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Supreme Court Defines Customer's Duty to Discover and Report Payment of Forged Checks

by Kevin P. Oddo

Despite the prevalence of check fraud, there have been few decisions from Virginia courts concerning those sections of the Uniform Commercial Code pertaining to the rights of an account holder to recover from its bank for improper payment of a check. In particular, the rules governing a customer's duty to review its monthly bank statements for forged or altered checks had never been addressed by the Supreme Court of Virginia until this past June, when it issued its opinion in *Halifax Corporation v. First Union National Bank*, 262 Va. 91, 546 S.E.2d 696 (2001).

Halifax Corp. presented a typical case of employee embezzlement. Between August 1995 and January 1997, Halifax's comptroller, Adams, wrote at least 88 checks on Halifax's account at Signet Bank, which was subsequently acquired by First Union. The checks were made payable to Adams, who without authorization used facsimile signatures on the checks. The checks were deposited by Adams in her personal account at Wachovia Bank. Each check was paid by First Union and charged against Halifax's account.

First Union sent monthly statements to Halifax reflecting the unauthorized checks. Halifax, however, failed to notify First Union of the unauthorized signatures within one year after the statements were sent to Halifax.

Kevin P. Oddo is a partner with Flippin, Densmore, Morse & Jessee in Roanoke, Virginia.

Halifax discovered the embezzlement in January 1999, by which time Adams had stolen in excess of \$15,000,000 from the company. Halifax then filed suit against First Union, alleging *inter alia* (1) a violation of Virginia Code § 8.4-401 (for charging against its account checks that were not authorized and therefore not properly payable), and (2) breach of its deposit agreement. The circuit court granted summary judgment to First Union, and Halifax appealed.

On appeal, the Supreme Court addressed several issues under articles 3 and 4 of the UCC (codified in Titles 8.3A and 8.4 of the Virginia Code). First, the Court analyzed § 8.4-406(f), which provides, in pertinent part:

Without regard to care or lack of care of either the customer or the bank, a customer who does not within one year after the statement or items are made available to the cus-

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