

No. 20-573

IN THE
SUPREME COURT OF THE UNITED STATES

CLARENCE OTWORTH – Petitioner

vs.

PNC BANK – Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
ORIGINAL ACTION CASE

CLARENCE OTWORTH
187 EAST DANIELS ROAD
TWIN LAKE, MICHIGAN 49457
(231) 292-1205

TWO QUESTIONS PRESENTED

For a person to be known as a customer of a bank there must be either a current account or any sort of deposit account like a saving, team deposit, recurring deposit, loan account or similar relation.

Banks are entitled to charge noncustomers a check cashing fee, but they should not be allowed to charge noncustomers a check cashing fee if the noncustomers are aides of disabled customers because disabled customers must pay the noncustomer check cashing fee to get their deposits out of the bank.

FIRST QUESTION

IF A DISABLED CUSTOMER WRITES A CHECK PAYABLE TO HIMSELF, AND THE NONCUSTOMER AGENT OF THE DISABLED CUSTOMER DELIVERS THE CHECK TO THE BANK, IS THE BANK OBLIGATED TO CASH THE CHECK AND GIVE THE MONEY TO THE AGENT OF THE DISABLED CUSTOMER?

Clarence Otworth asserts that a bank is obligated to give the money of a customer to the agent of the customer if the customer is the payee.

SECOND QUESTION

IF DISABLED CUSTOMERS ARE FORCED TO PAY THE CHECK CASHING FEE OF BANKS ON THEIR NONCUSTMER AIDES TO GET THEIR DEPOSITS OUT OF THE BANK IS THAT A VIOLATION OF THE AMERICANDS WITH DISABILITIES ACT OF 1990, AS AMENDED, AND/OR A VIOLATION OF CHAPTER 4 OF THE UNIFORM COMMERICAL CODE?

Petitioner asserts that it is definitely a violation of the Americans with Disabilities Act of 1990, as amended (ADA), and/or Chapter 4 of the Uniform Commercial Code (UCC), because disabled customers must pay the noncustomer check cashing fee of banks on their noncustomer aides to get the money they deposited in the bank out of the bank.

PARTIES

Petitioner is an 82 year-old retired railroad conductor. He was the plaintiff In the District Court and the appellant in the Sixth Circuit Court of Appeals. He can no longer walk. He is a victim of the side effects of Lipitor a medicine for cholesterol which destroyed the muscles in his legs. He has a checking account with PNC Bank. His only source of income is a disability check of \$2,116.45 that is automatically deposited into his checking account on the first day of each month. He lives at 187 East Daniels Road, Twin Lake, Michigan 49457. Telephone: (231) 292-1205. He brings this action on his own behalf and on behalf of all disabled Americans that cannot travel to their bank.

Defendant PNC Bank is incorporated. Corporate headquarters is the Tower at PNC Plaza, 300 Fifth Avenue, 29th floor, Pittsburgh, Pennsylvania 15222. Telephone: (888) 762-2265.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petition for a writ of certiorari to review a decision of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A of the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided petitioner's case was July 27, 2020. The case is docketed in the court of appeals as No. 19-2188. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. Section 1981(a) states: All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts... and to the full and equal benefit of all laws and proceedings for the security of person and property.

42 U.S.C. Section 1983 states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be

subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.

The Americans with Disabilities Act (ADA) became law in 1990. The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all area of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.

The purpose of Uniform Commercial Code (UCC) is to provide a set of consistent regulations for the sale of goods and other related transactions. This is especially important in interstate transactions. The Uniform Commercial Code, first published in 1952, is one of a number of uniform acts that have been established as law with the goal of harmonizing the laws of sales and other commercial transactions across the United States through UCC adoption by all 52 states, the District of Columbia, and the Territories of the United States.

STATEMENT OF THE CASE

Petitioner requests this Court to exercise its power and discretion under Rule 11 of its rules to grant a writ of certiorari to the United States Court of Appeals for the Sixth Circuit. The case presents the question of whether or not banks violate the Americans with disabilities Act of 1990, as amended, by charging noncustomer

aides of disabled bank account holders a noncustomer check cashing fee which the disabled bank account holders must pay to get their own deposited money out of a bank.

FACTUAL BACKGROUND

Petitioner is an 82 year-old disabled citizen. Born and raised in Ohio. He was prescribed Lipitor for cholesterol. He was on the medication for 7 years. It destroyed the muscles in his legs. He cannot walk. He is in a wheelchair. Senior Resources, a Michigan Agency, provides him with an aide every Wednesday for two hours to do his banking, shopping and house cleaning. He wrote his aide a check every Wednesday. She cashed the check and purchased his food. On March 13, 2018, Defendant PNC Bank informed her that starting on April 23, 2018, it would start charging noncustomers, such as her, a two percent checking cashing fee on the written amount of the check. Therefore, on March 20, 2018, Clarence Otworth wrote a fifty dollar check payable to himself and gave it to his aide to present to the bank. She also presented his letter of introduction to the bank which explained that she was the agent of the payee, Clarence Otworth, a disabled customer (account holder), and she was instructed to collect his money and give it to him. The bank refused to cash the check, but continued cashing the checks that he made payable to his aide, so the bank could continue collecting two percent of the written amount of the check.

INCONTROVERTIBLE FACTS

1. Clarence Otworth has a PNC checking account; No. 4268246309.
2. Checking accounts are called demand deposit because the check is payable on demand when presented for payment at the bank the check is drawn on.
3. The very basis of checking accounts is that banks accept an otherwise worthless piece of paper in lieu of legal tender (cash) because the bank that holds the payer's money is legally required to hand over to the payee the amount written on the check.
4. Clarence Otworth's only income is a disability check of \$2,043.20 which is automatically deposited into his bank account by the Railroad Retirement Board on the first day of each month.
5. Clarence Otworth cannot travel to the bank because he cannot walk. He is in a wheelchair.
6. Arcadia, a subsidiary of Senior Resources, a Michigan agency, provides Clarence Otworth with an aide every Wednesday for two hours to do his banking, shopping, and house cleaning.
7. Each Wednesday, Clarence Otworth would write his aide, Heather Chester, a check. She would take the check to the PNC bank, located at 2351 Holton Road, Muskegon, MI 49445, exchanges it for cash - and buy his food.
8. Heather Chester has been doing Clarence Otworth's banking, shopping and house cleaning for over three years. On March 13, 2018, Defendant PNC Bank

informed her that it would start charging noncustomers like her a check cashing fee of two per cent of the written amount of the check on April 23, 2018.

9. Therefore, on March 20, 2018, Clarence Otworth wrote a check to himself (check #570) for fifty dollars. He endorsed the check and gave it to Heather Chester to take to the bank.

10. Clarence Otworth also wrote a letter of introduction for Heather Chester to take to the bank. The letter stated that Clarence Otworth was cashing his check, not Heather Chester.

11. Clarence Otworth's letter also stated that Heather Chester was the Agent-of-the-Payee, Clarence Otworth, a disabled customer, and she was sent to the bank to collect the amount written on the check for the payee, Clarence Otworth.

12. Defendant PNC BANK, located at 2351 Holton Road, Muskegon, Michigan 49445, refused to cash the check of account holder Clarence Otworth and hand over his money to Heather Chester, the agent of the payee, Clarence Otworth.

13. Clarence Otworth has a legitimate claim of entitlement to the money in his bank account.

14. Clarence Otworth possessed a constitutionally protected property interest in his deposits. He was deprived of that interest without due process of law.

15. On April 23, 2018, Defendant PNC Bank started charging noncustomers a check cashing fee of two percent of the written amount of the check.

16. Clarence Otworth is forced to pay the noncustomer check cashing fee of his aide, Heather Chester, or any other agent of the payee that is a noncustomer, in order to get his own money out of the bank.

**THIS CASE PRESENTS ISSUES
OF FUNDMENTAL NATIONAL IMPORANCE**

There can be no doubt that this case presents issues of great national importance. At the most fundamental level the questions it raises is whether or not banks violate the Americans with Disabilities Act of 1990, as amended (ADA)? A federal civil rights law that protects people with disabilities from discrimination in all areas of life. And whether or not banks violate Chapter 4 of the Uniform Commercial Code (UCC) by charging the noncustomer aides of disabled customers a check cashing fee which disabled customers must pay to get their bank deposits out of the bank.

REASONS FOR GRANTING THE PETITION

The petition should be granted because Magistrate Judge Raymond S. Kent, in the U.S. District Court in Grand Rapids, Michigan, and the Judicial Panel of Jane Branstetter Stranch, Amul Roger Thapar, and Chad Andrew Readler, in the U.S. Sixth Circuit Court of Appeals in Cincinnati, Ohio, did not want to answer the two questions presented here:

IF A DISABLED CUSTOMER WRITES A CHECK PAYABLE TO HIMSELF, AND THE NONCUSTOMER AGENT OF THE DISABLED CUSTOMER DELIVERS THE CHECK TO THE BANK, IS THE BANK OBLIGATED TO CASH THE CHECK AND GIVE THE MONEY TO THE AGENT OF THE DISABLED CUSTOMER?

Clarence Otworth asserts that banks are indeed obligated to cash the checks of disabled customers and give the money to the agent of the disabled customer.

IF DISABLED CUSTOMERS ARE FORCED TO PAY THE CHECK CASHING FEE OF BANKS ON THEIR NONCUSTMER AIDES TO GET THEIR DEPOSITS OUT OF THE BANK IS THAT A VIOLATION OF THE AMERICANDS WITH DISABILITIES ACT OF 1990, AS AMENDED, AND/OR A VIOLATION OF CHAPTER 4 OF THE UNIFORM COMMERCIAL CODE?

Clarence Otworth asserts that it is definitely a violation of the Americans with Disabilities Act of 1990, as amended (ADA), and/or Chapter 4 of the Uniform Commercial Code (UCC), because disabled customers must pay the noncustomer check cashing fee of banks on their noncustomer aides to get the money they deposited in the bank out of the bank

CONCLUSION

For the foregoing reasons, Clarence Otworth respectfully requests the Court to grant his petition for a writ of certiorari.

I, Clarence Otworth, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on Wednesday, August 26, 2020.

Respectfully Submitted,



Clarence Otworth
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