

FINDINGS OF FACT¹

1. On the afternoon of May 19, 2000, Plaintiff, Roman S. Demapan entered the Bank of Guam (hereinafter “Bank”) for purposes of negotiating a CNMI government payroll check.
2. Mr. Demapan presented the check and his I.D. to the teller. After looking at a computer monitor, the teller told Mr. Demapan that Bank would have to hold the check because the computer showed a delinquent loan. Bank had no legal right to confiscate the check.
3. Mr. Demapan informed the teller that he was unaware of any loan with Bank and asked that the check be returned.
4. The teller spent 5-10 minutes communicating with a supervisor in Mr. Demapan’s presence. During this time, Mr. Demapan twice asked for the return of his check, but his demand was refused.
5. The supervisor asked Mr. Demapan to wait in the lobby. He waited for well over an hour and then left the bank.
6. After leaving the bank, Plaintiff proceeded to the house of Juan S. Demapan, his brother. While there, Plaintiff asked his brother whether the brother had any outstanding loans from Bank or if the brother has received a loan in Plaintiff’s name.
7. The brother then accompanied Plaintiff back to Bank, where they met with the Bank Manager, Marcy Tomokane.
8. During the meeting Ms. Tomokane spoke on the phone with an individual in Guam that she identified as “Bill.” This person told Ms. Tomokane that she was not authorized to pay even part of the proceeds of the check to Plaintiff. Plaintiff and his brother left the bank.
9. Later that evening, Mr. Demapan returned home and was informed by his maid that someone from the bank had left a cashiers check for the full amount of the payroll check.
10. Mr. Demapan was deprived of funds for a total of about four and ½ hours. He suffered no financial harm as a result of being without these funds.

¹The Court notes that these finding are issued solely for the purpose of deciding the motion for summary judgment. In so doing, the Court considered all properly submitted facts to be true and construed them in the manner most favorable to the non-moving party - Mr. Demapan in this case.

- 1 11. At no time during his interaction with bank employees did any bank employees make any
2 derogatory comment, use abusive or profane language, make any obscene gesture, or
3 threaten Mr. Demapan with physical violence.
- 4 12. Mr. Demapan suffered shock, humiliation, anger, embarrassment, outrage and frustration as
5 a result of this incident. He says that these feelings lasted two to three weeks. Mr. Demapan
6 was particularly distressed at being accused, in essence, of being a “deadbeat” and at being
7 made to wait in the lobby for more than an hour as if he had done something wrong.
- 8 13. The actions complained of here did not make Mr. Demapan ill in any way, nor did they
9 cause him to seek or to receive any medical or psychiatric treatment.
- 10 14. The actions complained of here did not alter Mr. Demapan’s pattern of daily life, cause him
11 to miss any time from work, or restrict him from the pursuit of sports and other hobbies.

12 CONCLUSIONS OF LAW

13 The Plaintiff raises five distinct causes of action: conversion, negligent
14 misrepresentation, intentional infliction of emotional distress, breach of fiduciary duty and
15 breach of covenant of good faith and fair dealing. The Court will consider each of these in turn.

16 A. Conversion

17 Conversion is “an intentional exercise of dominion or control over a chattel which so
18 seriously interferes with the right of another to control it that the actor may justly be required to pay
19 the other the full value of the chattel.” RESTATEMENT (SECOND) OF TORTS § 222A(1). This
20 definition has been adopted by the courts of the Commonwealth. *Del Rosario v. Camacho*, 2001
21 MP 3 at 53-54. In this particular case, both parties seem to agree that the type of conversion alleged
22 is called in the Restatement “Conversion by Demand and Refusal.” RESTATEMENT (SECOND) OF
23 TORTS § 237. This tort occurs when a person lawfully takes or is entrusted with the property of
24 another, but then refuses to return the property, without a proper reason, on the demand of the
25 rightful owner. *Id.* To prevail on such a claim, Plaintiff must prove five elements:

26 “that (1) he had legal title to the converted property; (2) he either had possession of
27 the property or the right to possess it at the time of the conversion; (3) the defendant
28 exercised dominion over the property in a manner which denied the plaintiff his
rights to use and enjoy the property; (4) in those cases where the defendant lawfully,

1 or at least without fault, obtained possession of the property, the plaintiff made some
2 demand for the property's return which the defendant refused; and (5) the plaintiff
has suffered damage by the loss of the property.”

3 *Frost v. Eggeman*, 638 P.2d 141, 144 (Wyo. 1981). In the instant case, there is no dispute that Mr.
4 Demapan had legal title to the check and the right to possess it at the time of its alleged conversion.
5 There is some dispute as to whether 3 and 4 above are satisfied, but these are factually based
6 inquiries not suitable for summary judgment.² It is in the last, the requirement that Plaintiff be
7 damaged by the alleged conversion, that Plaintiff’s cause of action fails.

8 The normal remedy for conversion is payment of the full value of the converted property to
9 the Plaintiff. *See* RESTATEMENT (SECOND) OF TORTS § 222A(1). Because Plaintiff has already
10 received this amount, in the form of a cashiers check issued by Bank, he can longer request this as
11 damages. That leaves Plaintiff to claim non-economic harm, presumably for emotional distress and
12 as punishment (punitive damages). Neither of these is sufficient. Plaintiff has properly conceded
13 that no action for negligent infliction of emotional distress will lie where, as here, there is no
14 allegation of physical harm or the threat of physical harm. Furthermore, as will be discussed in
15 detail below, the Court concludes that Plaintiff has not alleged facts sufficient to support a claim of
16 intentional infliction of emotional distress. Plaintiff is ineligible for punitive damages because he
17 is unable to show any harm qualifying for compensatory damages and punitive damages may not
18 awarded absent compensatory damages. *S.J. Amaroso Constr. Co. v. Lazovich & Lazovich*, 810 P.2d
19 775, 777 (Nev. 1991). Because he cannot show that he suffered any legally-recognized harm,
20 Plaintiff’s claim for conversion must be dismissed.³

21
22
23
24
25 ²With regard to requirement 4, the Court notes that neither party disputes that Mr. Demapan demanded the
26 return of the check and that it was not immediately returned. However, the law of torts as contained in the Restatement
does not always require immediate return. *See* RESTATEMENT (SECOND) OF TORTS §§ 238-241.

27 ³These facts could potentially support an action for trespass to chattels, *See* RESTATEMENT (SECOND) OF TORTS
28 §§ 217-219, but Plaintiff has never alleged such a tort. However, even if this tort were proven Plaintiff would be entitled
only to nominal damages

1 **B. Negligent Misrepresentation**

2 Plaintiff's second claim is nominally for negligent misrepresentation. Specifically, Plaintiff
3 alleges that the bank's failure to purge old, uncollectible accounts from its database was negligent
4 and that this negligence injured him. Plaintiff has a point - the Court is very surprised to find that
5 a bank the size of Bank of Guam would have no regular procedure for cleaning-up its files and
6 apparently no plans to create such a program in the future. If this failure has repeatedly led to
7 incidents like the one complained of here, Bank's behavior could be viewed as intentional, rather
8 than merely negligent. However, Plaintiff has not alleged any similar past incidents⁴ and,
9 unfortunately for Mr. Demapan, there is no cause of action for negligent misrepresentation, without
10 a showing of either physical or pecuniary harm, *see* RESTATEMENT (SECOND) OF TORTS §§ 311(1),
11 525, 531, and 552, and Plaintiff has not alleged either physical or pecuniary loss. Plaintiff does
12 claim that he suffered from "personal pain, humiliation and embarrassment." Plaintiff's
13 Memorandum in Opposition to Summary Judgment at 5. However, these are solely non-economic
14 harms and there is no tort currently recognized in the Commonwealth that would award non-
15 economic damages for negligent or fraudulent misrepresentation without a showing an additional
16 showing of physical harm or pecuniary loss. Therefore, Plaintiff's claim of negligent
17 misrepresentation must be dismissed.

18 **C. Intentional Infliction of Emotional Distress**

19 Plaintiff's third cause of action is for intentional infliction of emotional distress. Such a tort
20 will lie against "[one] who by extreme and outrageous conduct intentionally or recklessly causes
21 severe emotional distress to another." RESTATEMENT (SECOND) OF TORTS § 46. Such a person is
22 liable for both the emotional distress and any physical harm that results from the intentional conduct.
23 *Id.* To maintain such a claim, Plaintiff must prove "(1) that the conduct complained of was
24 outrageous; (2) that the conduct was intentional or reckless...(3) [that it caused] emotional distress;
25 and (4) [that] the distress [was] severe." *Charfauros v. Bd. of Elections*, App. No. 97-023 & 97-027

26
27 ⁴This evidence of similar prior incidents would operate like the use of such incidents in an employment
28 discrimination case, where evidence of prior discrimination is admissible to help prove improper motive in the case then
at bar. *See e.g., E.E.O.C. v. Recruit USA, Inc.*, 939 F.2d 746, 755 (9th Cir. 1991).

1 (N.M.I. Sup. Ct. Nov. 27, 1998) (Opinion at 49). In *Charfauros*, our Supreme Court also noted that
2 important role the court plays as guardian of the gateway to an action for intentional infliction of
3 emotional distress. *Id* at 50. This is in part because of the courts’ “justifiable reluctance...to become
4 embroiled in petty disputes that nonetheless cause someone to feel emotionally disturbed and
5 distressed.” *Id*. This Court has a duty to “judge the sufficiency of the conduct alleged to have
6 caused the emotional distress before allowing the case to proceed to a full trial.” *Id*.

7 In judging the sufficiency of the conduct, the Court notes that Bank’s actions in this case
8 were certainly both impolite and unprofessional. Bank maintained a database that wrongly showed
9 that Mr. Demapan had defaulted on a debt within the last 10 years, in fact his delinquent debt, if he
10 had any at all, was older and therefore legally uncollectible. (Bank admits it has no system in place
11 for checking the accuracy of such records or purging them of old accounts). Acting on incorrect
12 information, Bank essentially accused Mr. Demapan of being a deadbeat in the relatively public
13 forum of the main floor of a bank. However, a claim of this nature requires a much greater level of
14 bad conduct. Indeed, the Supreme Court of Alaska held that the conduct must be “so outrageous in
15 character, and so extreme in degree as to go beyond all possible bounds of human decency, and to
16 be regarded as atrocious, and utterly intolerable in a civilized community.” *Hawks v. State Dept.*
17 *of Public Safety*, 908 P.2d 1013, 1015-1016 (Alaska 1995). Bank’s behavior, however impolite,
18 does not meet this standard. Plaintiff’s claim for intentional infliction of emotional distress must
19 be dismissed.⁵

20 **D. Breach of Fiduciary Duty and Breach of the Duty of Good Faith and Fair Dealing**

21 Plaintiff’s final two causes of action, breach of fiduciary duty and breach of the duty of good
22 faith and fair dealing are based on a presumed contractual relationship between Bank and Plaintiff.
23 Both sides now agree that no such relationship exists. Therefore, these claims must be dismissed.
24

25 ⁵The Court notes that Plaintiff has suggested that Bank of Guam must “take its victim as he finds him.” This
26 is, of course, a common rule in the law of torts, but it is applied only to questions of damages. A tortfeasor is responsible
27 for all harms proximately caused by his tortious conduct even if those harms are severely inflated because the victim is
28 unusually sensitive. In this sense the tortfeasor does take his victim as he finds him. However, unusual sensitivity on
the part of the “victim” will not turn otherwise non-tortious conduct into tortious conduct. In this case, Bank’s behavior
would not constitute intentional infliction of emotional distress no matter how much emotional distress actually resulted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

For the reasons stated above, Defendant’s motion for summary judgment is GRANTED and Plaintiff’s complaint is, in its entirety, DISMISSED WITH PREJUDICE.

SO ORDERED this 14th day of March, 2005.

/S/ _____

JUAN T. LIZAMA, Associate Judge