either admitting or disputing each of the facts in the movant's statement." R. 4:46-2(b). The factual statements "which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation . . . demonstrating the existence of a genuine issue as to the fact." Ibid.

Here, defendant's factual recitations of previous payment were specifically supported by its checking account statement and images of the cleared checks. Plaintiff failed to dispute these factual recitations and provided no evidentiary support to create a genuine issue of material fact. Even in his brief before this panel, plaintiff argued it did not deny "as a matter of fact that the referenced checks were . . . paid[.]" The effect of this failure to deny is an admission by plaintiff on record to the dispositive and uncontested fact of defendant's previous payment. Defendant therefore was entitled to dismissal as a matter of law, and the trial court's order of summary judgment was appropriate.

See also Triffin v. SHS Grp., LLC, 466 N.J. Super 460, (2021) (affirming dismissal on defendant's "previously paid" defense, even though defendant's copy of the check lacked an indorsement, because defendant's bank statement "clearly demonstrate[d] the check was processed and paid[.]").

Because the constitutional question is not imperative to disposition of this litigation, we need not reach the question of whether a federal banking regulation preempts state evidentiary rules. Plaintiff's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION