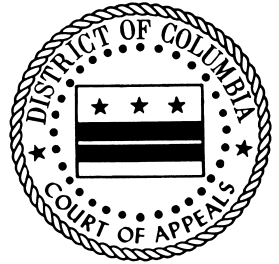


DISTRICT OF COLUMBIA COURT OF APPEALS

No. 23-CV-872



Clerk of the Court
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LYNNE M. SCHWARTZ SPECIAL NEEDS TRUST, *et al.*

Appellants

v.

PNC BANK, N.A., *et al.*

Appellees

Appeal from the District of Columbia Superior Court

APPELLANTS' REPLY BRIEF

Frederic W. Schwartz, Jr. 197137
700 12th Street, NW
Suite 700
Washington, D.C. 20005
202 463-0880
FWS888@aol.com

TABLE OF CONTENTS

REPLY TO PNC’S FREE-FLOATING DIATRIBE	1
REPLY TO PNC’S INTRODUCTION	1
REPLY TO PNC’S STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	4
REPLY TO PNC’S STATEMENT OF THE CASE	4
REPLY TO PNC’S STATEMENT OF FACTS.....	5
REPLY TO PNC’S SUMMARY OF THE ARGUMENT.....	6
REPLY TO PNC’S ARGUMENT	6
A. Standard of Review	6
B. Count I–Breach of Fiduciary Duty/Breach of Delegated Fiduciary Duty/Breach of Fiduciary Duty of a Trust Adviser.	9
C. Count III–Breach of the Duty of Good Faith and Fair Dealing.	11
D. Breach of the District of Columbia Consumer Protection Procedures Act..	12
F. Conversion	13
G. Motion to Strike	18
H. Motion to Compel	19
I. Account of Johanna Schwartz	19
J. IIP Breach of Contract Claim	20
CONCLUSION.....	20

TABLE OF AUTHORITIES

CASES

Duggan v. Keto, 554 A.2d 1126 (D.C. 1989) 15

Eagle Wine & Liquor Co. v. Silverberg Electric Co., 402 A.2d 31 (D.C. 1979) 8

Earth Island Institute v. Coca-Cola Co., No. 22-CV-0895 (August 29, 2024) 13

Franco v. Nat'l Capital Revitalization Corp., 930 A.2d 160 (D.C. 2007). 8

Futrell v. Dep't of Labor Fed. Credit Union, 816 A.2d 793 (D.C. 2003) 7

Landis v. Tailwind Sports Corp, 308 F.R. D 1 (D.D.C. 2015) 7

Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340 (1978) 7

Phelan v. City of Mt. Ranier, 805 A.2d 930 (D.C. 2002) 7

Poola v. Howard University, 147 A. 3d 267 (D.C. 2016). 15

Prasad v. George Washington University, 323 F.R.D. 88 (D.D.C. 2017) 19

RULES

R. Civ. Proc. 12(b)(6). 8, 9, 10

OTHER AUTHORITIES

Restatement (Second) of Torts. 14, 17

Restatement (Third) of Torts. 14

Voluntary Standards of Civility. 1

REPLY TO PNC'S FREE-FLOATING DIATRIBE

Our Bar has adopted Voluntary Standards of Civility in Professional Conduct. They remind the Bar that litigation is chess not war. Annoying opposing counsel and wasting the Court's time does not facilitate fair and efficient resolution of an appeal.

Appellants would also remind: Counsel "will not bring the profession into disrepute by making unfounded accusations of impropriety or making *ad hominem* attacks on counsel, and, absent good cause, we will not attribute bad motives or improper conduct to other counsel. Counsel "will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities," nor will Counsel "degrade the intelligence, ethics, morals, integrity, or personal behavior of others, unless such matters are legitimately at issue in the proceeding."

PNC has in past pleadings, as seen in the Appendix, strayed from an accurate legal and factual recitation of the circumstances. It apparently has no qualms about doing so in its arguments and other representations to this Court. *Res ipsa loquitur*.

REPLY TO PNC'S INTRODUCTION

PNC's litigation strategy throughout has been characterized by recalcitrance and a lack of the professionalism and cooperation mandated by the Superior Court Civil Rules (perhaps because PNC has had four lawyers representing it *seriatim* (two of which are no longer with the firm):

For example:

PNC complains that Appellants only propounded two interrogatories even though, PNC also believes that this was two too many since it refused to substantively answer either or explain what steps it had taken to do so. The two interrogatories propounded were customary at that stage of the litigation. The normal course after the Answer (which was also deficient as discussed below) is to identify the individuals with personal knowledge of the matter and then depose them. Appellants moved to compel, but the Superior Court denied the motion stating that it is up to the respondent to determine what is reasonable.

PNC also appears to complain that Appellants had the audacity to oppose PNC's dispositive motions and response papers raising such issues as the effect of the Superior Court's COVID Orders on the statute of limitations.

PNC takes particular umbrage at the suggestion that it had stolen the \$12,000.00 which the cashier's check represented, and had destroyed the actual cashier's check. These facts were set out in the Complaint. PNC's Answer did not provide a contrary response:

1. The legal representative of the involved Appellants deposited at a branch of PNC a \$12,000.00 cashier's check.
2. The cashier's check was drawn by PNC on itself and payable by itself, *i.e.* it had been purchased with funds from a PNC account.
3. PNC dishonored the cashier's check on April 15, 2019.
4. The basis on which PNC refused to honor the cashier's check was that it

was “not authorized.”

5. PNC refused to provide, before or after suit, until May 2023 any further information as to the meaning or designation “not authorized.”
6. PNC refused to identify any of its employees with personal knowledge of these circumstances.
7. PNC refused to return the cashier’s check, but instead substituted and returned a photo-copy of it retaining or destroying the original cashier’s check.
8. The copy was stamped “RETURN REASON- Q NOT AUTHORIZED.”
9. Because the photo-copy indicated the cashier’s check was “not authorized” it could not be transferred to or utilized by a “holder in due course.”

The foregoing are all indicia of inadequate banking services encompassing theft, and PNC points to no contrary or exculpatory evidence in its Answer or other pleading prior to PNC’s admissions in May 2023 that the funds had been escheated. At that point it became clear that PNC had not “stolen” the funds, but had fraudulent concealed their whereabouts in order to preclude their recovery by Appellants. Why PNC did so is not clear, but inexplicable behavior is not exculpatory.¹ Appellants did not suggest theft thereafter.

¹PNC drops a footnote to suggest that the proceeds from the \$12,000.00 cashiers check can be easily recovered from the District. Appellants do not seek damages in relation to this added burden however.

**REPLY TO PNC’S STATEMENT
OF THE ISSUES PRESENTED FOR REVIEW**

After a rambling review of the Orders of the Superior Court PNC stops short of identifying the specific issues under review as set out in these Orders. Appellants prefer their identification of issues as set out on Page 1 of their opening Brief.

REPLY TO PNC’S STATEMENT OF THE CASE

PNC’s recitation of the statement of the case is essentially correct with only two presumably inadvertent efforts to deceive.

First, PNC notes that Appellants’ claims were in fact “premised on a four-year-old cashier’s check in the amount of \$12,000.00 which was dishonored on April 15, 2019 “ PNC. Br. at 3. PNC goes on to state, however, that the check was dishonored “because the funds had escheated to the District of Columbia.” *id.* Simply untrue. As the notice of dishonor states the cashier’s check was dishonored because of “Q NOT AUTHORIZED. App 377 Thus it was not at the time of dishonor, but at some subsequent time, that PNC recognized that the funds had been escheated,²

Second, the relevant exhibits attached to Appellants Opposition to PNC’s Motion for Summary Judgment were not responsive to PNC’s discovery requests or were not requested. Regardless the Superior Court permitted their introduction.

²When PNC knew or should have known that it was statutorily required to transfer the escheated funds, and when it actually did so, has yet to be resolved.

REPLY TO PNC'S STATEMENT OF FACTS

PNC's Statement of Facts is correct where noted. Some facts as stated are misleading however . While PNC "attempted to locate an address for Frances Schwartz...for at least 7 years," it made no attempt to locate the "LMS Special Needs Trust," the remitter of the cashier's check. The "LMS Special Needs Trust," which existed until January 26, 2018, was listed as "Additional Owner # 1" of the cashier's check. App. 185, 189. There were additional errors in PNC's representation as to its internal operations, the effectiveness of its search for Frances Schwartz, and its compliance with District statute, but they need not be reached in relation to the grounds for summary judgment.

As to the claim of Johanna J. Schwartz PNC offers considerable information relating to its procedures for increasing its fees, much of which does not appear in the Record. Schwartz' claim, however, relates to the refusal of PNC to close her account after being directed to do so by her agent and, subsequently, through a power of attorney executed in England.

Finally IIP alleged that the monthly statements for its non-profit checking account had been defectively addressed and as a result were not delivered. The funds in the account were eventually escheated. PNC took the position that it had done a name search and could find no results. PNC did not carry out a search based on the

years of returned statements, however, each of which carried an account number which would have provided easily identifiable account contact information.

REPLY TO PNC'S SUMMARY OF THE ARGUMENT

PNC's Brief fails to answer the critical and dispositive questions in this appeal. Why did PNC for more than four years purposely and fraudulently conceal from Appellants the fact that it had legally and (more or less) properly escheated the proceeds from the Appellants' \$12,000.00 cashier's check? Why did PNC likely spend more than \$100,000 in litigating the concealment (based on Appellant's projected litigation costs)? Why did PNC fail to recognize and respond in its papers to the shift in Appellants' claim from one arising from the improper refusal to honor a \$12,000.00 cashier's check to one arising from the partial/temporary conversion of the \$12,000.00?

Clues but not answers arise from the encouragement of the unyielding and erroneous decisions by the Superior Court in PNC's favor whenever the opportunity arose. The errors of the Superior Court as addressed by PNC are reviewed in the Reply to PNC's Argument.

REPLY TO PNC'S ARGUMENT

A. Standard of Review

The parties generally agree on the standard of review, but PNC goes a little bit further than appropriate in relation to the non-dispositive motions arising in this

appeal. *Phelan v. City of Mt. Ranier*, 805 A.2d 930, 942-943 (D.C. 2002), cited by PNC, identified the general discretionary rule, but it was only reached after the trial judge reviewed most of the documents *in camera* and found that granting the remainder of the request was “not warranted by facts and circumstances of this incident, *i.e.*, irrelevant.” *Id.* at 942. Thus careful consideration of the denial of Appellants’ motions here is necessary. This was address in Appellant’s opening Brief at 7. This is particularly true here. In *Phelen*, “[t]here had been sufficient discovery to obtain all the information as above described.” In this appeal *all* discovery requests were denied throughout the proceedings. It was within the trial court's discretion to limit disclosure under the circumstances, but only after the review described by this Court in *Phelen* had taken place.

In particular as this Court put it in *Futrell v. Dep't of Labor Fed. Credit Union*, 816 A.2d 793, 809 (D.C. 2003) quoting from *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978) (footnote omitted): “[I]t is proper to deny discovery of a matter that is relevant only to claims or defenses that have been stricken . . . unless the information sought is otherwise relevant to issues in the case.” “We review the trial court's discovery rulings for abuse of discretion.”

As to motions to strike, PNC cites *Landis v. Tailwind Sports Corp*, 308 F.R. D 1,4 (D.D.C. 2015). Appellants look first to our own decisions for guidance rather than the U.S. District Court for the District of Columbia.

Appellants first note that they did not ask that the Answer actually be struck, but instead asked the Superior Court to Order a multi-step process meant to extract useful Answers from PNC's despite its recalcitrance. App. 328 This was the process identified in *Franco v. Nat'l Capital Revitalization Corp.*, 930 A.2d 160, 166-167 (D.C. 2007).

Such motions [to strike] are useful and appropriate tools "for weighing the legal implications to be drawn from uncontroverted facts." *United States v. 416.81 Acres of Land*, 514 F.2d at 631 However, a motion to strike a defense as insufficient will be denied "if [the defense] fairly presents a question of law or fact which the court ought to hear." *Securities & Exchange Commission v. Gulf & Western Industries, Inc.*, 502 F. Supp. 343, 345 (D.D.C. 1980) "In sum, a motion to strike will not be granted if the insufficiency of the defense is not clearly apparent, or if it raises factual issues that should be determined on a hearing on the merits." WRIGHT & MILLER, *supra*, § 1381, at 427-28 (footnotes omitted).

Finally, PNC has cited the old standby *Eagle Wine & Liquor Co. v. Silverberg Electric Co.*, 402 A.2d 31, 34 (D.C. 1979) in relation to Appellants' motion to amend the Complaint. But a motion to conform the Complaint to the previously concealed facts rise far above the *Eagle Wine* calculus as previously discussed. .

Therefore, as a general rule, discretion doesn't mean the Superior Court has free rein to resolve discretionary motions; it means that this Court reviews how the Superior Court applied the law and facts rather than this Court doing so *de novo*.

Finally in the case of a Rule 12(b)(6) motion, the default is not a dismissal; the default is a denial.

B. Count I–Breach of Fiduciary Duty/Breach of Delegated Fiduciary Duty/Breach of Fiduciary Duty of a Trust Adviser. (12(b)(6) dismissal)

PNC has spent a considerable amount of time missing the point of this Count (and where it was at that point in the proceedings when the Superior Court ruled).

PNC first sets out its view of the criteria for a breach of fiduciary duty.

1. Defendant owed Plaintiff a fiduciary duty.
2. Defendant breached the duty owed Plaintiff.
3. “Proximate cause and injury to be inferred from those facts.”

Appellants agree as to Criteria 1 and 2, but Criteria 3 at that early stage of the proceedings was erroneous.

However, while under some statutory schemes plaintiffs are required "to plead with particularity actual damages caused," under the Twombly/Iqbal standard applicable to most claims, "the lack of detail in the complaint is not a basis for dismissing a claim for damages at [an] early stage of the litigation[,] as plaintiffs are under no obligation to plead damages with particularity." *Democracy Partners v. Project Veritas Action Fund*, 285 F. Supp. 3d 109, 126 (D.D.C. 2018); see also *Alemayehu v. Abere*, 199 F. Supp. 3d 74, 86 (D.D.C. 2016) ("At this juncture, Mr. Alemayehu is not required to make a precise damages calculation."); *NCB Mgmt. Servs., Inc. v. FDIC*, 843 F. Supp. 2d 62, 70 (D.D.C. 2012) (holding that "[a]t [the pleadings] stage," a plaintiff "need not plead with particularity damages that would typically be expected to flow from its claims"). The Beckers are correct that a plaintiff must prove actual damages and proximate cause to recover on a breach-of-fiduciary duty claim, see *Aronoff v. Lenkin Co.*, 618 A.2d 669, 687 (D.C. 1992), but it was error to dismiss the Silberbergs' claims at this stage of the litigation for failure to specify how precisely they were damaged by the alleged breach of duty. *Silberberg v. Becker*, 191 A.3d 324, 338-339

The Appellants at this early stage still needed to allege some cognizable damages, of course. They did. Extract from the Complaint:

Breaches of Fiduciary Duties and damages of at least \$12,000.00, the Appellants were obligated to take out short term loans to meet the needs of the beneficiary Lynne M. Schwartz, wire transfer expenses, substantial legal fees, court costs in pursuit of the denied funds, and statutory damages, the total amount of which will be proven at trial. Appellants are entitled to punitive damages as well since the acts identified above and incorporated herein were purposeful, gross, wanton, willful, fraudulent, dishonest, malicious and contrary to statute with which PNC is required to be familiar so as to represent a high degree of moral culpability even though PNC knew from inspecting the cashier's check which it issued that the funds were to be paid in support of the needs of a disabled individual.

PNC also spends a considerable amount of time discussing the relationship between a Bank and its depositors quoting extensively if selectively from Appellants' Brief. Appellants admit discussing in detail the nature of a fiduciary duty and when, where and why it exists. Appellants apologize. To simplify: there are three groups of Plaintiffs/Appellants here . First there is Johanna Schwartz and IIP. They had a more or less straightforward banking relationship with PNC and are governed by *Geiger*. Thus they must look to the other Counts of the Complaint for liability. Then there is the Lynne M. Schwartz Special Needs Trust and the Lynne M. Schwartz Discretionary Trust. They had no banking relationship with PNC. As alleged (which must be accepted in a 12(b)(6) review, their funds were entrusted to and completely managed by the for-profit independent money managing divisions of PNC Financial Services Group, Inc. and its AMG Division. The Trusts did not make deposits to the corpus of the Trusts controlled by PNC after the initial contribution and the Trusts did not make withdrawals from the trust corpus (except

by request through the money managers hence the \$12,000.00 cashier's check). Thus their relationship was not that of a *Geiger*-like banker-depositor, but rather as described in the Complaint. The relationship did not need to utilize magic words to characterize it. Giving all ones money to another with the other having the sole right to manage and disperse it denotes a special relationship. All this was alleged in the Complaint which was sufficient for the purposes of this motion.³ *Geiger* does not control as its context and logic related to a retail banking relationship. Finally there were the Estate of Frances A. Schwartz and the Estate of Lynne Schwartz named as Rule 20 parties.

PNC fails to make this distinction although it quotes extensively from Appellants' opening Brief. Instead it claims that Appellants make no distinction in their Complaint. Assuming this is correct, and Appellants believe not, it only results in dismissing the fiduciary claims by Johanna Jane Schwartz and IIP.

C. Count III—Breach of the Duty of Good Faith and Fair Dealing.

The Superior Court held that the Complaint “did not include allegations of bad faith or arbitrary and capricious behavior.” PNC suggests that all it did was “issue, deposit, return funds (whatever that means), and dishonor the check as “unauthorized.” PNC Br. at 19 PNC seems to be oblivious to that part of the

³There was, of course, an extensive annual contract with PNC since it was a financial institution, but there was no need (and no opportunity) to present it at that juncture. It was unnecessary as well since PNC had it on file.

Complaint which alleged that PNC wrongfully dishonored and retained the cashier's check and failed to honestly explain why. Why the Superior Court and PNC find it difficult to consider why this was violation of the implicit contractual duty of good faith and fair dealing is impossible to understand and does not add to their credibility particularly utilizing the appropriate standard of review.⁴

D. Breach of the District of Columbia Consumer Protection Procedures Act.

The Superior Court pointed out that the District of Columbia Consumer Protection Procedures Act (CPPA) does not require much by way of pleadings to state a claim, and all that is required is an affirmative or implied misrepresentation which a reasonable consumer would find misleading. However the itemizations of PNC's representations made to the public and set out in the Complaint failed to impress her.

PNC goes further and suggests that the allegations relating to the manner in which it handled the cashier's check was not part of the equation, nor was the description of the trusting relationship entered into by Appellants with it. PNC claims that search as it might it could find no allegation of "misrepresentation" in the Complaint, much less in the CPPA's broader definition. PNC empirically and ultimately is unable to distinguish between "dishonoring a four-year-old cashier's

⁴PNC flirts with the notion that there was no contract alleged, but it knew that all the relationships relied upon grew out of contracts it drafted and required. For PNC to allege otherwise implicates Rule 11.

check” and wrongfully and improperly dishonoring a cashier’s check, refusing to explain why, destroying the check and, as we will see, secreting the location of its value for more than four years. *See* PNC Brief at 24

Following the initial filing of Briefs this Court issued a comprehensive, extensive and well-reasoned decision by Judge Deahl, as customary, in *Earth Island Institute v. Coca-Cola Co*, No. 22-CV-0895 (August 29, 2024) which addressed the CPPA and many of the errors of the Superior Court and PNC setting them out in a much more lucid way than Appellants’ counsel could. If Appellant were to do so would utilize the remainder of this reply Brief. Consequently Appellants incorporates *Earth Island* in its entirety by reference as part this reply Brief.

Finally in regard to the CPPA PNC argues that Appellants were not identified as customer even though the Complaint alleges “[a]ll plaintiffs were “customers” of PNC as defined in D.C. Code § 28:4-104(4) within the relevant period or are otherwise entitled to be designated a “customer.””

F. CONVERSION

Despite every effort by PNC (and strangely the Superior Court as well) to nullify Appellants’ Conversion Claims they fail. There is no dispute at this point over the legitimacy of PNC’s escheat of the proceeds of the \$12,000.00 cashier’s check. Nonetheless the imperfections of the suddenly ill-fitting original Complaint which the Superior Court inexplicably refused to allow to be amended or modified

do not totally nullified the conversion claim. The Restatement (Second) of Torts, the Restatement (Third) of Torts, and English Lexicography join together to establish PNC's liability and the resulting damages under the remaining allegation in the surviving Complaint.

The Superior Court wrote as central to its summary judgment ruling that:

The Court finds that based on the record, it is undisputed that PNC Bank did not "treat the [\$12,000.00] as if [it was PNC's Bank's] own ." *Greenpeace*, A.3d at 1064. Indeed PNC Bank did not take dominion and control over [Plaintiffs'] personal property in denial of or inconsistent with [Plaintiffs'] possessory right to the property." *Poola*, 147 A.3d at 284 n.17

Extract cited at PNC Br. at 22

The Superior Court ruled that the appropriate definition of "conversion" and the one she would utilize was:

"Conversion has generally been defined as any unlawful exercise of ownership, dominion or control over the personal property of another in denial or repudiation of his rights thereto. *Duggan v. Keto*, 554 A.2d 1126, 1137 (D.C. 1989)(citation omitted); see also *Poola v. Howard University*, 147 A.3d 267, 284 n. 17 (D.C. 2016)("The elements of tort conversion are '[1] an unlawful exercise, [2] of ownership, dominion, and control, [3] over the personalty of another, [4] in denial or repudiation of his right to such property.'"). "Conversion is a tort based on the theory that the defendant 'has in some way treated the goods as if they were his own..." *Greenpeace, Inc. v. Dow Chemical Co.*, 97 A. 3d 1953, 1064 (D.C. 2014)

Extract cited at PNC Br. at 34.

From this the Superior Court concluded as a matter of dispositive law that

PNC “did not take ‘dominion or control over [Plaintiffs’] personal property in denial of or inconsistent with [Plaintiffs’] possessory right to the property.” App. 22 quoting from *Poola* at 284 n. 17 Finally the Superior Court found that conversion is an intentional act although the relevancy of that conclusion is not clear.

In so ruling, however, the Superior Court found that the relevant “personal property” in this suit was the individual right to obtain \$12,000.00 upon documentation and not the actual cashier’s check which was destroyed. See options at *Duggan v. Keto, supra* at 1138

Consequently the Superior Court did not simply misread the language from *Dugan and Poole*, she appears to have avoided it. Let’s us parse:

PNC, the converter, denied and repudiation the right of the Appellants to the proceeds of the cashier’s check for a period of more than four years by unlawfully and untruthfully claiming to Appellants that its issuance was unauthorized, thereby rendering it useless, and by destroying the cashier’s check itself thereby foreclosing its use as evidence of the subject \$12,000.00.

Thus, despite the ultimate conclusion of the Superior Court, PNC did take under her articulated opinion “dominion or control over Appellants personal property in denial of or inconsistent with Appellants’ possessory right to the property.”

Without realizing it PNC agrees. In its brief PNC points out that **when PNC “advised them [Appellants] of the escheat** it also advised Appellants that the funds were readily available and could be recovered by filing a simple claim form on the District of Columbia’s Unclaimed Property website.” PNC Brief at 2 Appellants

had no way of knowing of the availability of their escheated \$12,000.00 after being misled for more than four years of fierce litigation.

As PNC notes, and as the Appellants have pointed out, Appellants no longer make any claim as to the full \$12,000.00. Appellants are entitled, however, to the value of the absent \$12,000.00 during the actual period of conversion, any other related damages which arose during that period and can be proven, and the cost of recovery. Damages await a remand, if granted, to be determined.

PNC rejects out of hand the concept of a temporary or limited conversion. This is addressed by Appellants in decisions set out at Pages 33 *et seq.* and 42 *et seq.* of their Brief, Restatement (Sec.) of Torts § 922 Return or Tender of Return of Converted Chattel. PNC's position makes no sense. It is clearly appropriate to hold a converter liable for only those damages which arise during or as a result of the period of conversion and not those damages which arise outside the period of conversion. As to this point PNC claims there was no conversion so there could be no damages. The error of this position is discussed above.

In particular PNC claims that Appellants did not and could not prove PNC "unlawfully or wrongfully possessed the \$12,000.00 cashier's check funds." Appellants agree. But as to depriving Appellants of the knowledge and therefore the ability to recover the \$12,000.00 it makes no difference whether it remained in a PNC vault or in some other unknown depository such as the District's escheatment

account. PNC maintained dominion and control.

PNC itself sets out the alternative: “Notably, under Appellants’ theory, any bank or financial institution would be subject to liability for conversion every time money is escheated to the state.” PNC. Br. at 38 That would be an “absurd” result as PNC suggests. But PNC’s hypothetical has nothing to do with this case. Here, Appellants posit that any bank or financial institution would be subject to liability for conversion every time money is escheated to the state ***and the bank or financial institution conceals that fact for years stating that the property was obtained without authorization thereby precluding the owner from its recovery.*** Thus whether or not PNC held the funds or escheated them to the District is irrelevant to the core issue of whether or not the Appellants had the practical knowledge or ability to recover the \$12,000.00 in question..

PNC’s counsel at this point, apparently running out of civility, accuses Appellants’ counsel twice of deceit in relation to a personal check from Frances Schwartz, purpose unknown. It is of minor relevance, however, because PNC’s employee tasked with rooting out for notification purposes the address of soon to be escheated accounts ignored the details of the “Additional Owner” of the cashier’s check, an account at PNC easily identified thus avoiding escheatment, App.189 PNC goes on for a while trying to explain why all this information could be ignored, but it is for a jury to decide if remand is permitted as a 20 page reply Brief is,

unfortunately, only 20 pages.

In any event PNC states the legitimacy of the escheatment absolves it of any liability in relation to the cashier's check including the concealment of the Appellants' \$12,000.00. The authorities discussed at P.44 of Appellants' brief and the Restatement (Sec.) of Torts § 550 Liability for Fraudulent Concealment state the contrary.

G. Motion to Strike

The Superior Court denied Appellants' Motion to Strike the Answer as untimely after refusing to utilize her discretion to rescue it. As a starting point while denominated a Motion to Strike it was an effort to establish a mechanism to ascertain PNC's position on the facts and what PNC's defenses were. Experienced Superior Court Judges such as here understand and welcome the tools provided by the Civil Rules to consolidate issues and efficiently reach a resolution of the suit.

PNC drops a footnote to suggest that any error was harmless in "light of the valid escheat of the funds." PNC Br. at 27 n. 4. As it was PNC fails to note that its Answer says nothing about escheatment or its validity. Further PNC continues to ignore the eventual irrelevancy of the escheatment and avoids the actual issue which was the wrongful and fraudulent concealment of the location of the escheated \$12,000.00 which, if timely given, would have avoided suit (or if filed within 20 minutes of service.)

H. Motion to Compel

The Superior Court, in conjunction with denying Appellants' proposed mechanism to clarify the Answer, also denied Appellant's Motion to Compel responses to Appellants' two propounded interrogatories as discussed above. The Superior Court did so, as PNC points out, because it accepted PNC's representation that it had made a "reasonable" search without providing further details or discussion. Appellants' suggestion that the situation might be analogous to a FOIA refusal was rejected out of hand.

In defense of these denials PNC again goes to the Federal District Court. *Prasad v. George Washington University*, 323 F.R.D. 88, 94 (D.D.C. 2017) *Prasad*, when considered, in its entirety, is not helpful.

While the initial responsibility of establishing relevance lies with the party seeking the information, "the burden is on the refusing party to show that the movant's request is burdensome, overly broad, vague or outside the scope of discovery." *United States v. Kellogg Brown & Root Servs., Inc.*, 284 F.R.D. 22, 33 (D.D.C. 2012) * * * "In general, when disputes are brought before the court, * * * the party resisting discovery has the burden of showing undue burden or expense." (Cit. Omitted)

PNC made no such representations.

I. Account of Johanna Schwartz

The Superior Court found as a matter of law that the statute of limitations on Johanna Schwartz' claims under her banking account with PNC began to run July 13, 2017, and the Complaint was filed on April 7, 2022. The Superior Court

misinterpreted the effect of the COVID Orders as discussed in Appellants' opening Brief. Among PNC's Summary Judgment Exhibits is a Statement for the account ending March 8, 2018 with the balance redacted. App. 200-293. In addition PNC failed to produce the initial contract which was its initial burden and not the Appellant's. These errors are sufficient to require remand.

J. IIP Breach of Contract Claim

The Superior Court ultimately dismissed IIP's breach of contract claim on the grounds that the statute of limitations had run rejecting the contrary argument in Appellants' prior papers. PNC adds nothing to the Superior Court's rationale. Appellants rely on its prior representations demonstrating PNC's errors as their 20 pages to reply have ended.

CONCLUSION

Search as one might in PNC's brief it is impossible to find any merit in its argument that its legitimate escheatment of Appellants' \$12,000.00 justified it concealing for more than four years of the location of the escheated—and otherwise readily available--\$12,000.00. The frivolous and vexatious litigation response unleashed on Appellants by PNC, a company with a 2023 net income of \$5.6 Billion, when Appellants found it necessary to bring suit must have had as its purpose forcing the abandonment of Appellants' suit without locating its \$12,000.00 trust funds. This Court should not in any way add its imprimatur to PNC's behavior.

Respectfully submitted,

/s/ Frederic W. Schwartz, Jr.

Frederic W. Schwartz, Jr.
700 12th Street, NW
Suite 700
Washington, DC 20005
(202) 463-0880 197137
FWS888@aol.com

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was transmitted to counsel of record this 10th day of September 2024 utilizing this Court's electronic filing system in accordance with the Rules of this Court.

/s/ Frederic W. Schwartz, Jr.