

File No. CI 21-01-30217

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

MUNICIPALITY OF WESTLAKE-GLADSTONE

plaintiff,

- and -

STRIDE CREDIT UNION LIMITED

defendant.

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STATEMENT OF DEFENCE

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**LAW COURTS
WINNIPEG**

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File No. 0144956.00001

APPVD
V.S.

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

MUNICIPALITY OF WESTLAKE-GLADSTONE

plaintiff,

- and -

STRIDE CREDIT UNION LIMITED

defendant.

STATEMENT OF DEFENCE

1. Except where hereinafter expressly admitted, the Defendant, Stride Credit Union Limited ("**Stride Credit Union**" or the "**Defendant**"), denies each and every allegation contained in the Statement of Claim (the "**Claim**"), and denies that the Plaintiff, the Municipality of Westlake-Gladstone (the "**RM**" or the "**Plaintiff**"), is entitled to the relief sought in paragraph 1 of the Claim or to any relief at all.
2. Stride admits paragraph 3 of the Claim and states that through Articles of Amalgamation dated January 1, 2017, Stride Credit Union was formed through the amalgamation of two local credit unions, including Austin Credit Union Limited ("**Austin Credit Union**").
3. In response to paragraph 4 of the Claim, and to the Claim as a whole, Stride Credit Union states that in or around 2014, the RM became a member of Austin Credit Union and opened a chequing account with account number 110660201259 (the "**Account**"). This account number remained the same after the amalgamation that led to Stride Credit Union.
4. The RM requested access to electronic banking services for the Account. The RM entered into a Debit Card/Personal Identification Number Agreement with Austin Credit Union dated April 23, 2015 (the "**Debit Card Agreement**"), and signed an Electronic Agreement Authorization (the "**Authorization**") dated April 27, 2015 in order to obtain a Member Card. Pursuant to the Authorization, the RM agreed that all transactions carried out through the electronic services, including but not limited to Bill Payments, Transfers, and Future Dated Transactions, shall be binding on it as a member of the credit union.

5. The RM also agreed to the terms of a Letter of Indemnity dated April 27, 2015 (the "**Indemnity Agreement**"), which states that the Austin Credit Union is not required to inquire as to the validity of any debit or credit transaction made under the Debit Card Agreement.
6. On November 20, 2017, when the RM retained a new Chief Administrator Officer, the RM completed and agreed to the terms of a Membership Application & Account Agreement – Business Organization dated November 20, 2017 for the Account (the "**2017 Account Agreement**"), wherein the RM acknowledged that it was primarily responsible for monitoring the Account and making sure that all transactions through it are proper, accurate and have been authorized by it. An additional signor was added to the RM Account on November 28, 2018 pursuant to a Membership Application & Account Agreement – Business Organization (the "**2018 Account Agreement**").
7. In response to paragraph 5 of the Claim, Stride Credit Union states that the terms of service for the RM's online banking for the Account were set out in several different agreements, including, *inter alia*, the Electronic Services Agreement last amended November 2018 (the "**ESA**"). Stride Credit Union states that the terms of the ESA provide that Stride Credit Union will be liable for direct losses to the account of members that result from the following types of activities or unauthorized transactions that occur through the use of online banking:
 - (a) transactions that occur after the member notifies Stride Credit Union that the member suspects or is aware that there has been misuse or unauthorized use of their password or personal verification questions so long as the member cooperates and assists Stride Credit Union in any investigation commenced in connection with the misuse or unauthorized access to the member's password or personal verifications questions;
 - (b) transactions where the member was a victim of fraud, theft or coercion by force or intimidation, so long as the member reports the incident immediately and cooperates and assists fully in any investigation; and
 - (c) Stride Credit Union's negligence, fraud or willful misconduct.
8. The ESA further states that Stride Credit Union will not be responsible for loss, damage, delay or inconvenience that a member may suffer or incur when:
 - (a) the member fails to notify Stride Credit Union that it suspects or is aware that there has been misuse or unauthorized use of its password or personal verification questions; or

- (b) the member fails to fulfill any of its other obligations under the ESA or fails to comply with any instructions that Stride provides the member, including, but not limited to:
 - (i) the member does not keep its password or personal verification questions strictly confidential;
 - (ii) the member does not change its password or notify Stride Credit Union when it suspects or becomes aware that there has been misuse or unauthorized use of its password or personal verification questions;
 - (iii) the member does not take all steps necessary to make sure it does not reveal any confidential information to anyone; or
 - (iv) the member does not use or maintain reasonable security measures.

9. In further response to paragraph 5 of the Claim, Stride Credit Union further states that the terms of the ESA provide that:

- (a) the member authorizes Stride Credit Union to accept any instruction given or claimed to be given by the member;
- (b) the member agrees to be responsible for any instruction given or claimed to be given by the member; and
- (c) the member agrees that Stride Credit Union has no obligation to reverse a transaction once Stride Credit Union had received instructions from the member or someone purporting to be the member.

10. In response to paragraph 6 of the Claim, Stride Credit Union denies that any fraud or theft committed on the RM resulted from the negligence of Stride Credit Union.

11. In response to paragraphs 6-15 of the Claim, and to the Claim as a whole, Stride states that:

- (a) on or about December 19, 2019, a person or persons logged into the RM's Account using the RM's password and made a change to the Account's personal verification questions;
- (b) between on or around December 19, 2019 and January 5, 2020, a person or persons logged into the RM's Account with the RM's password and added nineteen Bill Payees to the Account;

- (c) from on or around December 19, 2019 to January 5, 2020, forty-eight withdrawals of funds totalling \$472,377.15 were debited on the Account and transferred to the Bill Payees (the "Withdrawals");
 - (d) the Withdrawals were made by a person or persons who accessed the RM's Account using the RM's password;
 - (e) on or about December 31, 2019, a person or persons logged into the Account from a Device ID and IP Address believed to belong to the RM and viewed the Account balance, recent Account activity, and viewed a few cheque items;
 - (f) on or about January 2, 2020, a person or persons logged into the Account from a Device ID and IP Address believed to belong to the RM, viewed the Account balance and downloaded two E-Statements; and
 - (g) on or about January 6, 2020, a person or persons logged into the Account from a Device ID and IP Address believed to belong to the RM and downloaded six E-Statements.
12. On or about January 6, 2020, the RM notified Stride Credit Union of the Withdrawals. Stride Credit Union immediately shut down the RM's Account, recalled the Withdrawals, and contacted the Bill Payees to freeze the accounts. Stride Credit Union recovered funds totalling \$49,600.31, which were credited to the RM's Account.
13. During meetings held in January 2020 between the RM and Stride Credit Union, representatives of the RM indicated to Stride Credit Union that the RM's internal email system had been compromised in October and December 2019.
14. On or about January 8, 2020, Stride Credit Union advised the RM that a full forensic audit of the RM's IT system was necessary in order to determine how the RM's Account was accessed and whether there was a security-related problem with the RM's IT systems. Through its IT consultant, Stride Credit Union also offered guidance and assistance with the investigation. The request for a full forensic audit was reiterated to the RM on numerous occasions thereafter, including January 9, 2020 and January 15, 2020. To Stride Credit Union's knowledge, the RM has not completed any forensic audit of its IT system.
15. Stride Credit Union has requested additional information from the RM to aid in Stride Credit Union's investigation. The RM has failed to provide this further information.

Alleged Breaches of Contract

16. In response to paragraph 16 of the Claim, the Defendant denies that it breached any contractual obligations between Stride Credit Union and the RM as alleged in the Claim, or at all. Stride Credit Union's obligations to the RM with respect to the Account are set out in the terms of the various agreement between the parties, including the ESA, the 2017 Account Agreement, the 2018 Account Agreement, the Authorization, the Debit Card Agreement, and the Indemnity Agreement (collectively, the "**Contracts**"). Stride Credit Union states that it fulfilled its obligations under the Contracts.
17. In particular response to subparagraph 16(c) of the Claim, Stride Credit Union denies that it had a contractual duty to monitor the Account for unusual transactions and notify the Plaintiff thereof. Rather, the RM had a contractual duty to monitor the Account for unauthorized transactions.
18. Further, Stride Credit Union states that it was contractually entitled to rely on instructions purportedly given by the RM to make the Withdrawals, and the RM agreed to be responsible for any such instructions.
19. In particular response to subparagraph 16(d), Stride Credit Union states that it met its obligations as set out in the 2017 Account Agreement and the 2018 Account Agreement, and further states that Stride Credit Union did not become aware that the Withdrawals were unauthorized until on or about January 6, 2020. Stride Credit Union states that after it became aware that the Withdrawals were unauthorized, it immediately froze the RM's Account and prevented further unauthorized transactions from occurring.

Alleged Negligence and Breaches of Statutory Duties

20. In response to paragraphs 16 to 18 of the Claim, Stride Credit Union denies that it was negligent with respect to any of the particulars alleged in the Claim, or at all. In particular, Stride Credit Union states that:
 - (a) it met its obligations with respect to the RM's Account as governed by the Contracts between Stride Credit Union and the RM;
 - (b) it maintained reasonable internal controls over its electronic banking system, including the Account;
 - (c) it took immediate action to stop unauthorized Withdrawals upon being notified of them and attempted to recover the funds for the RM;

- (d) it immediately met with the RM to investigate what had occurred with the Withdrawals and requested the RM's assistance in an investigation to determine how the RM's Account had been comprised; and
 - (e) it cooperated with local authorities in their investigation to determine if the Withdrawals were due to fraud or theft.
21. Stride Credit Union denies that it owed the duties of care to the RM as alleged in paragraphs 16 or at all. If Stride Credit Union did owe those duties of care, which is not admitted but expressly denied, Stride Credit Union denies that it committed a breach of the standard of care, as alleged in paragraphs 17 and 18 or at all. Stride Credit Union states that at all times it acted as a reasonable credit union.
22. In response to subparagraphs 16(d) and 17(d) of the Claim, Stride Credit Union denies that it had a duty to monitor and report transactions such as the Withdrawals under s. 12(1)(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, SOR 2002-184 or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17. Further, Stride Credit Union denies that it owed a duty of care to the RM to monitor and report transactions such as the Withdrawals under s. 12(1)(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
23. Further, in the alternative, if Stride Credit Union had a duty to monitor and report transactions such as the Withdrawals under s. 12(1)(b) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* or the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which is not admitted but expressly denied, then Stride Credit Union denies such breach caused or contributed to the losses or damages as alleged by the RM, or at all.
24. In response to subparagraph 16(f) and further response to subparagraph 17(d) of the Claim, Stride Credit Union denies that it was obligated to ascertain the identity of the person or persons who transferred funds from the RM's Account under s. 54 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*. Further, Stride Credit Union denies that it owed a duty of care to the RM to ascertain the identity of the person or persons who transferred funds from the RM's Account under s. 54 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.
25. Further and in the alternative, if Stride Credit Union was obligated to ascertain the identity of the person or persons who transferred funds from the Plaintiff's Account under s. 54 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, which is not admitted but

expressly denied, then Stride Credit Union denies such breach caused or contributed to the losses or damages as alleged by the RM, or at all.

The Breach of the Contracts and Negligence of the RM

26. In further response to paragraphs 16, 17 and 18 of the Claim, and in response to the Claim as a whole, Stride Credit Union states that the RM did not meet its contractual obligations under the Contracts. Stride further states that it is not responsible for the losses to the Account that resulted from the Withdrawals, as the RM, *inter alia*:

- (a) failed to keep its password and/or personal verification questions strictly confidential;
- (b) failed to take all steps necessary to make sure it did not reveal any confidential information;
- (c) failed to use and maintain reasonable security measures, such as up-to-date anti-virus programs, anti-spyware programs, and firewalls;
- (d) failed to immediately change its passwords and notify Stride Credit Union when the RM suspected or became aware that there had been misuse or unauthorized use of its email, Account password, or personal verification questions;
- (e) failed to report the Withdrawals immediately to Stride Credit Union when it became aware or should have reasonably become aware of the Withdrawals; and
- (f) failed to fully cooperate and assist Stride Credit Union in its investigation to determine how the Withdrawals occurred.

27. Further, and in the alternative, Stride Credit Union states that any loss or damage suffered by the RM was caused by or contributed to by the negligence of the RM. Stride Credit Union therefore pleads and relies upon *The Tortfeasors and Contributory Negligence Act*, CCSM c T90.

Alleged Callous, High Handed, and Malicious Behaviour

28. In response to paragraph 19 of the Claim, Stride Credit Union denies that:

- (a) its actions or conduct as pled amounts to a blatant disregard of its obligations to the RM;
- (b) its actions or conduct with respect to the Withdrawals was callous, high handed and/or malicious; and

(c) the RM is entitled to punitive or exemplary damages due to any act or omission by Stride Credit Union and holds the RM to strict proof thereof.

29. In response to paragraph 20 of the Claim, the Defendant states that the Plaintiff is not entitled to any of the damages contained in paragraph 1 of the Claim.
30. Accordingly, the Defendant therefore asks for the Claim to be dismissed and with costs awarded in favour of the Defendant.

RESPECTFULLY SUBMITTED THIS 21st DAY OF MAY, 2021.

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