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CIVIL DIVISION
Case No. 26-CV-02504

Stephen Aguiar v. JP Morgan Chase Bank N.A.

ENTRY REGARDING MOTION

Title: Motion to Dismiss; Memorandum in Opposition; Reply in support of Motion to dismiss (Motion: 3)
Filer: Ryan M. Long; Stephen T. Aguiar; Ryan M. Long
Filed Date: July 22, 2026; August 10, 2026; August 19, 2026

Plaintiff Stephen Aguiar brought this case against Defendant JPMorgan Chase Bank N.A. ("Chase"), alleging that Chase improperly, without his authorization or consent, withdrew funds from his Chase bank account and closed the account without notice. He sued for conversion (Count 1), breach of contract (Count 2), unjust enrichment (Count 3), and negligence (Count 4). Chase now moves to dismiss all counts under Rule 12(b)(6) (Mot. 3).

Aguiar represents himself and Chase has counsel. For the reasons that follow, the court grants Chase's Mot. 3.

I. Legal Standard

Under V.R.C.P. 12(b)(6), the court "must assume that the facts pleaded in the complaint are true and make all reasonable inferences in the plaintiff's favor." *Montague v. Hundred Acre Homestead, LLC*, 2019 VT 16, ¶ 10, 209 Vt. 514. The court does not accept as true "conclusory allegations or legal conclusions masquerading as factual conclusions." *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, ¶ 28, 217 Vt. 611 (quotation omitted). The court considers whether "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." *Davis v. American Legion, Dept. of Vermont*, 2014 VT 134, ¶ 12, 198 Vt. 204 (quotation omitted). "The purpose of a motion to dismiss is to test the law of the claim, not the facts which support it." *Powers v. Off. of Child Support*, 173 Vt. 390, 395 (2002). Only "where the plaintiff does not allege a legally cognizable claim, [is] dismissal ... appropriate." *Montague*, 2019 VT 16, ¶ 11.

"The court's attention ... is to be directed toward determining whether the bare allegations of the complaint constitute a statement of a claim under V.R.C.P. 8(a)." *Levinsky v. Diamond*, 140 Vt. 595, 600 (1982). "When deciding a motion to dismiss, the court may consider documents attached to the complaint or incorporated in the complaint by reference." *Walsh v. Chittenden Corp.*, 798 F. Supp. 1043, 1048 n 3 (D. Vt. 1992). When a complaint relies on outside documents, those documents merge into the complaint and the court may properly consider them on a Rule 12(b)(6) motion to dismiss. *Off. of Auditor of Accts. v. Off. of Att'y Gen.*, 2025 VT 36, ¶ 8, 221 Vt. 266.

Rule 8 requires a “short and plain statement of the claim” in “simple, concise, and direct” language with “all pleadings [to] be construed as to do substantial justice.” V.R.C.P. 8(a), (e), (f). “[T]he threshold a plaintiff must cross in order to meet our notice-pleading standard is exceedingly low.” *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575 (mem.) (citation omitted). Consequently, “[m]otions to dismiss for failure to state a claim are disfavored and should be rarely granted.” *Id.* (citation omitted). The court should be “particularly wary of dismissing novel claims because ‘[t]he legal theory of a case should be explored in the light of facts as developed by the evidence, and, generally, not dismissed before trial because of the mere novelty of the allegations.’” *Montague*, 2019 VT 16, ¶ 11 (citation omitted).

II. Background

Applying this standard, the court derives the background section from the allegations in the complaint and documents referenced and relied upon, including the Deposit Account Agreement (“DAA”) attached to Chase’s 12(b)(6) motion.

Aguiar has, during all relevant times, maintained a bank account, credit card accounts, and a vehicle loan with Chase. Compl. ¶¶ 2, 5. The DAA governed Aguiar’s relationship with Chase. See Mot. 3 Ex. A. The court does not accept Aguiar’s conclusory allegation that “Defendant^[1]’s appended Chase account informational guide has [no] application or relevance to any of his signed contractual agreements for any of his accounts with JP Morgan Chase.” See Aguiar’s Resp. at 8 n 1. *Vitale*, 2023 VT 15, ¶ 28. He provides nothing to support that assertion and the DAA reads otherwise.

The DAA included two specific provisions regarding setting off funds and closing the bank account, namely: “You [Aguiar] agree that we [Chase] may, without prior notice or demand, apply or set off the funds in your Account at any time to pay off any debt, whether direct or indirect, you have with us[,]” Ex. A at 17, and “Either you [Aguiar] or the Bank [Chase] may close your [Aguiar’s] Account at any time with or without cause,” *id.* at 18.

In 2009, Aguiar was arrested. Compl. ¶ 9. Sometime after that, Chase withdrew, according to Aguiar, “approximately thousands of dollars,” from his Chase bank account. *Id.* ¶ 10. Aguiar did not authorize the withdrawal. *Id.* ¶ 11. At some other time, Chase closed Aguiar’s Chase bank account without his knowledge or consent. *Id.* ¶ 12. Aguiar discovered the closure within weeks of filing this complaint. *Id.* ¶ 14. Aguiar alleges Chase’s closure has caused him to suffer damages, including but not limited to “loss of the withdrawn funds, loss of use of those funds, [or] costs and burdens associated with attempting to reconstruct his account history while incarcerated[.]” *Id.* ¶ 15. He brought four claims against Chase: conversion (Count 1), *id.* ¶¶ 17–21, breach of contract (Count 2), *id.* ¶¶ 22–25, unjust enrichment (Count 3), *id.* ¶¶ 26–29, and negligence (Count 4), *id.* ¶¶ 30–33.¹

¹ One could read Aguiar’s negligence claim (Count 4) to encompass a claim for negligent nonperformance of contractual obligations, as Chase observes in its Reply. See Chase’s Reply at 6 n 3. To the extent that Aguiar has asserted this claim, the court dismisses it. The court has concluded today that the DAA governed the parties’ relationship. Aguiar may not assert a negligent nonperformance claim as an independent tort. See *Breslauer v. Fayston Sch. Dist.*, 163 Vt. 416, 422 (1995).

III. Discussion

A. Conversion (Count 1)

“Conversion consists in either appropriating property to one’s own use and beneficial enjoyment, destroying or exercising dominion over it to the exclusion of owner’s rights, or withholding possession from owner under claim of title inconsistent with his title.” *Redd Distrib. Co. v. Bruckner*, 128 Vt. 635, 639 (1970) (citation omitted). The key element of the claim is “the wrongful exercise of dominion over property of another.” *P.F. Jurgs & Co. v. O’Brien*, 160 Vt. 294, 299 (1993).

Aguiar fails to make out a prima facie case of conversion against Chase. Principally, Aguiar cannot establish “the key element”: Chase’s wrongful exercise of dominion over his property. Account deposits becomes “the property of the bank and the bank and the depositor assume the relation of debtor and creditor.” *Caledonia Nat. Bank of Danville v. McPherson*, 116 Vt. 328, 331 (1950). The bank effectively gets “legal title” to the money and, absent a special agreement to the contrary, the depositor becomes the bank’s creditor up to the value of the deposit. *O’Donnell v. Bank of Vermont*, 166 Vt. 221, 225 (1997).

Aguiar’s conversion claim fails as a matter of law because after he deposited funds in an ordinary bank account with Chase, see Compl. ¶¶ 2–3, 5, 11, the deposit became the property of Chase which could not thereafter tortiously convert them. See e.g., *Fundacion Museo de Arte Contemporaneo de Caracas v. CBI-TDB Union Bancaire Privee*, 160 F.3d 146, 148 (2d Cir. 1998) (“As to the conversion claim, we conclude that the Museum’s claim fails, as a matter of law, because funds deposited in a bank account are not sufficiently specific and identifiable, in relation to the bank’s other funds, to support a claim for conversion against the bank.”) (internal quotation marks and citation omitted). Aguiar does not allege a special agreement covered his deposit, nor that his deposit is somehow specific and identifiable from the rest of ordinary bank deposits at Chase. See *Aliya Medcare Fin., LLC v. Nickell*, 156 F. Supp. 3d 1105, 1132–33 (C.D. Cal. 2015) (“To be the subject of a conversion claim, however, the money, or the specific amount of money, [must be] identifiable, such as where it is earmarked, or set aside in a separate account, or otherwise identifiable.”) (internal quotation marks and citation omitted and alteration in original).

Because Aguiar cannot establish Chase’s wrongful exercise of dominion over his property, his conversion claim cannot survive dismissal.

B. Breach of Contract (Count 2)

To make out a viable breach of contract claim, the complaint need allege “(1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendant, and (4) damages.” *Abad v. People’s United Bank*, 2011 WL 1155546, at *6 (Vt. Super. Ct. May 2, 2011) (Pearson, J.) (quotation omitted). Still, the court can dismiss a breach of contract claim under Rule 12(b)(6) if the terms of the contract are unambiguous and the plain language of the contract contradicts or fails to support plaintiff’s allegations of breach. See *Orchard Hill Master Fund Ltd. v. SBA Commc’ns Corp.*, 830 F.3d

152, 156–57 (2d Cir. 2016); see also *Citibank N.A. v. City of Burlington*, 971 F. Supp. 2d 414, 424 (D. Vt. 2013).

Here, Aguiar alleges that: (1) he entered into a bank account agreement with Chase, Compl. ¶ 23; see also Chase’s Ex. A, (2) that agreement governed the parties’ rights and obligations, *id.* ¶¶ 23–24, (3) Chase withdrew funds from Aguiar’s bank account without authorization and closed the account without “notice and justification” as required by the agreement, *id.* ¶ 24, and (4) this caused Aguiar to suffer damages, *id.* ¶ 25.

Aguiar does not attach the parties’ agreement to his complaint; Chase attaches it to its motion to dismiss, see Chase’s Ex. A. Because Aguiar’s complaint relies on the DAA, it merges into the complaint and the court may properly consider it on a motion to dismiss. See *supra* § I (citing authorities).

The court concludes the DAA governs the parties’ relationship. First, Aguiar’s own allegations support a conclusion that a bank account agreement existed between the parties: Aguiar alleges that he maintained “a consumer bank account, credit card accounts, and a Chase vehicle loan” with Chase, Compl. ¶ 5, that there exists a “bank account agreement” between the parties, *id.* ¶ 24, and that, under this agreement, “Chase agreed to maintain Mr. Aguiar’s account and process transactions in accordance with the agreement and applicable law[.]” *id.* ¶ 23. Second, although Aguiar asserts the DAA, Chase’s Ex. A, is merely an “account informational guide,” Aguiar’s Reply at 8 n 1, the DAA provides that it is “your [Aguiar’s] Deposit Account Agreement, or contract, with us [Chase,]” Chase’s Ex. A at 3 (entitled “About this guide”). The DAA further provides that “[t]his agreement governs personal and business deposit accounts ... at JPMorgan Chase Bank, N.A.” and that by “opening or maintaining a checking [or] savings ... account with us, you accept and agree to be bound by the terms and conditions of this Agreement.” *Id.* at 7. Lastly, the DAA entered into force as of December 31, 2008, *id.* at 34, at around the time relevant to Aguiar’s claims, Compl. ¶¶ 5, 9–10.

Aguiar alleges that Chase breached the DAA by “[b]y withdrawing funds from [his] bank account without authorization.” Compl. ¶ 24. He contends this constituted a breach because he “did not approve any debit, setoff, transfer, or other transaction allowing Chase to remove funds from Plaintiff’s deposit account.” *Id.* ¶ 11. The plain terms of the DAA contradict this allegation. The DAA expressly allows what Aguiar alleges Chase cannot do: “You agree that we may, without prior notice or demand, apply or set off the funds in your Account at any time to pay off any debt, whether direct or indirect, you have with us[.]” Chase’s Ex. A at 17. Aguiar’s allegation do not support a breach.

Equally, Aguiar’s allegation that Chase breached the DAA by closing his account “without proper notice and justification as required by the agreement[.]” Compl. ¶ 24, does not help his claim. The DAA provides that Chase “may close your Account at any time with or without cause.” Ex. A at 18.

Chase’s conduct in either case did not violate the DAA that authorizes both withdrawing funds and closing account without prior notice.

C. Unjust Enrichment (Count 3)

“[T]he equitable doctrine of unjust enrichment rests upon the principle that a man shall not be allowed to enrich himself unjustly at the expense of another.” *Legault v. Legault*, 142 Vt. 525, 531 (1983) (internal quotation marks and citation omitted). But “[a] valid contract displaces any inquiry into unjust enrichment as to ‘matters within its scope.’” *Beldock v. VWSD, LLC*, 2023 VT 35, ¶ 77, 218 Vt. 144 (quoting Restatement (Third) of Restitution and Unjust Enrichment § 2(2)). The doctrine only provides “relief for a plaintiff when an enforceable contract does not exist but fairness dictates that the plaintiff receive compensation.” *Id.* ¶ 78 (internal quotation marks and citations omitted).

Aguiar describes the benefit that Chase retained here as: “funds taken through the withdrawal of funds from [his] bank account.” Compl. ¶ 27. The DAA governs the relationship between the parties. *Id.* ¶¶ 23–24; Chase’s Ex. A. That contract covers the alleged unjust enrichment: Chase’s retention of Aguiar’s deposit. Aguiar’s unjust enrichment claim “falls squarely within the scope of the contract” and Aguiar is “precluded from recovering under a theory of unjust enrichment[.]” *Fiske v. Halkiotis*, 2024 WL 3876123, at *3 (Vt. Aug. 15, 2024) (unpub. mem.).

Still, Aguiar appears to suggest that he may plead unjust enrichment at this stage as an alternative and inconsistent claim. Compare Reply at 9 and V.R.C.P. 8(e)(2) (allowing a party to plead inconsistent claims). This court concludes he may not do so for Rule 12(b)(6) purposes. Compare *Int’l Techs. Mktg., Inc. v. Verint Sys., Ltd.*, 157 F. Supp. 3d 352, 370–71 (S.D.N.Y. 2016) (dismissing unjust enrichment at the 12(b)(6) stage, reasoning that “plaintiff may not recover under a quasi-contractual theory for the very same damages” that were addressed by “valid contract governing their relationship”) with *Beldock*, 2023 VT 35, ¶ 77 (“We need not decide here whether Beldock could plead unjust enrichment as an alternative theory of relief to his breach-of-contract claim.”).

D. Negligence (Count 4)

“[N]egligence law does not generally recognize a duty to exercise reasonable care to avoid intangible economic loss to another unless one’s conduct has inflicted some accompanying physical harm, which does not include economic loss.” *Gus’ Catering, Inc. v. Menusoft Sys.*, 171 Vt. 556, 558 (2000) (mem.) (quotation omitted). Economic loss refers to “damages other than physical harm to persons or property.” *Springfield Hydroelectric Co. v. Copp*, 172 Vt. 311, 315 (2001) (quotation omitted). The rule accordingly “prohibits recovery in tort for purely economic losses.” *Long Trail House Condo. Ass’n v. Engelberth Constr., Inc.*, 2012 VT 80, ¶ 10, 192 Vt. 322 (quotation omitted).

The rule bars Aguiar’s negligence claim because he alleges purely economic losses. See e.g., Compl. ¶ 1 (characterizing this action as one “for unauthorized actions that include withdrawing funds from Plaintiff’s bank account, and for modifying and closing Plaintiff’s various bank, credit card, and loan accounts without Plaintiff’s knowledge or consent”), ¶ 10 (“Chase withdrew and/or caused to be withdrawn funds from Mr. Aguiar’s Chase bank account in the amount of approximately thousands of dollars that Mr. Aguiar had deposited in his account

prior to his July 30, 2009 arrest.”), ¶ 15 (“Mr. Aguiar has suffered damages including, but not limited to, the loss of the withdrawn funds, loss of use of those funds, costs and burdens associated with attempting to reconstruct his account history while incarcerated, and other damages to be proven at a jury trial.”), ¶ 34 (requesting “compensatory damages in an amount to be proven at trial, including but not limited to the amount of the unauthorized withdrawals of funds from Mr. Aguiar’s bank account under \$75,000”). Negligence “does not generally recognize a duty to exercise reasonable care to avoid intangible economic loss to another[.]” *O’Connell v. Killington, Ltd.*, 164 Vt. 73, 77 (1995).

The economic loss rule has two exceptions. First, the economic-loss rule does not apply if there has been some accompanying physical harm beyond purely economic loss. See *Walsh v. Cluba*, 2015 VT 2, ¶ 28, 198 Vt. 453. Second, it does not apply when there exists “a special relationship between the plaintiff and the defendant, and the defendant has assumed the responsibility not to violate a professional duty owed to the plaintiff.” *Veljovic*, 2025 VT 38, ¶ 12.

No exception applies to this case. Aguiar does not allege some accompanying physical harm beyond the purely economic loss of withdrawn deposit. *Walsh*, 2015 VT 2, ¶ 28. He likewise does not allege a special relationship between himself and Chase; he does not allege specific facts “that establish a relationship of trust, confidence, or reliance.” *Veljovic*, 2025 VT 38, ¶ 15. A relationship between a bank and its customers does not qualify in any event. See *id.* ¶ 19 (“The fact that plaintiff was an account holder alone, without a showing that she placed her trust, confidence, and reliance in the bank ... does not suffice to show a special relationship.”); *Evergreen Fam. Health Partners, LLP v. Bank of Burlington, Inc.*, 829 F. Supp. 3d 1, 12 (D. Vt. 2026) (rejecting that relationship of account holder and bank alone as sufficient to constitute a special relationship under Vermont law).

E. Motion to Amend Complaint

Aguiar also seeks to amend the complaint. See Aguiar’s Response at 3, 9. He filed no motion. V.R.C.P. 7(b)(1) (“An application to the court for an order shall be by motion”).

Leave to amend a pleading “shall be freely given when justice so requires.” V.R.C.P. 15(a). Courts liberally permit amendments to a party’s pleadings to allow maximum opportunity for claims to be decided on the merits. *Lillicrap v. Martin*, 156 Vt. 165, 170 (1989). Indeed, “[w]hen there is no prejudice to the objecting party, and when the proposed amendment is not obviously frivolous nor made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny the motion [to amend].” *Bevins v. King*, 143 Vt. 252, 254–55 (1983).

A court may, however, deny a motion to amend when, among other reasons, amendment would be futile. *Vasseur v. State*, 2021 VT 53, ¶ 7, 215 Vt. 224. Amendment would be futile if the amended complaint cannot withstand a motion to dismiss. *Prive v. Vt. Asbestos Grp.*, 2010 VT 2, ¶ 13, 187 Vt. 280; see also *Thea v. Kleinhandler*, 807 F.3d 492, 496–97 (2d Cir. 2015) (“Proposed amendments are futile if they would fail to cure deficiencies or state a claim under Rule 12(b)(6).”).

Given today's ruling, no amendment of the alleged facts would cure the deficiencies of the initial complaint as a matter of law. See, e.g., *Veljovic*, 2025 VT 38, ¶ 20 ("Therefore, because plaintiff's proposed amended complaint, like her original complaint, cannot show that an exception to the economic-loss rule applies, it cannot withstand a motion to dismiss, and amendment would therefore be futile.").

IV. Order

The court grants Chase's Mot. 3 and dismisses all claims. The court denies Aguiar's motion to amend complaint.

Electronically signed pursuant to V.R.E.F. 9(d) on September 14, 2026.


Colin Owyang
Superior Court Judge