Circuit Court for Wicomico County
Case No. 22-C-15-001577

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 283
September Term, 2017
&
No. 2845
September Term, 2018

SANDRA K. WATSON

v.

THE BANK OF DELMARVA, ET AL.

Berger,
Leahy,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: May 7, 2020

This appeal arises from the grant of summary judgment by the Circuit Court for Wicomico County in favor of appellees, the Bank of Delmarva (the "Bank") and Metropolitan Life Insurance Company ("MetLife").[1] On October 13, 2015, Sandra K. Watson ("Ms. Watson") filed a complaint in the Circuit Court for Wicomico County against her husband, Garfield Watson ("Mr. Watson"), the Bank of Delmarva, and MetLife. Appellant alleged negligence and breach of contract as to the Bank and MetLife, and that Mr. Watson fraudulently withdrew annuity funds. MetLife and the Bank each filed a Motion for Summary Judgment. On July 20, 2016, the court heard argument on the motions and subsequently entered an order granting summary judgment in favor of appellees.

This timely appeal followed. Appellant presents the following questions for our review, which we have rephrased and consolidated:

1. Was the Variable Annuity issued by MetLife a simple insurance contract subject to simple insurance contract defenses or was it an investment security subject to SEC Regulation and Maryland Securities Regulation?

2. Was MetLife in breach of contract when it paid out funds on a forged signature and issued a check in stacked format rather than jointly?

3. Was MetLife negligent when it paid out funds on a forged withdrawal form and issued a check in stacked format rather than jointly?

4. Was Bank of Delmarva entitled to rely on an agency theory of indorsement?[2]

[1] The annuity at issue in the case before us was issued by MetLife Investors USA Insurance Company. However, due to subsequent mergers and acquisitions, the annuity was ultimately acquired by MetLife.

[2] In appellant's brief she uses the spelling of endorsement with the first letter "i." For purposes of this opinion we find that both spellings are correct and have the same meaning. However, for consistency, we will use the spelling of endorsement with the first letter "e" throughout.

5. Was Bank of Delmarva entitled to rely on a special period of limitations set forth in the contract?

6. Did Bank of Delmarva assume a duty when it reviewed, accepted and approved a check with two indorsements?

7. Once a duty not otherwise required by law is undertaken by a party, must that duty be discharged in a non-negligent manner?

8. Was Bank of Delmarva entitled to judgment as a matter of law?

For reasons to follow, we affirm the circuit court's grant of summary judgment.

BACKGROUND

Sandra K. Watson and Garfield Watson married in 1997. On October 26, 2007, the couple purchased a Variable Annuity Contract (the "Annuity Contract" or "Contract") from MetLife for an initial purchase price of $400,000.[3] In the contract, appellant was listed as the owner and annuitant of the annuity, Mr. Watson was listed as a joint owner.

On or about November 5, 2012, it became apparent to appellant that Mr. Watson wanted to end their marriage. As a result, appellant searched Mr. Watson's car for evidence. She discovered a briefcase containing financial documents. Among those documents were two Annuity Withdrawal Request forms ("Withdrawal Forms") that Mr. Watson filed with MetLife and documents showing that Mr. Watson had opened a new bank account and safe deposit boxes at various banks.

[3] Appellant signed the Variable Annuity Application as "Sandra K. Watson, Mr. Watson signed as "Garfield R. Watson." Appellant filled out the personal information atop the left hand corner of the $400,000 check with her name handwritten as "Sandy K. Watson" and Mr. Watson's name handwritten as Gary R. Watson. Furthermore, appellant signed the check as "Sandy K. Watson."

The first withdrawal request was for a net partial payment of $150,000 in the form of a check. The first Withdrawal Form designated "Sandra K. Watson" and "Garfield R. Watson" as the owners, however, the signatures were signed as "Gary R. Watson" and "Sandy K. Watson." The second withdrawal request was for a net partial payment of $150,000 to be made via an Electronic Funds Transfer ("EFT"). This request designated "Sandra K. Watson" as the annuitant and "Gartfield R. Watson" and "Sandra K. Watson" as the owners. Under owner, the form is signed with a scribble and under joint owner, the form is signed "Sandy K. Watson."

Appellant claims she never signed the Withdrawal Forms, and instead, Mr. Watson signed his name and forged her name on the forms. In accordance with the first Withdrawal Form, MetLife issued a check in the amount of $150,000, payable in stacked format to appellant and Mr. Watson. He deposited the check into the joint checking account he and appellant shared at the Bank of Delmarva. In accordance with the second Withdrawal Form, MetLife made an EFT in the amount of $150,000, into the parties' joint checking account at the Bank of Delmarva. Mr. Watson, subsequently, withdrew all of the money received from MetLife from the joint checking account.

On November 5, 2012, appellant notified MetLife via telephone that she did not sign the Withdrawal Forms and she believed Mr. Watson had forged her signature. MetLife informed appellant it would conduct an investigation regarding her complaint. On November 7, 2012, to initiate the investigation of her complaint, MetLife mailed appellant an Affidavit of Check Payee for her completion. However, appellant never received the Affidavit because Mr. Watson had changed the address MetLife had on file to a P.O. Box

that only he could access. Mrs. Watson did not take any further action to follow-up with MetLife.

On October 13, 2015, appellant initiated litigation against Mr. Watson, MetLife, and the Bank. Appellant alleged Mr. Watson committed fraud by forging her signature on the two annuity Withdrawal Forms. In addition, she claimed MetLife breached the terms of the Annuity Contract and was negligent in accepting the Withdrawal Forms that were endorsed with her forged signatures. Against the Bank, appellant alleged breach of contract, negligence, and conversion for accepting the check deposited by Mr. Watson, failing to discover the forged signature on the check, and paying the $150,000 check that contained the forged endorsement. In June 2016, both MetLife and the Bank filed Motions for Summary Judgment. On July 20, 2016, the court heard argument on the motions and subsequently entered an order granting the motions in favor of MetLife and the Bank.

As to her claims against Mr. Watson, a jury trial was held on January 4, 2017. The jury found in favor of Ms. Watson and she was awarded $451,710.52 in economic damages and $677,565 in emotional distress damages for a total judgment of $1,129,275.52. This timely appeal followed.

STANDARD OF REVIEW

We review a trial court's grant of summary judgment *de novo*, "determining for ourselves whether the record on summary judgment presented a genuine dispute of material fact, and if not, whether the moving party was entitled to summary judgment as a matter of law." *Dett v. State*, 161 Md. App. 429, 441 (2005) (citations omitted). In reviewing the summary judgment record, "if the facts are susceptible to more than one

inference, the court must view the inferences in the light most favorable to the non-moving party." *Laing v. Volkswagen of America, Inc.*, 180 Md. App. 136, 153 (2008) (quotations omitted). Here, appellant concedes "no material facts are in dispute," thus we must determine if appellees are entitled to summary judgment as a matter of law.

DISCUSSION

METLIFE

I. The issue of whether or not the variable annuity issued by MetLife was a simple insurance contract or an investment security was not raised below.

Relying on a case tried in the U.S. District Court for the Eastern District of New York, *Banco Multiple Santa Cruz S.A., v. Moreno*, 888 F.Supp. 2d 356 (2012), appellant argues the variable annuity issued by MetLife is "not a simple insurance contract but rather a regulated investment security," and thus, is subject to "SEC Regulation, Maryland Securities Regulations, general contract law and considerations of negligence that can arise when there is a breach of contract." Conversely, appellee asserts "appellant did not raise the foregoing arguments at the trial court level." We agree.

In her brief and before this Court during oral argument, appellant concedes she did raise this argument before the trial court. Maryland Rule 8-131(a) provides that, except for jurisdiction of the trial court, "[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). Because this issue was not preserved for appeal, we decline further review.

II. Appellant did not preserve her "stacked format" arguments.

Appellant presents two arguments regarding MetLife issuing the check in stacked format. First she contends "MetLife was in breach of contract when it issued a check in stacked format." Second, she asserts "MetLife was negligent when it issued a check in stacked format rather than jointly." Appellant claims the MetLife Annuity Contract requires that a withdrawal check be made to the joint owners and be payable to the owners jointly. However, the check issued by MetLife for $150,000 "was not paid to the owners jointly, but rather made out in a stacked format which as a matter of law means that it is payable to either [owner]." Specifically, appellant points out that MetLife issued the check "in stacked format with names one above the other," not including the word "and" between the two names.

MetLife contends "appellant's arguments as to the formatting of the October 9, 2012 check were not properly presented to the trial court and thus have not been preserved for appeal." MetLife notes appellant raised this theory of liability for the first time in her Opposition to MetLife's Motion for Summary Judgment," however "neither appellant's original complaint nor her amended complaint (which was filed on the day discovery closed) allege MetLife breached the Annuity Contract by issuing the . . . check in 'stacked format.'"

We agree. In her Original Complaint, as it pertains to MetLife, appellant specified that MetLife breached the Annuity Contract by "accept[ing] an application for disbursal based on a signature that varied from the name in which the annuity was established." She averred MetLife "owed a duty of care to [her] to act as a reasonably prudent insurance company would act when faced with a withdrawal request where the name on the request

varied from that of the account holder," and MetLife "breached this duty by accepting a withdrawal request utilizing a different name." Appellant made no mention of the term, "stacked format" nor did she allude to improper formatting of the issued check as a theory of liability. As such, this issue was not properly preserved for appeal, and thus, we decline further review.

III. MetLife did not breach the Annuity Contract.

The interpretation of a written contract is subject to a *de novo* standard of review. *Wells v. Chevy Chase Bank, F.S.B.*, 363 Md. 232, 250 (2001). When interpreting written contracts, Maryland courts have applied the law of objective contract interpretation, which provides that "clear and unambiguous language" in a contractual agreement "will not give way to what the parties thought the agreement meant or was intended to mean." *Auction & Estate Representatives, Inc. v. Ashton*, 354 Md. 333, 340 (1999). Where the language of the contract is unambiguous, we must "give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used." *John L. Mattingly Constr. Co. v. Hartford Underwriters Ins.*, 415 Md. 313, 326 (2010).

To prevail in an action for breach of contract, appellant must prove that MetLife owed her a contractual obligation and that MetLife breached that obligation. *See Taylor v. NationsBank, N.A.*, 365 Md. 166, 175, 776 A.2d 645, 651 (2001). Appellant argues MetLife breached its obligation to her when it paid out funds on a forged signature. In response, MetLife contends the "Contract does not obligate MetLife to verify or otherwise authenticate the signatures on annuity withdrawal forms."

The Annuity Contract at issue defines owner as:

> **OWNER —** The person(s) or entity(ies) entitled to the ownership rights under this contract. If Joint Owners are named, all references to Owner shall mean Joint Owners. (Referred to as you or yours).

The General Provisions section of the Contract defines joint owners as:

> **JOINT OWNER —** A contract may be owned by Joint Owners, limited to two natural persons. Joint Owners have equal ownership rights and must both authorize any exercising of those ownership rights unless otherwise allowed by [MetLife].

The Withdrawal Provisions section of the Contract provides the following:

> **WITHDRAWALS —** Prior to the Annuity Date, you (Joint Owners) may, upon Notice to [MetLife], make a total or partial withdrawal of the Withdrawal Value. . . You must specify in a Notice to us from which Subaccount(s) values are to be withdrawn if other than the above method is desired. We will pay the amount of any withdrawal within seven (7) days of receipt of the Notice in good order . . . .

The Contract defines notice as:

> **NOTICE —** Any form of communication providing information we need, either in signed writing or another manner that we approve in advance. All notices to us must be sent to [MetLife's] Annuity Service Office and received in good order . . . .

In examining the plain language of the Annuity Contract, it is clear that both appellant and Mr. Watson as Joint Owners had equal ownership rights, and both appellant and Mr. Watson were required to authorize any use of such ownership rights, "unless otherwise allowed by [MetLife]." In order to withdraw funds, authorization was required from both appellant and Mr. Watson, unless MetLife allowed otherwise. The Withdrawal Forms submitted by Mr. Watson complied with the withdrawal terms of the Contract—a written communication sent to MetLife's Annuity Service Office and deemed to be sent in

"good order." Upon receipt, MetLife was contractually obligated to pay the amount of the withdrawal within seven days. MetLife met this obligation by issuing the $150,000 check to both joint owners of the annuity. The Contract did not include language requiring verification, and thus, MetLife was not bound to a heightened duty to verify, absent express terms in the Contract.

IV. **MetLife is not liable in negligence.**

Appellant next claims MetLife is negligent for paying the check "on a forged withdrawal form." Conversely, MetLife claims it "did not owe a legal duty to take additional steps to verify her signature on either withdrawal request form."

To prevail on a negligence claim, appellant must show: (1) MetLife was under a duty to protect her from injury, (2) MetLife breached that duty, (3) appellant suffered actual injury or loss, and (4) the loss or injury proximately resulted from MetLife's breach of the duty. *Davis v. Stapf,* 224 Md. App. 393, 406 (2015). Duty is a foundational element in a claim of negligence." *Pace v. State,* 425 Md. 145, 155, (2012). Whether a legal duty exists is a question of law to be determined by the court. *Doe v. Pharmacia & Upjohn Co., Inc.*, 388 Md. 407, 414 (2005). Maryland defines "duty" as "an obligation to which the law will give effect and recognition to conform to a particular standard of conduct toward another." *Jacques v. First Nat'l Bank of Md.*, 307 Md. 527, 532 (1986) (quoting J. Dooley, Modern Tort Law § 3.03, at 18–19 (1982, 1985 Cum. Supp.)) "To determine whether a tort duty exists in a particular context, we examine: (1) 'the nature of the harm likely to result from a failure to exercise due care,' and (2) 'the relationship that exists between the parties.'" *100 Inv. Ltd. P'ship v. Columbia Town Ctr. Title Co.*, 430 Md. 197, 213–14

(2013) (quoting *Jacques*, 307 Md. at 534, 515 A.2d 756). In *Jacques*, the Court of Appeals explained:

> Where the failure to exercise due care creates a risk of economic loss only, courts have generally required an intimate nexus between the parties as a condition to the imposition of tort liability. This intimate nexus is satisfied by contractual privity or its equivalent. By contrast, where the risk created is one of personal injury, no such direct relationship need be shown, and the principal determinant of duty becomes foreseeability.

Jacques, 307 Md. at 515.

"[A] contractual obligation, by itself, does not create a tort duty. Instead, the duty giving rise to a tort action must have some independent basis." As the Court in *Wilmington Trust Co. v. Clark*, explained:

> "[w]hile a tort action in favor of a contracting party can be founded upon a duty arising out of the contractual relationship, . . . the duty giving rise to the tort cause of action must be independent of the contractual obligation . . . . Mere failure to perform a contractual duty, without more, is not an actionable tort."

289 Md. 313, 328–329 (1981).

Furthermore, [t]he mere negligent breach of a contract, absent a duty or obligation imposed by law independent of that arising out of the contract itself, is not enough to sustain an action sounding in tort." *Jacques v. First Nat'l Bank*, *supra*, 307 Md. at 534. A tort action arises when a breach of contractual duty is also a violation of a duty imposed by law. *Mesmer v. Maryland Auto. Ins. Fund*, 353 Md. 241, 253 (1999) (quoting *Heckrotte v. Riddle*, 224 Md. 591, 595 (1961)). Although "there is no single principle or simple test for determining when a defendant's breach of a contract will also breach an independent duty and give rise to a tort action," a dispute over the existence of any valid contractual

obligation covering a particular matter, ordinarily limits the plaintiff to a breach of contract remedy. *Mesmer* 353 Md. at 254.

In the case at bar, appellant points to no legal duty requiring MetLife to take additional steps to verify her signature on the Withdrawal Forms. Further, the Annuity Contract did not impose such a duty and neither did MetLife's policies and procedures. During a deposition, a MetLife corporate representative, Stacey Dunn, testified regarding MetLife's policies once a withdrawal request is received. She testified as follows:

> So the associate would review the form, look at the information that has been completed on the form to ensure that it was completed—completed in totality, so the whole thing is completed, validate that the contract number is on there, validate that the client has taken—or given us an amount to withdraw.
>
> We would look to ensure that the tax withholding election was made. We would make sure that the—there's payee as to who we need to make the check payable to. Ensure that the signatures that we receive are on the form and match the ownership to ensure that if it's a joint owner that we need both signatures.
>
> And they would look for any outstanding requirements needed based on contract rules we have.

In regard to reviewing the signatures on the Withdrawal Form, Dunn testified:

> Q: If you receive a request, withdrawal request form that you just described, what process do you have other than checking the document which you have just described to verify or confirm that the request actually came from the client who's the owner of the annuity?
>
> Dunn: We look at the signatures to ensure that it is signed by the names that are on the contract.
>
> Q: and if there is a difference between the signatures on the withdrawal. . . . if there is a difference between the signed name on the withdrawal form and the name on the contract, what happens?

> Dunn: We would look to see that it is within reason of the name on the contract and that it is similar to the name on the contract as well as the name on the withdrawal form.

When asked to define "within reason" Dunn testified "if the signature is close to the same as the contract owner's name, we would look at that as saying it is the same." She further testified that MetLife does not have any procedures other than what she described to verify the identity of the person who signed the form. Dunn also testified that it is not a MetLife procedure to compare or review prior withdrawal forms when processing a new withdrawal.

Pursuant to the Annuity Contract and company procedure, MetLife reviewed the Withdrawal Form to ensure it was in "good order" by confirming the names on the form were substantially similar to the names on the Contract, as well as ensuring all of the requirements on the form were filled out. Based on the Contract and MetLife procedures, MetLife had no obligation to investigate the signatures on the Withdrawal Form. Absent more, we cannot find that MetLife had a duty, contractual or otherwise, to further investigate the signatures.

Moreover, even if MetLife were to compare the signatures on the Withdrawal Form to prior signatures received from appellant, the record shows appellant signed the purchase price check as "Sandy K. Watson"—the same as the signature on the Withdrawal Form. This would not have alerted MetLife to the presence of a forged signature, and thus, MetLife would have no reason to suspect fraud. Based on the facts of this case, MetLife exercised reasonable care in paying out the withdrawal requests and is not liable in

negligence.[4] We hold the trial court properly granted MetLife's motion for summary judgment.

BANK OF DELMARVA

V. The Account Agreement between the Watsons' and Bank of Delmarva entitled Mr. Watson to endorse the check on appellant's behalf.

Appellant argues the Bank was not entitled to rely on an agency theory of endorsement, as outlined in the Account Agreement, because the Bank's Vice President and Branch Manager, Timothy Boston, "relied on there being two indorsements on the check; one by Mr. Watson and one by Ms. Watson." The Bank contends "the conditional limitation which Watson espouses on the cross authorization is not found anywhere in the contract and is not supported by any legal authority."

In 2004, the Watsons' opened a joint bank account with the Bank of Delmarva. The terms of the Account Agreement expressly provided:

> Unless clearly indicated otherwise on the account records, any of you acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person signing the signature card to indorse any item payable to you or your order for deposit to this account or any other transaction with us.

[4] "[T]here can be no negligence where there is no duty that is due; for negligence is the breach of some duty that one person owes to another . . . . As the duty owed varies with circumstances and with the relation to each other of the individuals concerned, so the alleged negligence varies, and the act complained of never amounts to negligence in law or fact, if there has been no breach of duty." *Walpert, Smullian & Blumenthal, P.A. v. Katz*, 361 Md. 645, 655 (2000).

The language of the Account Agreement makes clear that by signing the agreement, both appellant and Mr. Watson authorized the other to endorse any instrument payable to the other for deposit into the joint account. Although appellant claims Mr. Watson signed the check without her permission, the provisions of the Account Agreement make clear that he did not need her permission to do so because she had already given him that authority. Such authority is effective until the Bank receives written notice from either Ms. or Mr. Watson revoking that authority. Appellant concedes that because the check was issued in stacked format only one signature was required to deposit the check, thus, Mr. Watson's signature alone would've been sufficient for the Bank to honor the deposit.[5]

Despite this provision of the Account Agreement, appellant claims her authorization for Mr. Watson to endorse any instrument payable to her is only effective if the Bank relied on the endorsement as an "agency authorization." To support this claim, appellant points to the deposition testimony of Mr. Boston regarding his approval of the two endorsements on the $150,000 check:

> Q: On the bottom of that check there is the words Tim Boston, I am not including that with respect to the identification on this document other than the name Tim Boston which was written on the bottom, have you seen this check before?

[5] Appellant also seems to argue that because Mr. Boston relied on two endorsements instead of one, he assumed a duty. Specifically, appellant claims "The issue of whether Mr. Boston's actions in reviewing the indorsements, approving both signatures and accepting that it was Ms. Watson's signature was the assumption of a duty, is a question for the jury." We find that appellant's "assumption of a duty" argument was not raised before the trial court, and thus, is not preserved for review on appeal." As such, we decline to address this argument. Md. Rule 8-131(a).

Boston: My initials are on it. This was three and a half years ago so for me to recall a check, that's a long timeframe, but yes my initials are on the check.

Q: When you refer to your initials on the check, there is an endorsement that says Sandy Watson and just below the N there are initials that appear to be TSB with a circle around it?

Boston: Correct.

Q: And those are your initials?

Boston: Correct.

Q: Why would you have initialed this check?

Boston: I would have initialed this check to say [sic] that I am satisfied that this check and those are the signatures.

Q: There are two endorsements on the back of this check, what did you do to confirm those endorsements?

Boston: I could have done multiple things. Like I said it was a long time ago, so I don't know exactly what I would have done or what I did do. But I would have again looked at the signature cards, looked at past checks, accounts, if it wasn't open in our branch I would have called, so that's what I would have done. I would have done my due diligence to make sure those were signatures.

. . . .

Q: To whom is the check made?

Boston: Sandra K. Watson, Garfield R. Watson

Q: What's the endorsements on the check?

Boston: Two signatures, looks like a G, so I assume that's Garfield's and then Sandy Watson.

Q: And you would have looked at the bank's signature cards?

Boston: Correct, or checking, other checks, you know any other accounts related that they may have had.

Q: What would you have looked at?

Boston: I could have looked at past checks that they had signed, I could have looked at if they had loans, I could have looked at loan documents to determine that was the correct signatures.

Q: But you don't recall for this particular instance what it was that you looked at?

Boston: No, I don't.

. . . .

Q: And the check is made payable to Sandra K. Watson?

Boston: Correct.

Q: What is the endorsement?

Boston: Sandy Watson.

Q: Does that endorsement conform with the name of the payee on the check?

Boston: It is not the exact name.

. . . .

Q: Can you tell me why you would have accepted an endorsement that differs from the name of the payee on the check and the name on the account and the name on the signature card?

Boston: Because it could be the way that she signs her name sometimes. If I look back at loan documents or other checks that she had signed, then I could have compared the two. For instance, my name is Timothy but I sign Tim, it's pretty much the same situation.

Q: And even though this is a, what you have acknowledged to be a large check $150,000, you would not have required

conformance with the endorsement to the name of the payee on the check?

Boston: The endorsement was satisfactory. Would they have had to write it exactly what they said, is what you mean?

Q: Yes.

Boston: Not if that's her signature. I mean if she signs Sandy Watson then we would be okay with Sandy Watson.

Q: Who do you believe endorsed the Sandy Watson on the back of that check?

Boston: Sandy Watson.

Based on this record, we find appellant's claim that Mr. Boston did not rely on the "agency authorization" is without merit. The question of agency was not posed to Mr. Boston during deposition. Further, neither the Account Agreement or the law requires the Bank to rely on agency authorization in order to deposit a check in stacked format. Maryland Rule § 3-110(d) provides:

> If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Md. Code Art. § 3-110(d) (emphasis added). It was, thus, proper for the bank to deposit the check if it believed at least one of the signatures were valid. Mr. Boston testified that he believed both signatures were valid and belonged to Mr. and Ms. Watson. He compared the signatures on the check to the signature card, previous signed checks and loan documents, and since appellant has previously signed documents as "Sandy Watson" he

reasonably assumed her signature was valid in addition to Mr. Watson's. As such, the Bank properly deposited the check.

VI. The parties are bound by statutory law and the express terms as set forth in the Account Agreement, including the 60-day period of limitations.

The Account Agreement signed by the Watsons to set up the joint bank account at the Bank of Delmarva included the following provision:

> You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care.

Moreover, Maryland Code, Commercial Law, §4-406(f) provides, in relevant part:

> Without regard to care or lack of care of either the customer or the bank, a customer who does not within 12 months after the statement or items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration.

Appellant argues that she complied with both the contractual and statutory limitations precluding the assertion of an unauthorized signature against the Bank when she went to the Bank on November 5, 2012, and informed a bank teller about the unauthorized signature on the MetLife Withdrawal Forms. Conversely, the Bank argues appellant did not complain to the Bank that the deposit was unauthorized or that the withdrawal was unauthorized until the underlying lawsuit was filed in 2015.

During a deposition, appellant testified that shortly after she found the MetLife Withdrawal Forms containing her allegedly forged signature, she went to the Bank of Delmarva to close the joint account:

Q:	So you went to M&T and the Bank of Delmarva at the north branch, and then what?
Ms. Watson:	I went in with my daughter. My daughter went in with me, and I explained what happened with MetLife.
Q:	Tell me exactly what you told them?
Ms. Watson:	I told them he had forged my name on documents to get money from MetLife, and that it went into their account, and could I please close the account that I had with them. I wanted to close out accounts I had with him, and could they please give me an amount that I needed to write the check out to close it, and the teller did that. And that's pretty much it because at the time, I did not know that he had signed the back of this check and forged my name.
Q:	Oh. Okay. So you went to the Bank of Delmarva, and what you had [told] them was he forged your name at MetLife to get disbursements?
Ms. Watson:	Yes.
Q:	And you wanted to close accounts?
Ms. Watson:	That I was closing all of the bank accounts, and I wanted to close my account with them that day.
Q:	But you didn't tell them he forged my name on anything that was deposited because you didn't know about it?
Ms. Watson:	Not at that time.

. . . .

Q:	What was your next contact with the Bank of Delmarva?
Ms. Watson:	There wasn't any because I didn't know about this forgery.
Q:	Okay. The next contact was the lawsuit, filing the complaint?
Ms. Watson:	Yes . . . .

It is, thus, clear that appellant visited the Bank of Delmarva shortly after she was made aware of the alleged fraudulent activity related to the Withdrawal Forms and her primary objective was to close the joint bank account. Although she mentioned to the teller Mr. Watson "had forged [her] name on documents to get money from MetLife" as the reason she wanted to close the account, she did not inform the teller that she did not authorize the deposit or withdrawal of the $150,000 check or that the check contained her unauthorized signature. She further did not request to file a written complaint or seek to initiate an investigation.

Appellant did not contact the Bank again until 2015 when she filed the lawsuit. As a result, she is precluded from asserting the unauthorized signature claim against the Bank because she failed to notify the Bank of any fraud within the contractual and statutory limitations period. The trial court did not err in granting the Bank of Delmarva's motion for summary judgment.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.