State of New York
Court of Appeals

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NOTICE TO THE BAR

Amicus Curiae Participation

On June 4, 2013, the Court of Appeals granted plaintiffs Clemente Bros. Contracting Corp. and Jeffrey A. Clemente leave to appeal in Clemente Bros. Contracting Corp., et al., v Hafner-Milazzo, et al. Plaintiff Clemente Bros. Contracting Corp. (Contracting) was a customer of defendant bank Capital One, N.A. (Capital One). Contracting had three deposit and/or checking accounts with Capital One and also took out two loans from Capital One. The plaintiffs commenced this action against Capital One, asserting inter alia, that Capital One had failed to use ordinary care in paying on allegedly forged checks and failed to comply with its own regulations in handling Contracting's accounts. In its answer, Capital One interposed several counterclaims to recover amounts due under the loans. Insofar as pertinent to this appeal, Supreme Court granted summary judgment to defendant Capital One, dismissing plaintiffs' complaint and awarding it judgment on its counterclaims. The Appellate Division affirmed (100 AD3d 677).

Under New York's Uniform Commercial Code, a bank may be liable to its customer when it pays a check on a forged signature. The bank may avoid such liability, however, when it makes statements of the account and the allegedly forged items available to the customer, and the customer fails to report the alleged forgery to the bank within one year. Here, the parties, by agreement, shortened the one-year period to 14 days. One of the issues on appeal is whether a bank and its customer may shorten the statutory time period provided for in UCC 4-406 within which the customer must make a claim to its bank for payment of an altered or forged item.

The Court invites amicus curiae participation from those qualified and interested.

Amicus motions must comply with section 500.23 of the Rules of the Court of Appeals. The text of the Rule is available on the Court's website at:

http://www.courts.state.ny.us/ctapps/500rules.htm.#Amicus

Questions may be directed by telephone to the Clerk's Office at (518) 455-7705.