

File No. CI 21-01-30217

THE QUEEN'S BENCH

Winnipeg Centre

Mar 9 2021 14:50

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CHARGE/FEE PAID:

225.00

BETWEEN:

MUNICIPALITY OF WESTLAKE-GLADSTONE

Plaintiff

- and -

STRIDE CREDIT UNION LIMITED

Defendant

STATEMENT OF CLAIM

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**FILED
QUEEN'S BENCH**

MAR 09 2021

**LAW COURTS
WINNIPEG**

APPROVED
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**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

MUNICIPALITY OF WESTLAKE-GLADSTONE

Plaintiff

- and -

STRIDE CREDIT UNION LIMITED

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

March 9, 2021
Date of Issue


Deputy Registrar

To: Stride Credit Union Limited
19 Royal Road North
Portage La Prairie, MB R1N 1T9

CLAIM

1. THE PLAINTIFF CLAIMS:

- a. Judgement in the amount of \$422,776.84;
- b. Pre-judgement and post-judgement interest on the above in accordance with *The Court of Queen's Bench Act* (Manitoba);
- c. Aggravated and/or punitive and exemplary damages;
- d. Pecuniary damages (special damages) in an amount to be proven at trial;
- e. Costs on a solicitor and own client basis, plus applicable RST and GST; and
- f. Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, the Municipality of WestLake-Gladstone, is a municipality created under *The Municipal Act (Manitoba)*, CCSM c M225. The Plaintiff has a head office in Gladstone, Manitoba.

3. The Defendant, Stride Credit Union Limited is a credit union duly incorporated under the laws of the Province of Manitoba and carries on business within the Province of Manitoba. The Defendant specifically carries on business in the Municipality of WestLake-Gladstone as a credit union.

4. The Plaintiff had an account for safekeeping of funds with the Defendant. The account number for the Plaintiff's account was 110660201259 ("the Account").
5. At all material times, the Defendant agreed to provide the Plaintiff with banking services, which included but is not limited to, the safekeeping of the Plaintiff's funds. The terms of the service were set out in, inter alia, services agreements including an Electronic Services Agreement which provided that the Defendant would be liable for losses/transactions where:
 - a. it can be shown that the Plaintiff has been a victim of fraud, theft or has been coerced by force or intimidation, so long as the Plaintiff reported the incident to the Defendant immediately and cooperates and assists fully in any investigation; or
 - b. it is found on the part of the Defendant, negligence, fraud or willful misconduct.
6. The Plaintiff states that as a result of the matters and facts set out herein the Plaintiff has been the victim of fraud and theft resulting from the negligence of the Defendant.
7. From December 19, 2019 to January 5, 2020, funds were electronically transferred out of the Account without the Plaintiff's knowledge, consent, permission, or authorization.

8. During the material time, 48 unauthorized withdrawals of funds totalling \$472,377.15, were debited on the Account and transferred to a Scotia VISA and TD VISA unrelated to the Plaintiff.
9. The particulars of the withdrawals were multiple daily individual transfers primarily between \$9,829.47 and \$9,984.27 on these dates:
 - a. On December 19, 2019, the Defendant allowed two (2) transfers totalling \$19,951.85;
 - b. On December 22, 2019, the Defendant allowed seven (7) transfers totalling \$69,501.24;
 - c. On December 26, 2019, the Defendant allowed ten (10) transfers totalling \$94,726.39;
 - d. On December 29, 2019, the Defendant allowed ten (10) transfers totalling \$99,212.86;
 - e. On January 1, 2020, the Defendant allowed seven (7) transfers totalling \$69,685.62;
 - f. On January 2, 2020, the Defendant allowed seven (7) transfers totalling \$69,651.89; and
 - g. On January 5, 2020, the Defendant allowed five (5) transfers totalling \$49,647.30.

10. The Account was credited the return of funds totalling \$49,600.31, the particulars of which are as follows:

- a. On January 17, 2020, one (1) transfer of the amount of \$9,955.81;
- b. On January 21, 2020, two (2) transfers together totalling \$19,850.16;
and
- c. On January 27, 2020, two (2) transfers together totalling \$19,794.34.

11. The Plaintiff states it did not authorize the withdrawals, which were completed within the Defendant's electronic transfer of funds process.

12. The withdrawals were unusual and not transactions completed by the Plaintiff in its time as a client of the Defendant.

13. On or around January 6, 2020, the Plaintiff logged in to its electronic banking account and determined that the unauthorized withdrawals had taken place.

14. On or around January 6, 2020, the Plaintiff notified the Defendant of the unauthorized withdrawals.

15. The Plaintiff states as the facts are:

- a. the password and personal verification questions of the Plaintiff were kept confidential and were not disclosed to anyone other than the Chief Administrative Officer; and

- b. the password and personal verification questions of the Plaintiff were not misused.

16. The Plaintiff states that the Defendant owed a duty of care to the Plaintiff in both contract and negligence, the particulars of which include:

- a. The Defendant represented to the Plaintiff it would provide banking services and would protect the Plaintiff's funds while on deposit with the Defendant;
- b. To provide the Plaintiff with the protection as set out in the Electronic Services Agreement;
- c. The Defendant had a duty to the Plaintiff to protect the Plaintiff's funds while on deposit and had a duty to monitor the Account for, and notify the Plaintiff of, the unusual withdrawals;
- d. To provide the Plaintiff with the protection as set out in the Account Agreement between the Plaintiff and the Defendant and in particular the Defendant should have verified and/or refused to debit the Account of the Plaintiff where it believed that certain payments were not authorized;
- e. The Defendant must monitor and report such transactions under s. 12(1)(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR 2002-184. Had the Defendant followed its obligations under the *Proceeds of Crime (Money Laundering) and*

Terrorist Financing Act, SC 2000, c 17 the Defendant would have stopped the withdrawals and alerted the Plaintiff of the unauthorized withdrawals; and

- f. The Defendant is also obligated to ascertain the identity of the person(s) who transferred the funds from the Plaintiff's Account under s. 54 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR 2002-184*.

17. The Plaintiff states that the Defendant breached its standard of care, and so far as is known by the Plaintiff until the discovery of the documents and the Defendant, the particulars include:

- a. By not ensuring that the Plaintiff's funds could not be accessed electronically and withdrawn and placed into other accounts without authorization, permission, and/or consent of the Plaintiff;
- b. By allowing the transfer of multiple daily withdrawals without notifying the Plaintiff;
- c. By failing to have internal controls which would have prevented persistent and consistent transactions and prevented the withdrawals from the Plaintiff's Account;
- d. By failing to follow the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations, SOR 2002-184* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c*

17, which would have alerted the Defendant to the unauthorized withdrawals.

18. The Plaintiff states that the Defendant breached its duty of care and was negligent when it allowed the withdrawal of the Plaintiff's funds. As a result of the breach of standard of care, the Plaintiff suffered damages.

19. The Plaintiff states that the said breaches were a blatant disregard of the Defendant's obligation to the Plaintiff and its response to the Plaintiff with respect to the unauthorized withdrawals was callous, high handed, malicious - ignoring the Plaintiff's right to rely on the safekeeping of its property (funds/money) and such actions are deserving of condemnation by this Honourable Court by applying exemplary and punitive damages.

20. The Plaintiff therefore claims the relief set out in paragraph 1 herein.

Dated: March 9, 2021

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