



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-22-00206-CV**

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**EAGLE REMODEL LLC, Appellant  
V.  
CAPITAL ONE FINANCIAL CORPORATION, D/B/A CAPITAL ONE  
BANK, Appellee<sup>1</sup>**

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**On Appeal from the 160th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-20-02277**

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**MEMORANDUM OPINION**

Before Justices Nowell, Goldstein, and Breedlove  
Opinion by Justice Nowell

Eagle Remodel LLC appeals the trial court's adverse summary judgment order. In thirteen issues, Eagle Remodel argues the trial court erred by overruling evidentiary objections, granting Capital One N.A.'s traditional motion for summary judgment, awarding attorney's fees to Capital One, and granting Capital One's motion to designate responsible third parties. We affirm in part and reverse in part; we remand this cause to the trial court for further proceedings.

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<sup>1</sup> Capital One states it has been improperly named and its proper name is Capital One, N.A.

## FACTUAL BACKGROUND

Eagle Remodel maintained a checking account with Capital One, which was opened by Eagle Remodel's sole manager, Cesar Rivera. As part of opening the account, Rivera executed a New Business Account Information Card wherein he agreed to Capital One's Rules Governing Deposit Accounts (Rules) on behalf of Eagle Remodel.

On November 20, 2018, Eagle Remodel notified Capital One that checks were stolen from the business and those checks subsequently were forged and cashed. Eagle Remodel notified the police about the theft and forgeries on the same day. One week later, Eagle Remodel sent an email to Capital One stating:

The person who stole the checks from the check books is named Jorge Ruiz, with an address [omitted], this confirmed by the store clerk and video surveillance where they tried to cash one of the checks and confirmed by the current employees who are close to this person, as well as the confirmation of other individuals involved with this fraud.

Eagle Remodel alleged that eighteen checks were stolen. In its interrogatories, Eagle Remodel stated it could not identify the signature or handwriting on the forged checks and each check was made payable to one of the following people: Isabel Reyna, Jesus Rodriguez, Jose Rodriguez, Victor Gonzalez, Jose Martinez, Juan Lopez, Juan Martinez, Juan Rodriguez, Jose Lopez, or Juan Gonzalez. Eagle Remodel's discovery responses state it suspected but could not confirm that Jorge Ruiz, Jr., a former employee, stole the checks and six other named persons were "involved in forging" the stolen checks. Eagle Remodel claims it requested Capital

One reimburse the amounts debited from its account as a result of the stolen checks, and Capital One refused to do so.

Eagle Remodel sued Capital One for conversion and breach of implied warranty/breach of contract. One year later, on February 4, 2021, Capital One filed its traditional motion for summary judgment. Eagle Remodel amended its petition on February 15, 2021, and added a request for a declaratory judgment. Capital One supplemented its motion for summary judgment on March 3, 2021, addressing the declaratory judgment action. Eagle Remodel amended its petition three more times before the summary judgment hearing, but Capital One did not amend or supplement its motion for summary judgment again. Eagle Remodel's fifth amended petition, its live pleading at the time of the summary judgment hearing, alleged causes of action for conversion, breach of implied warranty/breach of contract, breach of duty of good faith, violations of the Texas Deceptive Trade Practices Act, common law fraud, and negligent misrepresentation and grossly negligent misrepresentation; it also sought a declaratory judgment.

## LAW & ANALYSIS

### **A. Objections**

In its first and second issues, Eagle Remodel raises several evidentiary challenges. We review a ruling on the admissibility of evidence for abuse of discretion. *Pitts v. Bank of New York Mellon Tr. Co., Nat'l Ass'n*, 622 S.W.3d 596, 598 (Tex. App.—Dallas 2021, no pet.). A trial judge abuses her discretion if she acts

without reference to any guiding rules and principles such that her ruling is arbitrary or unreasonable. *Id.*

Eagle Remodel argues the trial court erred by overruling its objections contained in paragraphs 1.1 – 1.3 in Plaintiff’s Objections to Defendant’s Traditional Motion for Summary Judgment. In Paragraphs 1.1 – 1.3, Eagle Remodel argued Capital One’s motion violated the April 6, 2020 General Order of the Civil District Courts of the State of Texas Sitting in Dallas County because the motion contained more than one appendix and the appendices together contained more than 25 pages. A local rule states that no motion may exceed 25 pages in length, and the appendix of any motion also must be limited to 25 pages, with exceptions made if the trial court grants leave to exceed the limit upon a showing of compelling reasons.

When Eagle Remodel raised this argument at the summary judgment hearing, counsel for Capital One explained that its summary judgment motion was less than 25 pages and “[t]he only reason the appendix goes over any type of page limit is because we provided the entire contract, all of the bank statements that the parties rely upon in this case, which are exhaustive.” The General Order gives trial courts discretion to permit additional pages to be filed for compelling reasons. Capital One provided a reason, and the trial court overruled Eagle Remodel’s objection. Eagle Remodel provides no argument or authority on appeal showing the trial court abused its discretion by allowing Capital One to file the additional pages, and we conclude it did not. We overrule Eagle Remodel’s first issue.

In its second issue, Eagle Remodel argues the trial court erred by failing to rule on its objections in paragraphs 2.1 – 2.4 in Plaintiff’s Objections to Defendant’s Traditional Motion for Summary Judgment. In Paragraph 2.1, Eagle Remodel objected to the admissibility of the affidavit of Andre Glover and all documents attached thereto because Glover was not timely listed as a person with knowledge of relevant facts in Capital One’s disclosures. Capital One’s disclosures state that Capital One, the defendant in the lawsuit, as well as “its representatives or employees, former or current” may have knowledge of the facts made the basis of this lawsuit. Glover’s affidavit states he is a Market Manager at Capital One and his affidavit is based on his “personal knowledge as a Market Manager for Capital One” and his “review of available business records of Capital One.”

Capital One disclosed itself as a person with knowledge and stated “its representatives or employees, former or current” may have knowledge of the facts. Glover was an employee or representative of Capital One and executed the affidavit in that capacity. We conclude the trial court did not abuse its discretion by considering Glover’s affidavit. We overrule Eagle Remodel’s second issue to this extent.

In paragraphs 2.2, 2.3, and 2.4, Eagle Remodel objects to the admissibility of police reports from the City of Dallas Police Department that Capital One attached to its motion. In light of our resolution of Eagle Remodel’s third issue, discussed below, we need not resolve these arguments. *See* TEX. R. APP. P. 47.1.

## **B. Summary Judgment**

In its third issue, Eagle Remodel argues fact issues preclude summary judgment in Capital One's favor. We review a trial court's grant of summary judgment de novo. *Helix Energy Sols. Group, Inc. v. Gold*, 522 S.W.3d 427, 431 (Tex. 2017). To prevail on a traditional motion for summary judgment, "a movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law." *Id.* The movant bears the burden of proof in a traditional motion for summary judgment, and all doubts about the existence of a genuine issue of material fact are resolved against the movant. *See Sw. Elec. Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002). When a movant conclusively negates an essential element of a cause of action, the movant is entitled to summary judgment on that claim. *Id.* In a traditional summary-judgment motion, the movant must state specific grounds, and if the movant conclusively negates at least one essential element of a cause of action or conclusively establishes all the elements of an affirmative defense, the movant is entitled to summary judgment. TEX. R. CIV. P. 166a(c); *see KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 79 (Tex. 2015). We take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Gold*, 522 S.W.3d at 431.

Capital One moved for summary judgment on three grounds: all of Eagle Remodel's Claims are barred by the "same wrongdoer rule," Eagle Remodel's

request for a declaratory judgment fails as a matter of law, and the Rules bar Eagle Remodel from pursuing claims as to four of the unauthorized transactions.

*1. Business & Commerce Code Article 4*

A bank account such as the one at issue here creates a debtor-creditor relationship under which “a bank may only pay out money in accordance with a customer’s order,” and the bank “bears the burden of demonstrating proper payment.” *Compass Bank v. Calleja-Ahedo*, 569 S.W.3d 104, 109 (Tex. 2018) (quoting *Fed. Deposit Ins. Corp. v. Lenk*, 361 S.W.3d 602, 606 (Tex. 2012)). “Given the debtor-creditor relationship between a bank and a customer and the corresponding requirement that the bank must repay any deposits to the customer, a breach action for such a refusal [to repay deposits] includes funds that were wrongfully paid out by a bank.” *Id.* Under article 4 of the business and commerce code, “a bank is liable to its customer if it charges the customer’s account for an item that is not properly payable from that account.” *Id.*

The bank’s liability for unauthorized charges is the default rule to which the business and commerce code contains exceptions. *Id.* In this case, Capital One argues the exceptions in section 4.406 require Eagle Remodel to bear the loss resulting from the allegedly stolen and forged checks. TEX. BUS. & COM. CODE § 4.406.

## 2. *Same Wrongdoer Rule*

If a bank makes an account statement available as described by the statute, then “the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized.” TEX. BUS. & COM. CODE § 4.406(c). A customer who should reasonably have discovered an unauthorized payment must promptly notify the bank. *See id.* If a bank proves a customer failed to comply with the duties imposed by subsection (c), then the customer is precluded from asserting against the bank that

(2) the customer’s unauthorized signature or alteration *by the same wrongdoer* on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

TEX. BUS. & COM. CODE § 4.406(d)(2) (emphasis added). The official comment explains the effect of subsection (d)(2):

Subsection (d)(2) applies to cases in which the customer fails to report an unauthorized signature or alteration with respect to an item in breach of the subsection (c) duty . . . and the bank subsequently pays other items of the customer with respect to which there is an alteration or unauthorized signature of the customer and the same wrongdoer is involved. If the payment of the subsequent items occurred after the customer has had a reasonable time (not exceeding 30 days) to report with respect to the first item and before the bank received notice of the unauthorized signature or alteration of the first item, the customer is



precluded from asserting the alteration or unauthorized signature with respect to the subsequent items. . . .

. . . .

. . . One of the most serious consequences of failure of the customer to comply with the requirements of subsection (c) is the opportunity presented to the wrongdoer to repeat the misdeeds. Conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine the statement and notify the bank of an unauthorized signature or alteration so that the bank will be alerted to stop paying further items. . . .

*Calleja-Ahedo*, 569 S.W.3d at 112-13 (quoting TEX. BUS. & COM. CODE § 4.406 cmt.

2).

In support of its argument that it was protected by the “same wrongdoer” rule in section 4.406(d)(2), Capital One presented evidence that it timely made account statements available to Eagle Remodel. The bank’s summary judgment motion includes copies of Eagle Remodel’s bank statements for the periods August 1 to August 31, 2018, September 1 to September 28, 2018, October 1 to October 31, 2018, and November 1 to November 30, 2018, and those statements show when each allegedly forged check was processed.

Capital One asserts the evidence also shows all eighteen checks were stolen and forged by the same wrongdoer – Jorge Ruiz, Eagle Remodel’s former employee. In response, Eagle Remodel argues Capital One failed to prove there was only one wrongdoer. The record contains evidence that Ruiz stole the checks. However, the record does not show who signed or altered the checks, and it also does not establish the checks were signed or altered by the same wrongdoer. The November 2018 email

sent to Capital One states individuals other than Ruiz were involved in the fraud. Eagle Remodel's discovery responses state that six named persons in addition to Ruiz were involved in forging the stolen checks, but Eagle Remodel could not identify the signature or handwriting used on the forged checks. No evidence demonstrates who signed or altered any check.

To benefit from section 4.406(d)(2), Capital One bore the burden to prove all eighteen checks were signed or altered by the same wrongdoer. The record contains no evidence demonstrating who signed or altered the checks; the evidence shows who Eagle Remodel believes stole the checks. We conclude Capital One failed to meet its burden to prove the same wrongdoer signed or altered all eighteen checks and it is entitled to the protections afforded by section 4.406(d)(2). We sustain Eagle Remodel's third issue to this extent.

### *3. Declaratory Judgment & Reporting within 30 Days*

When a bank customer waits more than one year after a statement has been made available to report an unauthorized signature or any alteration on the item, the customer is precluded from asserting the unauthorized signature or alteration against the bank. *See* TEX. BUS. & COM. CODE § 4.406(f). Subsection (f) serves as a statute of repose that protects banks from liability “[w]ithout regard to care or lack of care of either the customer or the bank.” *Calleja-Ahedo*, 569 S.W.3d at 112 (quoting TEX. BUS. & COM. CODE § 4.406(f)).

The terms of section 4.406 “may be varied by agreement.” TEX. BUS. & COM. CODE § 4.103(a); *Calleja-Ahedo*, 569 S.W.3d at 113. The parties to the agreement cannot “disclaim a bank’s responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank’s responsibility is to be measured if those standards are not manifestly unreasonable.” TEX. BUS. & COM. CODE § 4.103(a). “In the absence of a showing that the standards manifestly are unreasonable, the agreement controls.” *Id.* § 4.103, cmt. 2. The supreme court has determined that the one-year period may be modified by agreement to sixty days. *Am. Airlines Employees Fed. Credit Union v. Martin*, 29 S.W.3d 86, 89 (Tex. 2000). Other courts have enforced thirty-day notice periods. *See Van Ess v. JPMorgan Chase Bank, N.A.*, No. CV H-14-2536, 2016 WL 5173528, at \*3 (S.D. Tex. Jan. 6, 2016).

The Rules signed by Eagle Remodel modify the reporting period:

You [Eagle Remodel] must notify us [Capital One] in writing within thirty (30) days . . . from the date your statement is postmarked or otherwise made available to you, or your account transaction history is made available to you through Online Banking, of any errors, discrepancies or irregularities, including but not limited to, unauthorized signature, alterations, improper charges, unauthorized transfer or withdrawal of funds, nonreceipt of an expected statement, or that any deposit was not properly credited to your account. . . . We will not be responsible for any loss suffered by you if you do not notify us in writing within these stated time periods.

Eagle Remodel sought a declaration that the provision of the Rules contractually shortening the one-year time frame in section 4.406(f) to thirty days was void and unenforceable as against public policy as enunciated by section 4.406(f), unconscionable, and manifestly unreasonable.

The correct interpretation of a statute is a matter of law, which we review de novo. *Sirius XM Radio, Inc. v. Hegar*, 643 S.W.3d 402, 406 (Tex. 2022). “When interpreting statutes, we look to the plain meaning of the enacted text.” *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 183 (Tex. 2019). If the statute is clear and unambiguous, we read the language according to its common meaning without consulting extrinsic aids. *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 389 (Tex. 2014). Likewise, contract interpretation involves questions of law we consider de novo. *BlueStone Nat. Res. II, LLC v. Randle*, 620 S.W.3d 380, 387 (Tex. 2021). Our sole objective is to ascertain the parties’ true intentions as expressed in the writing. *Id.* An unambiguous contract—one whose meaning is certain and definite—will be enforced as written. *Id.*

Although Eagle Remodel argues the challenged provision of the Rules is void and unenforceable as against public policy as articulated in section 4.406(f) and unconscionable, the Texas Supreme Court and this Court have already determined parties may shorten the time provided in section 4.406(f). *See Calleja-Ahedo*, 569 S.W.3d at 113; *Martin*, 29 S.W.3d at 89; *see Horton v. JP Morgan Chase Bank*,

N.A., No. 05-16-00472-CV, 2018 WL 494776, at \*3-5 (Tex. App.—Dallas Jan. 22, 2018, no pet.). We reject these arguments out of hand.

The UCC does not define “manifestly unreasonable,” and we were unable to locate a Texas case providing a definition. This court previously looked to the definition of “manifest” when considering the term “manifestly unreasonable” in the context of Chapter 9 of the business and commerce code. *See Morgan Buildings & Spas, Inc. v. Turn-Key Leasing, Ltd.*, 97 S.W.3d 871, 880 (Tex. App.—Dallas 2003, pet. denied) (relying on Black’s Law Dictionary to define “manifest.”). Manifest means readily perceived by the senses and especially by the sense of sight. *See Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/manifest> (last visited June 14, 2023). Unreasonable means “not governed by or acting according to reason.” *See Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/unreasonable> (last visited June 14, 2023). The provision at issue here does not fit within those definitions when considered together.

Whether a provision such as the one at issue here is manifestly unreasonable was considered in *ADC Rig Services, Inc. v. JPMorgan Chase Bank, N.A.*, 641 F. Supp. 2d 617 (S.D. Tex. 2009). The *ADC Rig Services* court noted that section 4.406 permits the parties to vary the terms of article 4 by agreement and the parties in that case entered into a binding contract that shortened the one-year term to thirty-days. *Id.* at 623. Accordingly, the court concluded, the parties modified the standard terms

of article 4 and agreed the depositor was required to notify the bank of any unauthorized item within thirty days. *See id.* That court also noted it had found no authority showing a thirty-day reporting limit is “manifestly unreasonable.” *Id.* at 623-24. We agree.

Eagle Remodel cites no authority that would lead us to different conclusions. Considering the statute, Texas Supreme Court authority, and authority from this and other courts, we overrule Eagle Remodel’s third or fourth issue to this extent.<sup>2</sup>

Eagle Remodel alleges checks numbered 2855, 2856, and 2857 were stolen and forged; these checks were processed by Capital One between August 15 and August 27, 2018, and were shown on Eagle Remodel’s September 1, 2018 statement. Eagle Remodel also alleges check number 2885 was stolen and forged; check number 2885 was processed on September 28, 2018, and shown on Eagle Remodel’s October 1, 2018 statement. Eagle Remodel did not notify Capital One about any of the unauthorized transactions until November 20, 2018.

Because Eagle Remodel did not notify Capital One of the unauthorized transactions relating to check numbers 2855, 2856, 2857, and 2885 within thirty days, Capital One bore no liability for any resulting losses for these four checks. We overrule Eagle Remodel’s third issue to this extent.

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<sup>2</sup> Eagle Remodel’s brief includes this argument under its fourth issue in which it argues the trial court erred by granting summary judgment on causes of action not addressed in the motion for summary judgment or the supplement thereto. However, Eagle Remodel acknowledges that Capital One did move for summary judgment on the declaratory judgment. Accordingly, we believe this analysis belongs within Eagle Remodel’s third issue.

### C. Unaddressed Causes of Action

In its fourth issue, Eagle Remodel argues Capital One’s motion for summary judgment and its supplement thereto fail to address several causes of action pleaded by Eagle Remodel, and the trial court erred by granting summary judgment on these causes of action. Capital One responds that the trial court properly granted summary judgment on all claims because the motion was broad enough to encompass all newly pleaded claims.

“Generally, a movant who does not amend or supplement its pending motion for summary judgment to address newly added claims alleged in a subsequent petition is not entitled to summary judgment on those claims.” *Callahan v. Vitesse Aviation Servs., LLC*, 397 S.W.3d 342, 350 (Tex. App.—Dallas 2013, no pet.); *see also Morris v. Unified Hous. Found. Inc.*, No. 05-13-01425-CV, 2015 WL 4985599, at \*4 (Tex. App.—Dallas Aug. 21, 2015, no pet.) (mem. op.). “In such a case, the portion of the summary judgment purporting to be final must generally be reversed because the judgment grants more relief than requested in the motion.” *Callahan*, 397 S.W.3d at 350. There are “limited exceptions” to this rule:

[A]n amended or supplemental motion for summary judgment is not required when the amended petition essentially reiterates previously pleaded causes of action, when a ground asserted in a motion for summary judgment conclusively negates a common element of the newly and previously pleaded claims, or when the original motion is broad enough to encompass the newly asserted claims.

*Id.* at 350–51.

At the time of the summary judgment hearing, Eagle Remodel had amended its petition and asserted causes of action for conversion, breach of implied warranty/breach of contract, breach of duty of good faith, violations of the Texas Deceptive Trade Practices Act, common law fraud, and negligent misrepresentation and grossly negligent misrepresentation; it also sought a declaration of the parties' contractual rights. Capital One moved for summary judgment on Eagle Remodel's conversion and breach of implied warranty/breach of contract claims; the supplement to its motion addressed the request for declaratory judgment.

All of Eagle Remodel's claims relate to the same set of facts: Eagle Remodel's efforts to hold Capital One responsible for the financial losses resulting from the stolen checks. In so far as Capital One relies on the same wrongdoer rule to urge us to affirm the summary judgment as to all claims, we have already addressed why that ground for summary judgment fails at this stage of the litigation. We sustain Eagle Remodel's fourth issue to this extent. However, in so far as Capital One proved the Rules bar Eagle Remodel from recovery for checks numbered 2855, 2856, 2857, and 2885, we agree that the bank's summary judgment motion is broad enough to encompass the newly asserted claims. We overrule Eagle Remodel's fourth issue to this extent.

#### **D. Attorney's Fees**

In its fifth, sixth, and seventh issues, Eagle Remodel challenges the trial court's award of attorney's fees to Capital One. The trial court's order granting



Capital One’s motion for summary judgment states Capital One is entitled to recover reasonable attorney’s fees and nontaxable expenses as the prevailing party. The trial court subsequently awarded fees and costs to Capital One.

In light of our resolution of Eagle Remodel’s third and fourth issues, it cannot be said that Capital One is the prevailing party at this stage of the litigation. Accordingly, without addressing the merits of the arguments raised in Eagle Remodel’s fifth, sixth, and seventh issues, we reverse the trial court’s December 14, 2021 Order granting Capital One, N.A.’s Motion for Attorney’s Fees and Costs. *See* TEX. R. APP. P. 47.1.

#### **E. Responsible Third Party**

In its eleventh issue, Eagle Remodel argues the trial court erred by granting Capital One’s motion for leave to designate responsible third parties because chapter 33 of the civil practice and remedies code did not apply to any of the causes of action pending at the time the order was entered. *See* TEX. CIV. PRAC. & REM. CODE § 33.004 (Designation of Responsible Third Parties). Chapter 33 applies to “any cause of action based on tort in which a defendant . . . is found responsible for a percentage of the harm for which relief is sought” and actions brought under the DTPA. *See id.* § 33.002(a). At the time of the responsible third party proceedings, Eagle Remodel only had asserted its claims for conversion and breach of implied warranty/breach of contract. Both claims were made pursuant to Chapter 3 of the

business and commerce code, which is Texas’s codified version of article 3 of the Uniform Commercial Code. *See generally* TEX. BUS. & COM. CODE § 3.101.

UCC article 3 establishes a “comprehensive and carefully considered allocation of responsibility among parties to banking relationships,” and contains its own comparative negligence provisions. *1/2 Price Checks Cashed v. United Auto. Ins. Co.*, 344 S.W.3d 378, 389 (Tex. 2011) (quoting *Sw. Bank v. Info. Support Concepts, Inc.*, 149 S.W.3d 104, 107 (Tex. 2004)). The supreme court determined that “[t]o import Chapter 33 into article 3 . . . would upset that article’s comprehensive liability scheme and ‘[do] violence’ to the UCC.” *Id.* (quoting *Sw. Bank*, 149 S.W.3d at 110). Accordingly, the court concluded, Chapter 33’s “proportionate responsibility statute did not apply to an article 3 conversion claim.”<sup>3</sup> *Id.* (discussing *Sw. Bank*, 149 S.W.3d at 111).

In this case, Eagle Remodel’s claims pending at the time the order was entered were brought pursuant to article 3. Because the proportionate responsibility statute does not apply to claims brought under article 3 of the business and commerce code, the trial court erred by granting Capital One’s motion to designate responsible third parties at that stage of the litigation. We sustain Eagle Remodel’s eleventh issue.

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<sup>3</sup> The supreme court did conclude that Chapter 33 could apply to a breach of implied warranty tort claim brought pursuant to article 2. *See JCW Elecs., Inc. v. Garza*, 257 S.W.3d 701, 707 (Tex. 2008). We do not consider this analysis persuasive for claims brought pursuant to article 3.

In light of our resolution of Eagle Remodel's eleventh issue, we need not consider its eighth, ninth, tenth, twelfth, or thirteenth issues. *See* TEX. R. APP. P. 47.1.

#### CONCLUSION

We reverse the trial court's June 22, 2021 Order Granting Summary Judgment in part. Specifically, we reverse the trial court's judgment as to Eagle Remodel's claims for conversion, breach of implied warranty/breach of contract, breach of duty of good faith, violations of the Texas Deceptive Trade Practices Act, common law fraud, and negligent misrepresentation and grossly negligent misrepresentation as those claims relate to checks numbered 2852, 2853, 2854, 2860, 5861, 2862, 2863, 2865, 2866, 2882, 2883, 2884, 2886, and 2887.

We affirm the trial court's June 22, 2021 Order Granting Summary Judgment in part. Specifically, we affirm the trial court's adverse judgment as to Eagle Remodel's request for a declaratory judgment, and we affirm the trial court's judgment on all causes of action asserted by Eagle Remodel as they relate to checks numbered 2855, 2856, 2857, and 2885.

We reverse the trial court's December 14, 2021 Order granting Capital One, N.A.'s Motion for Attorney's Fees and Costs.

We reverse the trial court's January 29, 2021 Order on Defendant's Motion for Leave to Designate Responsible Third Parties and on Plaintiff's Objections to Same.

We reverse the trial court's December 14, 2021 Final Judgment.

We remand this cause to the trial court for further proceedings.

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/Erin A. Nowell//

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ERIN A. NOWELL

JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

EAGLE REMODEL LLC, Appellant

No. 05-22-00206-CV          V.

CAPITAL ONE FINANCIAL  
CORPORATION D/B/A CAPITAL  
ONE BANK, Appellee

On Appeal from the 160th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DC-20-02277.  
Opinion delivered by Justice Nowell.  
Justices Goldstein and Breedlove  
participating.

In accordance with this Court's opinion of this date,

We **REVERSE** the trial court's June 22, 2021 Order Granting Summary Judgment in part. Specifically, we **REVERSE** the trial court's judgment as to Eagle Remodel's claims for conversion, breach of implied warranty/breach of contract, breach of duty of good faith, violations of the Texas Deceptive Trade Practices Act, common law fraud, and negligent misrepresentation and grossly negligent misrepresentation as those claims relate to checks numbered 2852, 2853, 2854, 2860, 5861, 2862, 2863, 2865, 2866, 2882, 2883, 2884, 2886, and 2887.

We **AFFIRM** the trial court's June 22, 2021 Order Granting Summary Judgment in part. Specifically, we **AFFIRM** the trial court's adverse judgment as to Eagle Remodel's request for a declaratory judgment, and we affirm the trial court's judgment on all causes of action asserted by Eagle Remodel as they relate to checks numbered 2855, 2856, 2857, and 2885.

We **REVERSE** the trial court's December 14, 2021 Order granting Capital One, N.A.'s Motion for Attorney's Fees and Costs.

We **REVERSE** the trial court's January 29, 2021 Order on Defendant's Motion for Leave to Designate Responsible Third Parties and on Plaintiff's Objections to Same.

We **REVERSE** the trial court's December 14, 2021 Final Judgment.

We **REMAND** this cause to the trial court for further proceedings.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 6<sup>th</sup> day of July 2023.