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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1445-MR

VITERRA USA GRAIN, LLC, N/K/A
BUNGE USA GRAIN, LLC — APPELLANT

v.

APPEAL FROM LYON CIRCUIT COURT
HONORABLE JAMES R. REDD, III, JUDGE
ACTION NO. 23-CI-00097

FIRST UNITED BANK AND TRUST
COMPANY; JAMES A. HUNT; AND
NUTRIEN AG SOLUTIONS, INC. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, ECKERLE, AND L. JONES, JUDGES.

COMBS, JUDGE: The dispute in this case arose from financial transactions involving Appellant Viterra USA Grain, LLC (now known as Bunge USA Grain, LLC) (Viterra), a licensed grain dealer operating in Eddyville; Appellee James A. Hunt (Hunt), a farmer in Fredonia, Kentucky; and the agriculture-related credit

extended to Hunt by Appellee First United Bank and Trust Company (First United Bank) and Appellee Nutrien Ag Solutions, Inc., (Nutrien). After our review, we affirm.

The following facts are undisputed: First United Bank and Nutrien held perfected security interests in Hunt's crops and crop proceeds. In October 2023, First United Bank filed a civil action against Viterra after Viterra issued a stop-payment order with respect to two checks (one for $244,252.65 and one for $14,126.53) issued on September 18, 2023. These checks were issued by Viterra in conjunction with Hunt's sale and delivery of more than 19,000 bushels of soybeans to Viterra in September 2023. Viterra was well aware of the security interests held by First United Bank and Nutrien. In fact, the checks were made payable to each of them as well as to Hunt.

Hunt and Nutrien were made parties to the First United Bank's action against Viterra. Hunt filed a cross-claim against Viterra alleging breach of contract. Among other things, he claimed that Viterra owed him for delivery of wheat between March 16 and March 20, 2023, and that it owed him "equity payments" under the terms of a futures contract totaling more than $35,000.00.

In its answer, Viterra defended its stop-payment order on the basis that Hunt had wrongfully converted the proceeds of its check in the sum of $372,466.54, issued in August 2023. Hunt, First United Bank, and Nutrien were

all payees on the check. While the check appeared to have been issued in exchange for Hunt's delivery of his soybeans, Viterra alleged that the proceeds of the August 2023 check were not, in fact, intended to pay Hunt for delivery of his crop. Instead, Viterra's employee claimed that he had the August 2023 check issued payable to Hunt, First United Bank, and Nutrien and that he instructed Hunt to use the proceeds to fund Hunt's purchase of more than 25,000 bushels of soybeans from Kentucky American Seeds for delivery to Viterra.

Viterra's employee indicated that he made this deceptive arrangement with Hunt so that it would appear that Hunt satisfied his contract to deliver soybeans to Viterra. Viterra's employee told Hunt that Viterra had not only located the soybeans for him to purchase but that Viterra would also arrange for transportation of the soybeans to its facility as well. Hunt just needed to pay for the soybeans from the proceeds of the check.

Hunt promptly deposited the August 2023 check into his account at First United Bank. First United Bank charged Hunt's account to pay overdrafts and to pay down Hunt's outstanding loan balance and accrued interest. Although Nutrien was immediately impacted by the stop-payment order with respect to the September 2023 checks, it was unaware of the existence of the August 2023 check until the litigation underlying this appeal commenced. It did not indorse the August 2023 check.

After Viterra was eventually contacted by Kentucky American Seeds regarding its nonpayment for the soybeans, Viterra's employee was forced to reveal to management the circuitous nature of his transaction with Hunt. The representative was promptly terminated.

Despite the perfected security interests (again, of which Viterra was well aware), Viterra believed that the circumstances justified a setoff against the two September 2023 checks just issued payable to Hunt, First United Bank, and Nutrien for Hunt's September delivery of soybeans. Viterra viewed this as an opportunity to realize "a partial recoupment of the amount that Hunt had effectively stolen" in August 2023 and by which First United Bank had been allegedly and unjustly enriched. Essentially, Viterra undertook a self-help remedy for Hunt's alleged conversion of the proceeds of its August 2023 check by issuing the stop-payment orders with respect to the September 2023 checks.

After the bank's complaint was filed, Viterra filed a counterclaim against First United Bank, asserting claims for conversion and unjust enrichment. Viterra asserted the same claims in its cross-claim against Hunt. Viterra never asserted a claim against Nutrien.

Following a period of discovery, the parties moved for summary judgment. Upon the motions filed by First United Bank and Nutrien, the trial court concluded that there was no basis in law for Viterra's decision to stop payment on

the two September 2023 checks. In its order entered August 13, 2025, the trial court ordered Viterra to reissue the two checks (one for $244,252.65, and another one for $14,126.53) payable to Hunt, First United Bank, and Nutrien to replace the September payments for Hunt's soybeans.

In this order, the trial court also denied Viterra's motion for summary judgment with respect to its claims of unjust enrichment against First United Bank and Hunt. It did so on the basis that genuine issues of material fact existed. Referencing terms of the National Grain and Feed Association's Grain Trade Rules governing the transactions between Viterra and Hunt, the trial court observed that "some, if not most or even all, of the remaining claims may have to be resolved by arbitration." This order was not made final and appealable.

On September 10, 2025, Viterra filed a motion to compel arbitration of its outstanding contract dispute with Hunt. Additionally, it asked the court to stay the other claims despite the fact that those claims were not subject to arbitration. First United Bank and Nutrien objected to the proposed stay. They observed that the court had concluded as a matter of law that they were entitled to the proceeds of the September 2023 checks. They viewed Viterra's request for a stay as an attempt simply to avoid reissuing the September 2023 checks as ordered. The bank filed a motion asking the court to order Viterra to show cause why it had not issued the replacement checks.

In response, Viterra contended that the summary judgment should remain interlocutory pending resolution of the remaining claims among the parties because it would ultimately be entitled to a setoff, noting that neither First United Bank nor Nutrien would be unduly prejudiced by a stay. Viterra explained that it had a "legitimate concern that if it prevails on its counterclaim and cross-claims for unjust enrichment that a judgment against Hunt will be hard to collect if it cannot offset the judgment against the partial summary judgment issued [by the trial court in August 2025]."

The trial court's judgment was entered in October 2025. It ordered Viterra to issue the two replacement checks for the soybeans delivered to Viterra by Hunt in September 2023, along with prejudgment interest, within twenty (20) days. Furthermore, it determined that "neither First United Bank and/or [Nutrien] were unjustly enriched by the receipt and/or payment by [Viterra] of $372,466.44 on August 14, 2023." The court concluded that there was no just cause for delay and made the partial summary judgment final and appealable. It also declared that "[t]his Judgment resolves all issues regarding First United Bank and [Nutrien]." The court reiterated that the issues outstanding between Hunt and Viterra remained

pending before the trial court. It did not reference Viterra's unresolved claim for conversion against First United Bank.[1] This appeal followed.

Through this appeal, Viterra seeks to challenge the trial court's order in favor of First United Bank and Nutrien on its claims of unjust enrichment.[2] It contends that the trial court must have decided as a matter of law that First United Bank and Nutrien were not unjustly enriched by Hunt's conversion of the August check's proceeds because they were protected secured creditors with liens on his crops. However, it observes that neither First United Bank nor Nutrien had a right to the funds represented by the August 2023 check by virtue of their perfected security interests because the funds were not proceeds from the sale of any of Hunt's crops.

It is undisputed that Hunt did not deliver his soybeans to Viterra in exchange for the August 2023 check. On that basis, Viterra argues that the trial court's reasoning with respect to the proceeds of the August 2023 check is fatally flawed. It argues that the trial court's resolution of the issue -- although it follows denial of a motion for summary judgment -- is, nevertheless, subject to appeal

[1] The conversion claim is not viable given the applicability of provisions of Kentucky's version of the Uniform Commercial Code. *See Cubby Angel Properties, LLC v. Citizens Bank of Kentucky, Inc.*, 681 S.W.3d 167 (Ky. App. 2023).

[2] Again, the record does not indicate that the litigation includes a cause of action against Nutrien for unjust enrichment.

because Viterra has been deprived of an opportunity to contest the court's conclusion that neither First United Bank nor Nutrien was unjustly enriched by Hunt's actions.

To be clear, Viterra *does not* take issue with the judgment in favor of First United Bank and Nutrien with respect to the proceeds of the September checks. It acknowledges that First United Bank and Nutrien are entitled to proceeds derived from those checks. Instead, the issues are whether the trial court erred in its analysis of the outstanding unjust enrichment claim involving the August 2023 check and, if so, whether Viterra might be entitled to an offset against the judgment in favor of First United Bank and Nutrien (with respect to the September 2023 checks) such that there would be no need to issue the replacement checks.

Clearly, Viterra does not want to issue the replacement checks where it might later be determined that First United Bank and Nutrien must disgorge amounts they received from the proceeds of the August 2023 check -- allegedly converted by First United Bank and/or Hunt. According to Viterra, equity requires that the settling-up be postponed because the amounts by which First United Bank were unjustly enriched could exceed the value of the replacement checks.

We agree that Viterra is entitled to appellate review of the trial court's decision to dismiss its claim against First United Bank for unjust enrichment.

(Again, there is no such claim against Nutrien). However, we are not persuaded that the trial court erred by granting summary judgment with respect to Viterra's claim for unjust enrichment. Consequently, it did not err by ordering Viterra to issue checks to replace the September 2023 payments for Hunt's soybeans.

We must first consider whether it is appropriate to review an order denying summary judgment. A party moving for a summary judgment must establish that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Loy v. Whitney*, 339 S.W.2d 164, 166 (Ky. 1960); Kentucky Rules of Civil Procedure (CR) 56.03. Only judgments entered pursuant to a final order may be reviewed on appeal. CR 54.01. Generally, an order overruling a motion for summary judgment is interlocutory and, consequently, not appealable. *Battoe v. Beyer*, 285 S.W.2d 172 (Ky. 1955).

The denial of a motion for summary judgment is not reviewable where the sole question is whether there exists a genuine issue of material fact. *Bell v. Harmon*, 284 S.W.2d 812 (Ky. 1955). "[A]n order denying a summary judgment can in no sense prejudice the substantive rights of the party making the motion since he still has the right to establish the merits of his motion upon the trial of the cause." *Id.* at 814. However, our jurisprudence necessarily requires an exception to the general rule where the only basis for denying the summary judgment

involves the resolution of an issue as a matter of law rather than as a matter of fact. *See Gumm v. Combs*, 302 S.W.2d 616, 617 (Ky. 1957).

The circuit court's order denying Viterra's motion for summary judgment with respect to its claim for unjust enrichment against First United Bank constitutes an adjudication on the merits. The trial court determined as a matter of law that Viterra's claims for unjust enrichment could not proceed to trial. "This issue, unlike one of fact, may not be again presented or retried in the proceedings." *Gumm*, *supra*, at 617. Accordingly, we conclude that circuit court's order is properly reviewable. *See Ford Motor Credit Co. v. Hall*, 879 S.W.2d 487, 488–89 (Ky. App. 1994).

> Summary judgment is properly granted where:
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> pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

CR 56.03. Our review of this matter is *de novo*; we do not defer to the circuit court's legal conclusions. *Frear v. P.T.A. Industries, Inc.*, 103 S.W.3d 99, 105 (Ky. 2003).

The dispute on appeal can be resolved with reference to Articles 3 and 4 of the Uniform Commercial Code. These provisions embody a fully integrated scheme governing the indorsement, negotiation, collection, and payment of checks.

They provide a system of comprehensive and specific remedies allocating losses occasioned by check fraud. *See Mark D. Dean, P.S.C. v. Commonwealth Bank & Tr. Co.*, 434 S.W.3d 489, 507 (Ky. 2014) (citing A. Brooke Overby, *Check Fraud in the Courts After the Revisions to U.C.C. Articles 3 and 4,* 57 ALA. L. REV. 351, 398 (2005)).

At KRS[3] 355.1-103(2), Kentucky's version of the UCC provides as follows:

> Unless displaced by the particular provisions of the [UCC], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause, supplement its provisions.

Interpreting this provision, the Supreme Court of Kentucky has explained that "there is a strong policy in favor of treating the UCC as occupying the field and displacing common-law causes of action." *Dean*, 434 S.W.3d at 505. The official comments to UCC § 1-103 explain further as follows:

> while principles of common law and equity may *supplement* provisions of the [UCC], they may not be used to *supplant* its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the [UCC] provides otherwise. In the absence of such a provision, the [UCC] preempts principles of common law and equity that are

[3] Kentucky Revised Statutes.

> inconsistent with either its provisions or its purposes and policies.

See Cubby Angel Properties, LLC, 681 S.W.3d at 173 (citing *Dean*, 434 S.W.3d at 506 (quoting UCC § 1-103 Official Cmt. 2 (2002)) (emphasis added).

Therefore, we must decide whether the UCC's provisions essentially subsume Viterra's equitable claim for unjust enrichment against First United Bank. If so, First United Bank was entitled to judgment as a matter of law.

Preliminarily, we note that the Kentucky Supreme Court has advised that the UCC should be applied wherever possible. *Dean*, 434 S.W.3d at 506 (quoting UCC § 1-103 Official Cmt. 2 (2002)). And, while the question of whether the UCC has displaced other principles of law and equity in a given situation is one that must be decided on a case-by-case basis, the proper balance tends to favor application of the UCC and displacement of other law. *Id.* at 505 (citing David J. Leibson & Richard H. Nowka, *The Uniform Commercial Code of Kentucky* § 1.03, at 1–4 (3d ed. 2004)).

UCC provisions should generally be held to apply because its provisions were promulgated "to lend as much stability and certainty to commercial law as possible." *Id.* Courts are advised to hesitate before recognizing common-law or non-UCC claims or to employ common-law or non-UCC remedies because they might very well be acting under the "mistaken belief that they are dealing with one of the rare transactions not covered by the UCC." *Id.* at 505-06

(citing *C–Wood Lumber Co., Inc. v. Wayne Cnty. Bank*, 233 S.W.3d 263, 281 (Tenn. Ct. App. 2007)). The UCC will "be understood to intend the displacement of the common law whenever both the code and the common law would provide a means of recovery for the same loss." *Id.* at 506 (citing *Clancy Sys. Int'l, Inc. v. Salazar*, 177 P.3d 1235, 1237 (Colo. 2008)). Thus, common law claims are barred "where the [UCC] provides a comprehensive remedy for the parties to a transaction[.]" *Dean*, 434 S.W.3d at 506-07 (quoting *Sebastian v. D & S Express, Inc.*, 61 F. Supp. 2d 386, 391 (D. N.J. 1999)) (internal quotation marks omitted).

KRS 355.3-420 provides an extensive statutory framework for the resolution of instrument conversion claims. Consequently, its provisions necessarily displaced Viterra's common-law claim for conversion against First United Bank. Viterra's alternative theory of recovery based upon the doctrine of unjust enrichment depends upon equitable principles employed by courts. However, the rationale underpinning the equitable remedy sought by Viterra necessarily depends upon the re-weighing of fairness factors already calculated and implemented through the enacted provisions of the UCC. In order for the UCC to provide reliability, consistency, and certainty as to rights and liabilities pertaining to negotiable instruments, the parties in commercial transactions must be bound exclusively by the remedies it provides. *See Halla v. Norwest Bank Minnesota NA*, 601 N.W.2d 449, 451 (Minn. Ct. App. 1999).

Viterra's equitable claim concerning First United Bank's responsibilities with respect to the August 2023 check collides directly with the rationale embodied in UCC provisions assigning losses according to the relative responsibility of the parties (including Viterra's own bank) for the loss. In fact, the transactions at issue in this case fall squarely within the scope of Articles 3 and 4 of the UCC.[4]

At best, Viterra's August 2023 check represented Viterra's obligation to Hunt for his promise to pay Kentucky American Seeds for 25,000 bushels of soybeans on Viterra's behalf. For unknown reasons, Viterra's employee made the check payable to First United Bank and Nutrien, as well – payees that Viterra's employee never intended to benefit. In fact, there was no indebtedness whatsoever from Viterra to Hunt, First United Bank, or Nutrien when Viterra's employee issued the check naming them as payees. Viterra's claim against First United Bank for the alleged wrongdoing described by Viterra and the nature of the remedies available are governed by provisions of the UCC. Viterra cannot sidestep those provisions by pursuing a claim in equity. Consequently, the trial court did not err

[4] These UCC provisions take into account considerations related to which party was best able to take precautions to prevent the loss. Under the circumstances as described by Viterra, it was likely in the best position to prevent the loss by supervising its employee, enforcing its rules, and examining its records relating to delivery of crops.

by dismissing Viterra's equitable claim for unjust enrichment.

We affirm the judgment of the Lyon Circuit Court.

ALL CONCUR.

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