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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

AFFILIATED HEALTH GROUP, LTD.,)	Appeal from the Circuit Court
AMERICAN HEALTH CENTER, LTD.,)	Of Cook County.
DIMENSIONS MEDICAL CENTER, LTD.,)	
ACCESS HEALTH CENTER, LTD.,)	
ADVANTAGE HEALTH CARE, LTD.,)	No. 15 L 6944
AANCHOR HEALTH CENTER, LTD.,)	
FORESTVIEW MEDICAL CENTER, LTD.,)	The Honorable
MICHIGAN AVENUE CENTER FOR)	Thomas R. Mulroy, Jr.,
HEALTH, LTD., ACE HEALTH CENTER)	Judge Presiding.
LTD., CENTER FOR FAMILY HEALTH)	
CARE, SC, VIJAY L. GOYAL, M.D.,)	
and VINOD K. GOYAL, M.D.,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	
NORTHERN TRUST CORPORATION,)	
)	
Defendant-Appellee.)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 **Held:** When a payee of a check bearing a forged endorsement sues the depository bank, either in tort or in implied contract, the payee ratifies the depository's act of collecting the

¶ 6 Nakhshin set up accounts at Devon and TCF for entities named "Affiliated Health Group Billing, Inc.," "American Health Center for Billing, Inc.," and "Dimensions Medical Management Corp.," along with other accounts for entities named like AHG's affiliated health centers. Starting in 1992 and continuing for 20 years, Nakhshin obtained checks payable to AHG and its affiliates and deposited them at Devon and TCF. Devon and TCF added the face values of the checks to the accounts of Affiliated Health Group Billing, Inc., American Health Center for Billing, Inc., Dimensions Medical Management Corp., and other dummy entities. Nakhshin, Koganshats, and other employees of AHG and its affiliates withdrew funds from the accounts of Affiliated Health Group Billing, Inc., and the entities named like AHG affiliates.

¶ 7 Many of the stolen checks came from Blue Cross Blue Shield of Illinois, drawn on an account with a subsidiary of Northern Trust Corporation. Devon and TCF sent the stolen checks to Northern Trust. Northern Trust sent payments to Devon and TCF in the face amount of the checks, and debited Blue Cross's account for the payments.

¶ 8 AHG discovered the theft in 2013. In October 2013, the Goyals, AHG, and AHG's affiliates filed a complaint naming as defendants Nakhshin, Koganshats, Devon, TCF, Blue Cross, and some other parties. The plaintiffs accused Devon and TCF of conversion, in violation of section 3-420 of the Uniform Commercial Code (Code) (810 ILCS 5/3-420 (West 1994)), and negligence. AHG settled the claims against Devon in May 2015, and chose not to appeal the dismissal of claims against TCF.

¶ 9 In July 2015, AHG and the other plaintiffs from the lawsuit against Devon and TCF filed the complaint that initiated the case now on appeal, naming only Northern Trust as defendant. AHG charged Northern Trust with a violation of section 3-420 of the Code, negligence, and breach of fiduciary duties. AHG attached to the complaint copies of more than 100 checks, claiming that Northern Trust wrongly accepted the checks and sent to Devon and TCF the face value of the checks. The checks' values total about \$1.5 million.

¶ 10 Northern Trust filed a motion to dismiss the complaint, arguing that the complaint against Devon and TCF barred the lawsuit against Northern Trust. The circuit court granted the motion to dismiss. The plaintiffs now appeal.

¶ 11 ANALYSIS

¶ 12 We review *de novo* the order for dismissal of the complaint predicated on section 2-619.1 of the Code of Civil Procedure. 735 ILCS 5/2-619.1 (West 2014); *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 13 First, a terminological note: Blue Cross, the drawer, issued checks on its Northern Trust account, making Northern Trust the drawee bank, and sent the checks to AHG and its affiliates, the payees. Nakhashin stole the checks and brought them to Devon and TCF, the depository banks, which then sent the checks to Northern Trust, which paid the face amount of the checks to Devon and TCF. Once Northern Trust paid the face amount of the checks, it became the payor bank as well as the drawee bank.

¶ 14 The Uniform Commercial Code includes numerous provisions, including section 3-420, designed to regulate the allocation of losses due to check forgery when the parties cannot

recover from the forger. See *Allocation of Losses from Check Forgeries Under the Law of Negotiable Instruments and the Uniform Commercial Code*, 62 Yale L.J. 417, 433–40 (1953). "The overall goal in allocation of forgery losses is to serve the commercial community by utilizing doctrines which encourage and facilitate good business practices and which allocate losses as equitably as possible. To achieve these results, four specific objectives have been suggested by courts and commentators: promotion of transferability, placing loss on the best risk bearer, placing loss on the negligent party, and uniformity of result in application of the preceding standards." *Allocation of Losses from Check Forgeries Under the Law of Negotiable Instruments and the Uniform Commercial Code*, 62 Yale L.J. at 433–34.

¶ 15 In their efforts to allocate check forgery losses equitably, courts have resorted to legal fictions. Some courts have found an implied contract between the payee and the depository bank, and permitted the payee to recover in assumpsit from the depository for breach of the implied contract. "Assumpsit is classified as an action ex contractu ***. Hence, in order to sustain the action, it is necessary for the plaintiff to establish *** facts and circumstances from which the law will raise an implication of a promise to pay. In such a case, a plaintiff may waive the tort and institute his action in assumpsit for money had and received. If the defendant has not parted with the personalty but has converted it to his own use, the owner still has a right to waive the tort and proceed upon the theory of an implied contract of sale to the wrongdoer. The contract implied is one to pay the value of the property at the time of conversion." *Raven Red Ash Coal Co. v. Ball*, 39 S.E.2d 231, 234–35 (Va. 1946).

¶ 16 Payees may also recover on a theory that the depository bank wrongfully obtained the payee's money from the payor bank and converted the money to its own use, committing the tort of conversion. See *Atlanta & St. A.B. Ry. Co. v. Barnes*, 96 F.2d 18 (5th Cir.1938). Section 3-420(a) of the Uniform Commercial Code clarifies that the payee may recover from either the payor bank or the depository bank for conversion. Donald J. Rapson, *Loss Allocation in Forgery and Fraud Cases: Significant Changes Under Revised Articles 3 and 4*, 42 Ala. L. Rev. 435, 453-57 (1991).

¶ 17 The circuit court here held that the plaintiffs, by suing the depository banks, Devon and TCF, ratified the payment by the drawee bank and the payor bank, Northern Trust, to those banks of the face amount of the checks, and the plaintiffs thereby surrendered their rights to seek any recovery from Northern Trust and Blue Cross on the checks processed through Devon and TCF. The circuit court followed *P.M.F. Services, Inc. v. Grady*, 698 F. Supp. 141 (N.D. Ill. 1988). The plaintiffs argue that the *P.M.F.* court misunderstood the relevant law.

¶ 18 In *P.M.F.*, Grady, an employee of P.M.F., opened an account at Mount Greenwood Bank under the name "PMF Services." *P.M.F. Services*, 698 F. Supp. at 142. He stole checks payable to P.M.F. and deposited them into the account at Mount Greenwood Bank. Some of the checks came from Niedert Fleet Management Corp., which wrote them on a checking account at Northern Trust. P.M.F. filed a single complaint, naming as defendants Grady, Mount Greenwood Bank and Northern Trust. Like the plaintiffs here, P.M.F. charged both Mount Greenwood Bank and Northern Trust with conversion in violation of the section of the Uniform Commercial Code now codified at 810 ILCS 5/3-420.

¶ 19 The *P.M.F.* court explained that when a drawee/payor bank, like Northern Trust, pays the face amount for a check bearing a forged endorsement and debits its customer's account for the payment, the customer has a right to have the bank credit its account for the amount of the check, because the customer authorized payment only to the payee and not to the forger. Thus, the payor bank used its own funds, not its customer's funds, to pay the depository bank for the check bearing the forged endorsement. The *P.M.F.* court said:

"When a payee sues a collecting bank for conversion, the payee seeks recovery of the specific proceeds of the check. But if — under the general theory just explained — those proceeds are viewed as having remained in the drawer's account, no conversion can have taken place (for, as already explained, the money turned over to the collecting bank was that of the payor bank rather than of that bank's customer).

That dilemma can be avoided if the payee 'ratifies' the collection of the proceeds from the payor bank, thus enabling the payee to sue the collecting bank for misusing the payee's money rather than someone else's (the payor bank's). And that concept has given rise to the doctrine that by the very act of bringing suit against the collecting bank for conversion, the payee does ratify the collection 'and transmutes the remittance of funds by the payor bank into an authorized act for which it may debit its customer's account' (*Cooper v. Union Bank*, 9 Cal. 3d 371, 107 Cal. Rptr. 1, 6, 507 P.2d 609, 614 (1973))." *P.M.F.*, 698 F. Supp. at 143.

¶ 20 Because the payee ratified the depository bank's collection of the face value of the check, "the plaintiff seeks, as we think he had the right to do, to ratify the collection of the check for him; in such case he ratifies the assumed payment of it, and the check is then paid; the drawee bank and the maker thereof are both released from paying it over again; the payee would be estopped from making such claim." *United States Portland Cement Co. v. United States National Bank of Denver*, 157 P. 202, 204 (Colo. 1916), *quoted in P.M.F.*, 698 F. Supp. at 144.

¶ 21 The *P.M.F.* court found that Illinois adopted the theory of ratification by suit in *Independent Oil Men's Ass'n v. Fort Dearborn National Bank*, 311 Ill. 278, 279–81 (1924). *P.M.F.*, 698 F. Supp. at 144-45. In *Independent*, an employee of Independent obtained checks payable to Independent, forged an endorsement and cashed the checks, obtaining payment of the face value of the checks from Fort Dearborn National Bank, the depository bank. Fort Dearborn then obtained payments from drawee banks. Fort Dearborn argued that it obtained only the funds of the drawee banks, and not the funds of the drawers of the checks sent to Independent, and therefore "the drawers and the payee were in no way affected by the payment of the money by the drawee banks to it on the forged indorsements; *** and that there is no contractual relation between it and the payee which establishes an obligation to pay." *Independent*, 311 Ill. at 280.

¶ 22 The plaintiffs here contend that the *P.M.F.* court misunderstood the following sentences from *Independent*:

"[Independent] does not contend that it has a right to base its action on the check ***. It seeks to recover the value of its property which came into the hands of [Fort Dearborn] and for which [Fort Dearborn] refuses to account. [Independent] might have brought an action of trover against [Fort Dearborn] for unlawful conversion of its property, but it chose to waive the tort and to bring its action in assumpsit for money had and received for its use. That it had a right to do this is well established by the great weight of authority. [Citations.] [Independent] ratifies the collection of the check for it, and by this act ratifies the assumed payment of the check. Both the drawer and the drawee of the check are released from paying it over again, because the payee, by ratifying the payment, is estopped from making a claim against either. *United States Portland Cement Co. v. United States Nat. Bank*, 61 Colo. 334, 157 Pac. 202." *Independent*, 311 Ill. at 280-81.

¶ 23 The *P.M.F.* court concluded that in Illinois, a lawsuit by a payee against a depository bank, either in tort for conversion or in quasi-contract for money had and received, ratifies that bank's act of collecting from the drawee banks the face value of the check, and estops the payee from proceeding against the drawee bank and the drawer of the check. *P.M.F.*, 698 F. Supp. at 144-45. The plaintiffs contend that the *Independent* court meant that a payee who sues the depository bank in assumpsit for money had and received, and who waives the tort claim against the depository bank for conversion, thereby ratifies the depository bank's collection of the check. But, according to the plaintiffs, if the payee sues the depository bank

for conversion, it does not ratify the collection, and it retains the right to sue the drawee bank, along with the depository bank, for conversion. See *King v. White*, 962 P.2d 475, 483 (Kan. 1998).

¶ 24 We agree with the *P.M.F.* court's understanding of *Independent*. The *Independent* court did not make its result depend on the distinction between tort and quasi-contractual causes of action. Most notably, the *Independent* court relied on the authority of *Portland Cement*, which made no reference to the distinction between quasi-contract and tort. Courts following *Portland Cement* have consistently held that suing the depository bank for conversion ratifies the depository bank's collection of the check and estops the payee from suing the drawee bank. See *Resh v. Connecticut National Bank*, 89 F.3d 598, 601 (9th Cir. 1996); *Cooper*, 507 P.2d at 614; *Denver Electric & Neon Service Corp. v. Gerald H. Phipps, Inc.*, 354 P.2d 618, 623-24 (Colo.1960).

¶ 25 Following *Independent*, as interpreted in *P.M.F.*, we find that Illinois has adopted the rule under which, when a payee (AHG) of a check bearing a forged endorsement sues the depository bank (Devon and TCF), either in tort or in implied contract, the payee (AHG) ratifies the depository's act of collecting the check, and the ratification by suit estops the payee from suing the drawer of the check (Blue Cross) and the drawee bank (Northern Trust) that paid the face amount of the check to the depository bank.

¶ 26 The plaintiffs contend that we should not apply *P.M.F.* here, because *P.M.F.* involved far less loss. It is true that the face value of the checks at issue in *P.M.F.* amounted to less than \$20,000 in total. Here, the checks appended to the plaintiffs' complaint total more than \$1.5

million. In their brief, the plaintiffs allege repeatedly, without citation to the record, that Nakhshin stole checks worth more than \$50 million over the course of 20 years before the plaintiffs discovered the crimes. However, the plaintiffs cite no authority that would permit us to ignore the applicable legal principles due to the scope of the alleged offense.

¶ 27 Finally, in their reply brief, the plaintiffs contend that the ratification by suit applies only to the checks actually listed in the suit against Devon and TCF, and the suit against Northern Trust involves more checks not specified in the earlier suit. The plaintiffs did not raise this issue in the circuit court, and they did not raise the issue in their appellant's brief. Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) provides that points not argued in an appellant's brief are forfeited and "shall not be raised in the reply brief." "Arguments that do not satisfy Rule 341[(h)](7) do not merit consideration on appeal." *Maun v. Department of Professional Regulation*, 299 Ill. App. 3d 388 (1998). Therefore, we will not address the forfeited issue.

¶ 28 CONCLUSION

¶ 29 Under the doctrine of ratification by suit, adopted in Illinois by the *Independent* court, the lawsuit the plaintiffs filed against Devon and TCF estops them from suing Northern Trust to recover for the theft alleged in the suit against Devon and TCF. Accordingly, we affirm the dismissal of the complaint.

¶ 30 Affirmed.