

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 23-CV-01836

<p>Paul Crossman, Plaintiff</p> <p>v.</p> <p>RBS Citizens, National Association, Defendants</p>	<p>DECISION ON MOTION</p>
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RULING ON MOTION TO DISMISS

Plaintiff Paul Crossman has filed this action for damages against Defendant RBS Citizens, National Association (“Citizens”) asserting claims for violation of Vermont’s Uniform Commercial Code (“UCC”), breach of contract, and unjust enrichment. Plaintiff is represented by Tristan C. Larson, Esq. Defendant is represented by Jacqueline A. Crockwell, Esq. Mr. Crossman alleges that in 1992, he was issued four cashier’s checks totaling \$20,000 from Marble Bank upon closing his account there. Mr. Crossman put the four checks in a safety deposit box and forgot about them until 2022. By that time, Marble Bank had merged into Citizens. When Crossman attempted to cash the checks, Citizens refused to honor them. Pursuant to Rule 12(b)(6) of the Vermont Rules of Civil Procedure, Citizens moves to dismiss the Complaint, arguing Crossman’s UCC claim is barred by the applicable statute of limitations and the breach of contract and unjust enrichment claims are displaced by the UCC.¹ Crossman opposes the motion, asserting that under the UCC, the limitations period did not begin to run until presentation of the checks, and that his common law claims remain viable despite the provisions of the UCC. For the reasons discussed below, Defendant’s motion to dismiss is GRANTED IN PART and DENIED IN PART.

Discussion

In reviewing a motion to dismiss, the Court accepts “all facts alleged in the complaint as true and in the light most favorable to the nonmoving party.” *Coutu v. Town of Cavendish*, 2011 VT 27, ¶ 4; *see also Winfield v. State*, 172 Vt. 591, 593, 779 A.2d 649, 652 (2001) (when considering a motion to dismiss under Rule 12(b)(6), the court must “assume that all well pleaded factual allegations in the complaint are true, as well as all reasonable inferences that may be derived therefrom”). However, to the extent a party asserts “conclusory allegations or legal conclusions masquerading as factual conclusions,” the Court is not required to accept them as

¹ Citizens has not asserted that it did not assume Marble Bank’s obligation to pay the cashier’s checks upon the merger.

true. *Rodrigue v. Illuzzi*, 2022 VT 9, ¶ 33 (quotation omitted). “The purpose of a motion to dismiss for failure to state a claim upon which relief can be granted is to test the law of the claim, not the facts that support it.” *Samis v. Samis*, 2011 VT 21, ¶ 9. “Thus, when considering a Rule 12(b)(6) motion, the Court’s attention is directed toward determining whether the bare allegations of the complaint constitute a statement of a claim under V.R.C.P. 8(a).” *Bethel v. Mount Anthony Union High Sch. Dist.*, 173 Vt. 633, 634, 795 A.2d 1215, 1217 (2002) (quotation omitted). Dismissal is proper when there is no set of facts and circumstances alleged in the complaint which, if proved, would entitle the plaintiff to relief. *Samis*, 2011 VT 21, ¶ 9.

I. Plaintiff’s UCC Claim is Barred by the Statute of Limitations.

Citizens argues that under the version of the UCC in effect in 1992 (when the cashier’s checks were issued), Crossman’s claim is time-barred because the cause of action accrues on the date of issue, and any claim must be brought within six years of that date. Crossman counters that his claim is timely because it is asserted “against a drawer of a draft” and thus, the cause of action accrues when the check is presented and dishonored.

As an initial matter, the Court must determine not only which statute of limitations applies, but which version of the UCC applies. Vermont’s UCC was amended, effective in 1995. The new version, still applicable today, clearly provides that an “action to enforce the obligation of . . . the issuer of a teller’s check, cashier’s check, or traveler’s check must be commenced within three years after demand for payment is made.” 9A V.S.A. § 3-118(d) (2011 repl. ed.). If this provision governs Crossman’s claim, then the instant action is timely as having been filed within the three-year limitations period.

However, before 1995, the UCC provided that a “cause of action against a maker or an acceptor accrues . . . in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.” 9A V.S.A. § 3-122(1)(b) (1992) (repealed 1995). On the other hand, a “cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument.” *Id.* § 3-122(3) (providing that “[n]otice of dishonor is a demand”). Thus, if § 3-122(1)(b) applies to Crossman’s claim, then his cause of action accrued in 1992, and this case would be barred by § 511’s general six-year statute of limitations for civil actions. *See* 12 V.S.A. § 511 (“A civil action . . . shall be commenced within six years after the cause of action accrues and not thereafter.”). But if § 3-122(3) applies, then the action would also be timely, because the statute of limitations is not triggered until payment is demanded on the check.²

The Vermont Supreme Court has made clear that “retroactive application of limitations law is . . . barred by 1 V.S.A. § 214(b).” *Stewart v. Darrow*, 141 Vt. 248, 252, 448 A.2d 788, 790 (1982); *see also Curran v. Marcille*, 152 Vt. 247, 250, 565 A.2d 1362, 1364 (1989) (“[A] statute affecting legally existing rights should not be construed to operate retrospectively.”).

² The parties do not appear to dispute that a cashier’s check is a demand instrument. *See Santos v. First Nat’l State Bank of N.J.*, 451 A.2d 401, 407 (N.J. Super. Ct. App. Div. 1982) (noting that a “check is a draft or order on a bank to pay on demand”); 9A V.S.A. § 3-104 (1992) (repealed 1995).

Section 214(b) states that the “amendment or repeal of an act or statutory provision . . . shall not: . . . (2) affect any right, privilege, obligation, or liability acquired, accrued, or incurred prior to the effective date of the amendment or repeal.” Thus, under § 214(b), only the statute in effect at “the time the plaintiff[’s] claim accrued . . . can govern the timeliness of the suit.” *Stewart*, 141 Vt. at 253. Accordingly, the Court must determine whether Crossman’s cause of action accrued under the UCC existing in 1992, or after 1995.

The answer to this question turns on whether, in 1992, a cashier’s check was treated as a draft or a note (that is, a promise to pay). See 9A V.S.A. § 3-104(2)(b) (1992) (repealed 1995) (“A writing which complies with the requirements of this section is . . . (b) a ‘check’ if it is a draft drawn on a bank and payable on demand; . . . [or] (d) a ‘note’ if it is a promise other than a certificate of deposit.”). The 1992 UCC gives no clear definition of a cashier’s check, unlike the current version, which states: “‘Cashier’s check’” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.” 9A V.S.A. § 3-104(g) (2011 repl. ed.). However, the consensus view at the time appears consistent with the current definition. See, e.g., *Santos*, 451 A.2d at 407 (“[A] cashier’s check is a draft drawn by a bank upon itself.”). While this would appear to fall within the definition of either a draft or a note (promise), § 3-118(a) of the 1992 UCC clears up any ambiguity. It provides: “A draft drawn on the drawer is effective as a note.” 9A V.S.A. § 3-118(a) (1992) (repealed 1995). Thus, as the comments to the current UCC confirm, “[f]ormer Section 3-118(a) treated a cashier’s check as a note.” 9A V.S.A. § 3-103, cmt. 2 (2011 repl. ed.) (explaining that despite changes in modern banking practice, “it is technically more correct to treat a cashier’s check as a promise by the issuing bank to pay rather than an order to pay”); see also *id.* § 3-412, cmt. 1 (“Under former Section 3-118(a), since a cashier’s check or other draft drawn on the drawer was ‘effective as a note,’ the drawer was liable under former Section 3-413(1) as a maker.”).³

Having determined that the 1992 UCC treated a cashier’s check as a note, the Court concludes that § 3-122(1)(b) applies to Crossman’s claim against the maker of the note (Marble Bank, now Citizens). Under that section, his cause of action accrued “on the date of issue” of the cashier’s check in 1992. See 9A V.S.A. § 3-122(1)(b) (1992) (repealed 1995). Because Crossman’s cause of action to enforce the cashier’s checks accrued when he received them in 1992, 1 V.S.A. § 214(b) bars retroactive application of the amended statute of limitations contained in the 1995 version of § 3-118(d). Under § 511’s general six-year statute of limitations for civil actions, Crossman’s time to assert a claim to enforce the cashier’s checks expired in 1998. Therefore, his UCC claim asserted here must be dismissed as time-barred.

³ We note that Crossman’s reliance on 1995 UCC definitions to interpret the 1992 version of the code and for his argument as to which statute of limitations applies is misplaced. See Pl.’s Mem. in Opp. to Def.’s Mot. to Dismiss, filed June 26, 2023, at 2. For example, Crossman argues that the current UCC allows him to treat the cashier’s checks as either a note or a draft. See 9A V.S.A. § 3-104(e) (2011 repl. ed.) (“If an instrument falls within the definition of both “note” and “draft,” a person entitled to enforce the instrument may treat it as either.”). While this may be true for instruments issued in 1995 and thereafter, this newer revision does not change the fact that in 1992, a cashier’s check was “effective as a note.” 9A V.S.A. § 3-118(a) (1992) (repealed 1995).

II. The UCC Displaces Certain of Plaintiff's Common Law Claims.

Citizens also argues that Crossman's claims for breach of contract and unjust enrichment fail as a matter of law because they are displaced by the UCC. As the Vermont Supreme Court has observed, the UCC "is an excellent example of a statute that displaces much of the common law. Indeed, one of its basic purposes was to replace common law variations by jurisdiction and achieve national uniformity in commercial law." *See Frangiosa v. Kapoukranidis*, 160 Vt. 237, 243, 627 A.2d 351, 354 (1993) (citation omitted), *superseded by statute on other grounds*, Uniform Commercial Code, 1993, No. 158 (Adj. Sess.), § 12, eff. Jan. 1, 1995, *as recognized in, Alpine Haven Prop. Owners Ass'n v. Deptula*, 2003 VT 51, ¶ 18. Both the current and 1992 version of the UCC generally provide that "[u]nless displaced by the particular provisions of this title, the principles of law and equity . . . supplement its provisions." 9A V.S.A. § 1-103(b) (2011 repl. ed.); 9A V.S.A. § 1-103 (1992) (repealed 1995). However, the law is also clear that "unless a specific provision of the Uniform Commercial Code provides otherwise . . . , [the UCC] preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies." 9A V.S.A. § 1-103, cmt. 2 (2011 repl. ed.).

Courts have developed a two-part test to determine if a common law claim should be allowed in an area normally covered by the UCC: parallel "claims may be maintained except in circumstances where (1) the [UCC] provides a comprehensive remedial scheme, and (2) reliance on the common law would undermine the purposes of the [UCC]." *Bucci v. Wachovia Bank, N.A.*, 591 F. Supp. 2d 773, 779 (E.D. Pa. 2008). One of the primary guiding principles is to maintain the uniformity the UCC brings to commercial transactions across the country. *See, e.g., Mahabare v. SunTrust Bank*, 573 F. Supp. 3d 1006, 1011-12 (D. Md. 2021) ("[W]hen the [UCC] and the common law both provide a means of recovery, the [UCC] should displace the common law, because variations in the common law among states destroy the uniformity in commercial transactions sought to be accomplished by the [UCC].").

Here, the Court concludes that the UCC displaces Crossman's breach of contract and unjust enrichment claims to the extent they arise out of Citizens' refusal to honor the cashier's checks. As for the breach of contract claim, this is based entirely on Citizens' duty to pay the amounts promised on the checks. *See Compl.*, filed May 2, 2023, ¶¶ 20-23 (alleging that "Citizens has refused to fulfill its obligation with respect to the contract with Paul Crossman" to "pay the amounts shown on the checks"). The UCC provides a person whose check is dishonored with a remedy to enforce the obligation in court, and Crossman's transaction falls squarely within that comprehensive statutory scheme. *See* 9A V.S.A. §§ 3-309, 3-418 (2011 repl. ed.); 9A V.S.A. § 3-122 (1992) (repealed 1995). To also permit Crossman to assert a breach of contract claim based on the dishonored checks would undermine the UCC's key purposes of clarity and uniformity. Thus, the UCC displaces Crossman's breach of contract claim, and it must be dismissed. *See Orecchio v. Connecticut River Bank, N.A.*, No. 1:08-CV-164, 2009 WL 2160583, at *3 (D. Vt. July 14, 2009) (dismissing plaintiff's common law conversion and negligence claims as displaced by the UCC).

Crossman's unjust enrichment claim is less straightforward. Crossman alleges he "conferred a benefit on Marble Bank when he purchased the checks at issue with the funds in his account" and it would be "inequitable" for Citizens to retain the benefit and not compensate him.

See Compl. ¶¶ 41-44. Such allegations also arise directly out of Citizens’ refusal to honor the cashier’s checks and are displaced by the UCC. However, Crossman also alleges that a bank holding funds that are not claimed may deposit them “with the State of Vermont Unclaimed Property Division,” and Citizens failed to do so. *Id.* ¶¶ 15-16. Thus, Crossman may be attempting to assert a claim based on the theory that Citizens failed to comply with Vermont’s Revised Uniform Unclaimed Property Act, 27 V.S.A. §§ 1451-1623.

The Uniform Unclaimed Property Act is partly designed to prevent the holders of abandoned property from receiving a windfall. See *Screen Actors Guild, Inc. v. Cory*, 154 Cal. Rptr. 77, 80 (Ct. App. 1979) (“[T]he UPL has two principal objectives to protect unknown owners by locating them and restoring their property to them and to give the state rather than the holders of unclaimed property the benefit of the use of it, most of which experience shows will never be claimed.” (citation omitted)); *Benson v. Simon Prop. Group, Inc.*, 642 S.E.2d 687, 689-90 (Ga. 2007) (noting that the UPL “protects the interests of owners by requiring both holders and the Commissioner of Revenue to take certain steps to locate owners and reunite them with their property” and gives the “state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof”). Crossman alleges that Citizens failed to surrender the funds to the state’s Unclaimed Property Division, thereby improperly retaining the benefit of the funds and receiving a windfall. Such an unjust enrichment claim does not arise out of Citizens’ refusal to honor the cashier’s checks, and at this stage of the litigation, the Court cannot conclude that the claim implicates the UCC’s remedial scheme or would undermine its purposes. Accordingly, remaining mindful of the motion to dismiss standard, Citizens has not demonstrated that there is no set of facts Crossman could prove to support an unjust enrichment claim that would not be displaced by the UCC. The motion to dismiss is denied as to the unjust enrichment claim to the extent it does not arise from Citizens’ dishonoring of Crossman’s cashier’s checks when presented in 2022.⁴

Order

For the foregoing reasons, Defendant’s Motion to Dismiss is GRANTED as to Plaintiff’s UCC violation and breach of contract claims. In addition, the Motion to Dismiss is GRANTED as to Plaintiff’s unjust enrichment claim to the extent that claim arises from Citizens’ refusal to honor Crossman’s cashier’s checks; the motion is DENIED to the extent the unjust enrichment

⁴ Citizens relies on *Crawford v. JP Morgan Chase Bank, N.A.*, No. 08-CV-12634, 2009 WL 1913415 *6 (E.D. Mich. June 30, 2009), *aff’d*, 425 F. App’x 445 (6th Cir. 2011), for the position that unjust enrichment claims are generally preempted by the UCC. However, subsequent cases have called that ruling into question and have declined “to terminate [plaintiff’s] unjust enrichment claim . . . based solely on the argument that the claim is displaced by the UCC.” *In re Pratt*, No. 1:13-cv-1083, 2017 WL 4516822, at *5 (W.D. Mich. July 6, 2017); see also *CAM Logic, Inc. v. Bank of America, N.A.*, No. 16-CV-10802, 2016 WL 9738114, at *2 (E.D. Mich., Sept. 14, 2016) (distinguishing *Crawford* and holding that UCC did not displace claims for conversion, negligence, or breach of contract arising out of bank’s alleged failure to prevent fraudulent check scheme). Moreover, there is no indication that the plaintiff in *Crawford* presented any unjust enrichment theory other than the bank’s obligation to honor the check when presented. Thus, the Court does not find the *Crawford* case dispositive on this issue.

claim arises out of the allegation that Citizens failed to comply with Vermont's Unclaimed Property Act.

Electronically signed on August 16, 2023 at 5:48 PM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge