

IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

TAMMY WELBES, on behalf of herself)	
and all others similarly situated,)	Case No. LACV110634
)	
Plaintiff,)	
)	
v.)	RULING ON DEFENDANT’S
)	MOTION TO DISMISS
DUTRAC COMMUNITY CREDIT)	
UNION,)	
)	
Defendant.)	

Defendant’s Pre-Answer Motion to Dismiss came before the Court. As no party requested a hearing on the matter, the motion was set for decision without oral argument. After having considered the relevant filings, the arguments of counsel, and the applicable law, the Court enters the following ruling on the pending motion.

FACTUAL BACKGROUND

Plaintiff Tammy Welbes maintained a checking account with Defendant DuTrac Community Credit Union. This account is governed by DuTrac’s standard Account Agreement. The Account Agreement authorizes DuTrac to charge overdraft fees in the following circumstances:

If, on any day, the available funds in your share or deposit account are not sufficient to pay the full amount of a check, draft, transaction, or other item, plus any applicable fee, that is posted to your account, we may return the item or pay it, as described below. ... Your account may be subject to a charge for each item regardless of whether we pay or return the item.

Account Agreement, at 5-6 (subsection titled “Payment of Overdrafts”).

Welbes alleges that DuTrac has a standard practice of charging account holders overdraft fees based on the account’s balance subject to any “debit holds” which might be on the account.

According to Welbes, when an account holder issues a transaction from their checking account, DuTrac allows the merchant receiving the funds to request a debit hold on the funds to be transferred. This debit hold may be larger than the actual amount of funds authorized for transfer by the account holder and is only lifted once DuTrac, at a later time, forwards the authorized payment to the merchant. If an overdraft fee determination is based on the account balance subject to these debit holds, transactions which do not make the actual balance of the account negative may nonetheless incur overdraft fees. The core of the parties' dispute, and the relevant inquiry in the pending motion, is whether this alleged practice violates the Account Agreement.

ANALYSIS

I. Motion to Dismiss Standards

A pre-answer motion to dismiss under Iowa Rule of Civil Procedure 1.421(1)(f) should be granted "when it appears to a certainty that the plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claims asserted." *Pennsylvania Life Insurance Co. v. Simoni*, 641 N.W.2d 807, 810 (Iowa 2002). "A court should grant a motion to dismiss 'only if the petition on its face shows no right of recovery under any state of facts.'" *Young v. HealthPort Technologies, Inc.*, 877 N.W.2d 124, 127 (Iowa 2016) (quoting *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994)). "When a moving party attacks a claim by filing a motion to dismiss, that party 'admits well-pleaded facts and waives ambiguity or uncertainty in the petition.'" *Id.* (quoting *Schaffer v. Frank Moyer Const., Inc.*, 563 N.W.2d 605, 607 (Iowa 1997)). "Under our notice-pleading standards, nearly every case will survive a motion to dismiss for failure to state a claim upon which any relief may be granted." *Id.* "In ruling on a motion to dismiss, a court construes the petition in the light most favorable to the plaintiff and resolves any doubts in the plaintiff's favor." *Id.* at 128.

II. Breach of Express Contract

The petition alleges two causes of action: breach of express contract and breach of the implied covenant of good faith and fair dealing. In the former, Plaintiff asserts that Defendant breached the parties' Account Agreement by charging overdraft fees based on the account holders' balance after considering any debit holds on the account—resulting in overdraft fees for transactions which did not make the balance of Plaintiff's account negative.

Generally, to establish a claim for a breach of contract, [a plaintiff] must show “(1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach.”

Iowa Arboretum, Inc. v. Iowa 4-H Foundation, 886 N.W.2d 695, 706 (Iowa 2016) (quoting *Iowa Mortgage Ctr., L.L.C. v. Baccam*, 841 N.W.2d 107, 110-11 (Iowa 2013)). In this motion, Defendant asserts that Plaintiff's claim fails because the conduct alleged in the petition is not a breach of the parties' contract.

Though it was not appended to the petition directly, this Court may consider the language of the contract at issue because Plaintiff incorporated the Account Agreement into the petition by reference. Complaint, at ¶¶ 9-10; *Hallett Construction Co. v. Iowa State Highway Commission*, 154 N.W.2d 71, 74 (Iowa 1967) (stating that a document may be incorporated into a pleading by reference); *King v. State*, 818 N.W.2d 1, 6 n.1 (Iowa 2012) (citing *Hallett* favorably for this proposition). The contract language authorizing Defendant to charge overdraft fees states:

If, on any day, the available funds in your share or deposit account are not sufficient to pay the full amount of a check, draft, transaction, or other item, plus any applicable fee, that is posted to your account, we may return the item or pay it, as described below. ... Your account may be subject to a charge for each item regardless of whether we pay or return the item.

Account Agreement, at 5-6 (subsection titled “Payment of Overdrafts”). Plaintiff argues that, for a transaction which does not make the account balance negative, the “available funds” in the account are always “sufficient to pay the full amount” of the transaction. Defendant, on the other hand, argues that “available funds” is a synonym for “available balance,” and that “available balance” is a term of art within the banking community referring to an account’s balance less any “debit holds” which have been placed on the account—limits set at the request of merchants who are anticipating posting a transaction to the account.

The Account Agreement’s only provisions which define “available funds” lie in the section titled “Funds Availability Policy Disclosure,” and tie the concept of “available funds” most directly to delays in recognizing deposits. The contract does not have any terms specifically defining “available funds.” Account Agreement, at 11-13. Additionally, the Account Agreement makes no direct reference to “debit holds.” In the absence of any such terms, both parties’ proposed interpretations of the contract rely on evidence extrinsic to the four corners of the document. Plaintiff’s interpretation relies on layperson definitions and consumer expectations. Meanwhile, Defendant’s interpretation relies on evidence of industry-standard definitions.

In evaluating a motion to dismiss, this Court may not consider evidence beyond the petition. *Crall v. Davis*, 714 N.W.2d 616, 619 (Iowa 2006). Accordingly, this Court cannot resolve the proper interpretation of the contract at this stage of proceedings and the motion to dismiss is denied as to Plaintiff’s claim for breach of express contract.

III. Breach of the Implied Covenant of Good Faith and Fair Dealing

In the second claim for relief, Plaintiff alleges that Defendant breached the implied covenant of good faith and fair dealing in their performance of the contract by abusing their discretion to interpret the contract so that Defendant could charge overdraft fees on transactions

which do not make the account balance negative. “An implied covenant of good faith and fair dealing is inherent in all contracts.” *Albaugh v. The Reserve*, 930 N.W.2d 676, 686 (Iowa 2019); Restatement (Second) of Contracts § 205 (1981). “The underlying principle is that there is an implied covenant that neither party will do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” *Albaugh*, 930 N.W.2d at 686 (quoting *Alta Vista Properties, LLC v. Mauer Vision Ctr., PC*, 855 N.W.2d 722, 730 (Iowa 2014)). “This implied covenant ‘does not give rise to new substantive terms that do not otherwise exist in the contract.’” *Id.*

“[A]buse of a power to specify terms” under a contract may be a violation of the implied covenant of good faith and fair dealing. Restatement (Second) of Contracts § 205, cmt. d (1981). However, the Account Agreement provides no such discretion to Defendant. A party acting on their belief regarding the proper interpretation of a contract term is not an exercise of discretion to specify that term. Though the Account Agreement does state Defendant “may” charge a fee in these circumstances—granting Defendant discretion to not charge said fee—it is not a violation of the implied covenant of good faith and fair dealing for Defendant to charge such fees when the contract authorizes it. Account Agreement, at 6 (subsection titled “Payment of Overdrafts”). Accordingly, Plaintiff has failed to state a claim upon which relief may be granted for breach of the implied covenant of good faith and fair dealing. The motion to dismiss is granted as to this claim for relief.

IV. Preemption

Finally, Defendant argues that Plaintiff’s state law causes of action are preempted by the National Credit Union Association’s (“NCUA”) regulations implementing the Truth in Savings Act of 1991 (“TISA”). Because this Court dismisses Plaintiff’s cause of action under the implied

covenant of good faith and fair dealing for failure to state a claim upon which relief may be granted, it is not necessary to consider whether such a claim is preempted by these regulations. Thus, the Court will only evaluate whether Plaintiff's claim for breach of express contract is preempted. It is not.

“This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” U.S. Const. art. VI, cl. 2. “This Clause provides ‘a rule of decision’ for determining whether federal or state law applies in a particular situation.” *Kansas v. Garcia*, 140 S. Ct. 791, 801 (2020) (quoting *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324 (2015)). “If federal law ‘imposes restrictions or confers rights on private actors’ and ‘a state law confers rights or imposes restrictions that conflict with the federal law,’ ‘the federal law takes precedence and the state law is preempted.’” *Id.* (quoting *Murphy v. National Collegiate Athletic Assn.*, 138 S. Ct. 1461, 1480 (2018)). However, “[i]n a preemption analysis, courts should assume that ‘the historic police powers of the States’ are not superseded ‘unless that was the clear and manifest purpose of Congress.’” *Arizona v. United States*, 567 U.S. 387, 400 (2012). “Federal regulations have no less pre-emptive effect than federal statutes.” *Fidelity Federal Savings and Loan Association v. de la Cuesta*, 458 U.S. 141, 153 (1982).

“It is well established that within constitutional limits Congress may preempt state authority by so stating in express terms.” *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 203 (1983). The NCUA has done just this: “State law requirements that are inconsistent with the requirements of the TISA and [Code of Federal Regulations Title 12, Part 707] are preempted to the extent of the inconsistency.” 12

C.F.R. § 707.1(d). Thus, the question becomes whether a breach of express contract claim for assessing an overdraft fee in circumstances which a credit union's Account Agreement does not permit is inconsistent with anything in these regulations.

Defendant does not point to any particular provision which they claim is inapposite to such a lawsuit. Instead, Defendant argues that the heart of Plaintiff's suit is a challenge to the sufficiency of Defendant's overdraft fee disclosures. Plaintiff objects to this characterization of their claim. Plaintiff insists that their argument is what it says on its face: that Defendant's overdraft fee practices violate the express terms of the Account Agreement. The Court agrees with Plaintiff. Though the Petition makes passing assertions that "Defendant's [fee] practices violate Iowa consumer protection law" and Defendant takes pending transactions into account when assessing overdraft fees "[w]ithout informing its accountholders," these allegations do not form the basis for any stated claim for relief. Petition at ¶¶ 3, 12, 31-42.

In support of their argument, Defendant relies on *Lambert v. Navy Federal Credit Union*, 2019 WL 3843064 (E.D. Va. Aug. 14, 2019). Assuming arguendo that this Court would find *Lambert* persuasive on the issues presented therein, Defendant's reliance on it is misplaced. In *Lambert*, the Eastern District of Virginia decided that a challenge to the defendant credit union's fee practices under North Carolina's Unfair and Deceptive Trade Practices Act—a challenge which stated that the fee assessment practice in question was unfair in a ways which violated state law—was preempted by federal TISA regulations. *Id.* at *1, *3. The Court in *Lambert* expressly decided that the accompanying breach of contract claim was not preempted. *Id.* at *3. So, *Lambert* actually stands against Defendant's position in the present case.

Accordingly, because Plaintiff does not challenge the adequacy of Defendant's fee disclosures, the Court finds that Plaintiff's express breach of contract claim is not preempted by federal fee disclosure laws.

RULING

For all of the above-stated reasons, it is the ruling of the Court that the Defendant's Motion to Dismiss is GRANTED in part, as to the Plaintiff's claim for breach of the implied covenant of good faith and fair dealing, and DENIED in part, as to the Plaintiff's claim for breach of express contract.




State of Iowa Courts

Case Number
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Type:

Case Title
WELBES V DUTRAC COMMUNITY CREDIT UNION
OTHER ORDER

So Ordered



John Telleen, District Court Judge,
Seventh Judicial District of Iowa

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