

**IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

BETTY PARMER

Plaintiff(s),

vs.

Civil Action No.: 14-C-374

Presiding Judge: Christopher C. Wilkes

Resolution Judge: Russell M. Clawges Jr.

**UNITED BANK, INC., and
RANDALL WILLIAMS
Defendant(s).**

**ORDER GRANTING MOTION TO STRIKE &
DENYING MOTION TO DISMISS**

This matter came before the Court pursuant to Plaintiff's Motion To Strike From The Record Any Reference To February 6, 2015 Email Of Shawn George To Carol Miller And To Bar Any Consideration By The Court Of Said Email Correspondence and Defendants' Motion to Dismiss. Both the Motions have been fully briefed and are submitted for decision.

Plaintiff's Motion to Strike stems from correspondence sent to the Court following a February 5, 2015 hearing on the Defendants' Rule 12(b)(6) Motion to Dismiss. At the time of hearing, the Motion to Dismiss had been fully briefed by each party. The Court heard oral argument from both parties and called for proposed findings of fact and conclusions of law.

On Friday, February 6, 2015, counsel for United Bank sent the Court a copy of correspondence between counsel for the parties, seeking to demonstrate the Plaintiff's admission of the expiration of the statute of limitations. The pleadings did not incorporate by reference the submitted email. Nor was the email accompanied by an affidavit. The Plaintiff then filed the instant Motion to Strike.

The Court may not consider the email for the purpose of the Motion to Dismiss with limited

exception. In reviewing Rule 12(b)(6) motions, the Court may not consider extraneous matters beyond the scope of the pleadings. Though the email at issue may support a properly framed motion for summary judgment, this Court cannot convert the instant Motion to Dismiss into a Rule 56 motion in order to bring in evidence beyond the pleadings. Accordingly, the Court grants the Plaintiff's Motion to Strike.

As for the motion to dismiss, this Court finds the Complaint is sufficient to withstand Defendants' Motion to Dismiss. Generally, a motion to dismiss should be granted only where 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.' *Murphy v. Smallridge*, 196 W.Va. 35, 36, 468 S.E.2d 167, 168 (1996). The Supreme Court of Appeals of West Virginia has advised that motions to dismiss are viewed with disfavor and that lower courts should rarely grant such motions. *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008); citing *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605-06, 245 S.E.2d 157, 159 (1978). For the purpose of evaluating motions to dismiss, complaints must be "construed in the light most favorable to plaintiff, and its allegations are to be taken as true." *Lodge Distrib. Co., Inc. v. Texaco, Inc.*, 161 W.Va. 603, 605, 245 S.E.2d 157, 158 (1978); *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008).

"We recognized, however, that liberalization in the rules of pleading in civil cases does not justify a carelessly drafted or baseless pleading." *Par Mar v. City of Parkersburg*, 183 W.Va. 706, 398 S.E.2d 532 (1990). "The essential material facts must appear on the face of the complaint... and sketchy generalizations of a conclusive nature unsupported by operative facts do not set forth a cause of action." *Id.* at 710. "The plaintiff... must know every essential element of his cause of action and must state it in the complaint." *Id.* at 711.

As it was more recently reiterated, "despite the allowance in Rule 8(a) that the plaintiffs

statement of the claim be 'short and plain,' a plaintiff may not fumble around searching for a meritorious claim within the elastic boundaries of a barebones complaint, or where the claim is not authorized by the laws of West Virginia. A motion to dismiss under Rule 12(b)(6) enables a circuit court to weed out unfounded suits." *Williamson v. Harden*, 214 W.Va. 77, 585 S.E.2d 369 (2003).

Therefore, the standard requires that this Court may grant Defendants' Motion to Dismiss only if, in viewing all the facts in a light most favorable to Ms. Parmer, "it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Syl. pt. 3*, in part, *Chapman v. Kane Transfer Co., Inc.*, 160 W.Va. 530, 236 S.E.2d 207 (1977); *Forshey v. Jackson*, 222 W.Va. 743, 671 S.E.2d 748 (2008).

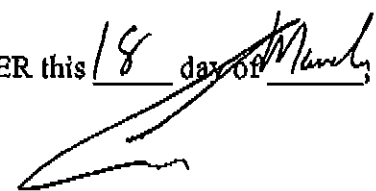
Defendant argues that the Plaintiff's Complaint should be dismissed because the Plaintiff failed to bring the instant claim prior to the expiration of the statute of limitations. Ms. Parmer participated in a loan that was executed on April 19, 2012, and filed her Complaint more than two years later. However, the Complaint alleges that she was not aware of the alleged wrongdoing on April 19, 2012. Accordingly, the Court finds that upon the information and pleadings presented, it must deny the Defendants' motion. A review of matters outside the scope of the Complaint may support a proper motion for summary judgment once sufficient evidence can be produced, but this matter cannot be dismissed under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.

THEREFORE, for all the foregoing reasons, the Plaintiff's Motion To Strike From The Record Any Reference To February 6, 2015 Email Of Shawn George To Carol Miller And To Bar Any Consideration By The Court Of Said Email Correspondence is hereby GRANTED and Defendants' Motion to Dismiss is hereby DENIED.

The Court notes the objections of counsel to adverse rulings herein and directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, any *pro se* parties, and the

Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street,
Martinsburg, West Virginia 25401, or via email at Business.Court@courtsww.gov.

ENTER this 18 day of March, 2015.


CHRISTOPHER C. WILKES, JUDGE
BUSINESS COURT DIVISION

ENTERED March 18, 2015

DOCKET LINE #: 53

JEAN FRIEND, CIRCUIT CLERK

STATE OF WEST VIRGINIA, SS:

I, Jean Friend, Clerk of the Circuit and Family Courts of
Monongalia County, State aforesaid do hereby certify that
the attached ORDER is a true copy of the original Order
made and entered by said Court.



Circuit Clerk