



Gasho v. Wells Fargo Bank NA et al

2019 | Cited 0 times | D. Arizona | November 20, 2019

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

John R Gasho, Sr.,

Plaintiff, v. Wells Fargo Bank NA,

Defendant.

No. CV-18-00552-TUC-RCC (EJM) ORDER

This conversion action arises from allegedly fraudulent transfers made by one of unauthorized savings account. Plaintiff alleges that the Defendant, Wells Fargo Bank

After a thorough and careful de novo review of the record (Doc. 22) (Doc.

1) with prejudice.

Factual Background , a business based out of Tucson, Arizona. held a business checking account (account ending in -9621) with Wells Fargo. Id. at ¶ 4. On n allegedly unauthorized business savings account (account ending in - knowledge. Id. at 4-7. Then, two transfers totaling \$79, 185.00 transferring the money from Plaintiffs legitimate business account into the unauthorized savings account. Id. at ¶ 7.

Procedural History On November 16, 2018, Plaintiff filed a Complaint against Wells Fargo Bank and two of its employees. Doc. 1. The case was subsequently referred to Magistrate Judge Markovich. Doc. 5. While under Judge Markovich, the Parties stipulated to the dismissal of the Wells Fargo Bank employees, Dax McMenamin and Chris Federman, leaving Wells Fargo as the sole defendant. Docs. 7 & 11. Defendant Wells Fargo responded to Doc. 15. The Parties filed timely responses and the Motion was fully briefed as of March 25, 2019. Docs. 17 & 18. Thereafter, Magistrate Judge Markovich issued an R&R recommending that this Court

Standard of Review



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§ 636(b)(1); LRCiv. 72.1(a). While magistrate judges do not have the authority to dismiss, they may prepare a [R&R] to aid the district judge in the disposition of the case. § 636(b)(1)(B)-(C). After receiving to the magistrate and any objections from the parties, the district judge conducts a de novo review of the

portions of the record to which the parties object. Id. Finally, the district judge determines Id.

Legal Analysis 1 -beyond any time conversion. The statute of limitations in Arizona for a conversion action is two years.

1 A more detailed analysis is set forth in the R&R. Doc. 22. Ariz. Rev. Stat. § 12-542(5).

Additionally, Arizona follows the discovery rule. The discovery rule determines when the two-year time limit starts. The discovery rule states that the statute of limitations begins to run when the Plaintiff knows, or in the exercise of reasonable diligence, should have known of the facts giving rise to the cause of action. See *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.*, 898 P.2d 964, 966 (1995); see also *11333 Inc. v. Certain Underwriters at Lloyd's, London*, 261 F. Supp. 3d 1003, 1024 (D. Ariz. 2017), appeal dismissed, No. 17-16331, 2019 WL 2591204 (9th Cir. Jan. 30, 2019). This means that a Plaintiff attempting to bring a conversion action must do so within two years of the date that Plaintiff knew or should have known of the injury. There is no dispute that the statute of limitations is two years. Thus, the dispositive inquiry is when the Plaintiff knew or should have known of the unauthorized transfers causing his injury.

Here, the transfers took place in September of 2009. Plaintiff did not file suit until November of 2018. Plaintiff, without reason, asserts that he did not actually discover the transfers until tion began accruing sometime between September 2009, when the transfers were made, and November 15, 2018, when the Complaint was filed. This Court need not venture into the

the two-year statute of limitations. This Court agrees with the conclusions set forth in

Accordingly, IT IS HEREBY ORDERED that the R&R is ADOPTED. is DISMISSED WITH PREJUDICE. The Clerk of the Court is directed to close this case and docket accordingly. Dated this 19th day of November, 2019.

