No. 25-80

IN THE

Supreme Court of the United States

STUDCO BUILDING SYSTEMS US, LLC,

Petitioner,

v.

1ST ADVANTAGE FEDERAL CREDIT UNION,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court grant a petition for *certiorari* to reverse the unanimous decision of the Court of Appeals for the Fourth Circuit on an issue of Virginia state law, where the decision is precisely faithful to the language of the state statute; there are no federal-law issues in the case; there is no cognizable circuit split involving the interpretation of analogous state-law statutes from other jurisdictions, and a decision contrary to the ruling of the Court of Appeals would threaten grave harm to the national financial system?

DISCLOSURE STATEMENT

1st Advantage Federal Credit Union, defendant in the district court and prevailing appellee below, is a federally-chartered, member-owned, not-for-profit credit union. 1st Advantage's shares are held by its depositors; it has no parent corporation and no publicly-held company owns ten percent or more of its stock or shares.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Statutes, Rules and Regulations

Cited Authorities

Page

OPPOSITION TO PETITION FOR CERTIORARI

This is not an appropriate case for the grant of a writ of *certiorari*. There is no genuine circuit split and the Court of Appeals for the Fourth Circuit acted appropriately and consistently with law – solely state law, in this case – in reversing the decision of the United States District Court for the Eastern District of Virginia.

STATEMENT OF THE CASE

Petitioner Studco Buildings System, LLC, a New York affiliate of an Australian steel fabricator, was scammed in 2018 when unknown foreign persons sent an inarticulate e-mail to Studco, pretending to be its long-time Ohio-based steel supplier Olympic Steel. The e-mail told Studco to stop making payments to Olympic's bank account at JPMorgan/Chase, and rather to direct its payments to an account at 1st Advantage. As the Court of Appeals noted, the e-mails were "poorly written;" exhibited "several indicators of the emails' inauthenticity," and contained "nonsensical[]" instructions.[1]

1st Advantage is a modestly-sized community federal credit union, whose account-holders (called "members") are restricted by law to those who live, work, worship or attend school in Hampton Roads, Virginia, and nearby parts of Richmond and North Carolina. Olympic

1. The actual e-mails are reproduced in the reported opinion (and on the Westlaw version), giving a clearer sense of their ramshackle nature, including the "sent" address differing from the supposed-sender's e-mail address two inches below. 133 F.4th 246, 269-70 (4th Cir. 2025).

Steel cannot be and never has been a member. Without telephoning Olympic Steel to confirm the change, Studco sent four payments totaling over $550,000 to the 1st Advantage account. This money promptly was withdrawn and forwarded abroad by another victim of the scam, a 1st Advantage depositor who thought she was working for a real estate company.

Studco discovered the scam in November 2018, and telephoned 1st Advantage. 1st Advantage immediately froze the account; initiated a FinCEN 314b information sharing request with JPMorgan/Chase and SunTrust (now Truist) Bank (by which the U.S. Financial Crimes Enforcement Network provides a safe harbor to financial institutions sharing information possibly-relevant to money laundering or terrorist activities); conducted an internal investigation, and eventually provided all of its documents to the Federal Bureau of Investigation. The scammers have not been identified.

Studco sued 1st Advantage (and the "John Doe" 1st Advantage member/depositor, who ultimately was dismissed from the case). The original gravamen of the multi-count Amended Complaint was that 1st Advantage itself had orchestrated the scam and conspired to send the fraudulent e-mail as part of a multi-national racketeering enterprise. By the time the matter reached trial, only three state-law counts remained: two Virgina common-law claims (bailment and "fraudulent inducement"), and a claim under the Virginia iteration of the Uniform Commercial Code, Va. Code § 8.4A-207, alleging "mis-designation of beneficiary."[2] That section applies where

2. The district court found in favor of 1st Advantage on Studco's fraudulent inducement claim. The district court,

a financial institution receives an incoming deposit which bears a valid account number, but the name of the beneficiary does not match the name on the account. In relevant part, that section of the Virginia Code says:

> If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply . . . (1) Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

Va. Code § 8.4A-207(b). "Know" means "actual knowledge" – something the district court recognized when denying 1st Advantage's motion to dismiss this claim under Fed. R. Civ. P. 12(b)(6), since Studco had alleged actual knowledge on the part of 1st Advantage in the Amended Complaint. But Studco could not prove "actual knowledge" at trial, since there was none. The district court did not find "actual

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erroneously under Virginia law, entered judgment for Studco on its bailment claim, which was reversed by the Court of Appeals and does not appear to form any part of this Petition. The trial court also denied Studco's Fed. R. Civ. P. 59(e) motion to add a punitive damages award, in the amount of the Virginia statutory maximum, to the judgment. Studco's cross-appeal, arguing that the failure of the trial court to award punitive damages was an abuse of discretion, was unavailing; that issue also forms no part of the Petition.

knowledge" anywhere in its lengthy and detailed findings of fact.

Rather, the district court erred by importing some form of negligence or due diligence standard in lieu of the statutory requirement of actual knowledge. As the Court of Appeals wrote:

> Although the district court correctly recognized that 1st Advantage could only be held liable for deposits into misdescribed accounts if it had *actual* knowledge of the misdescription, it nonetheless ruled in favor of Studco, finding that 1st Advantage had actual knowledge because it should have, with 'due diligence,' had such knowledge.
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> * * * * *
>
> It was . . . error for the district court to construe 'actual knowledge' to mean knowledge that could have been obtained with 'due diligence.'

Appendix A to Petition at 19a-20a.

The district court made no factual finding that 1st Advantage had any actual knowledge that the name and account number on the receiving account did not match, despite being urged to do so by Studco.[3] Rather, analyzing

3. And the law requires that actual knowledge at the time of the acceptance of the deposit. Although 1st Advantage's industry-standard automated processing system generated an internal "warning" at any mismatch between name and number – even if the difference was "John X" rather than "X, John" – that warning

largely factors unrelated to the transfers (such as the need to reconfirm the "John Doe" member's address when her account was opened), the trial judge held that it was "commercially unreasonable" for 1st Advantage not to have discovered the discrepancy.

1st Advantage appealed. The primary basis for the appeal was the plain language of Va. Code § 8.4A-207: a financial institution is permitted to deposit transfers in accordance with the account number used on the transfer. The institution has no duty to ensure the account number matches the name on the account. Here, of course, they didn't match, since Olympic Steel was not a 1st Advantage member. But the financial institution has no duty even to look at the name, and due to the millions of such transactions daily, almost none do. The process is automated, as the code provision intends. Only if some individual at the financial institution has actual knowledge, at the time the funds are accepted, that the name and number do not match, but decides to accept them anyway, can liability attach. As the law states and as the Court of Appeals held, the Virginia statute requires "actual knowledge" of the mis-designation at the time the funds are received. And as Studco repeatedly acknowledged before the Court of Appeals, the trial court made no finding that anyone at 1st Advantage had such actual knowledge.

The reason for this statutory rule is simple. Our economy depends on a large number of transactions, and requiring a financial institution to review manually each deposit where the name and account number do not

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was not generated until after the acceptance of the deposit, and remained internal to the system unless an "exception" also was generated. None was.

match – even a small institution like 1st Advantage has hundreds or thousands of mis-matches a day, almost all of them immaterial – would quickly bring the economy to a screeching halt.[4] Changing the bright-line actual knowledge test to a negligence standard, contrary to the words of the state statute, would import both uncertainty and enormous delay into the system.

The Clearing House Association, LLC, and NACHA (formerly the National Automated Clearinghouse) filed an *amicus* brief in the Court of Appeals, urging the Court of Appeals to reverse the trial judge's failure to apply the requisite "actual knowledge" test. The Clearing House clears and settles more than $2 trillion in payments every business day. NACHA governs the ACH network; in 2022, there were 30 billion ACH payments valued at $77 trillion. These *amici* observed that "the district court's ruling disrupts Article 4A's (of the UCC) framework and jeopardizes the day-to-day feasibility of the nation's funds-transfer systems." A separate *amicus* brief, also urging reversal of the trial court, was filed collectively by the Virginia Credit Union League; the National Association of Federally-Insured Credit Unions, and the Credit Union National Association. These organizations explained how "the district court's opinion will upend

4. Before the Court of Appeals and in the Petition, Studco appeals to the "due diligence" standard of Va. Code § 8.1A-202(f). As the Court of Appeals and other courts have recognized, including almost all of the courts Studco cited in its brief below, that section does not require due diligence in reviewing transfers and acquiring actual knowledge, but relates to "*when* an organization is put on notice or receives knowledge" (emphasis by Court of Appeals), where actual knowledge is held by some individual somewhere in the organization but has not yet been transmitted to the person effecting the transfer.

credit union practices and strap credit union members with burdensome – and in some cases unbearable – requirements far beyond what the law requires."

REASONS FOR DENYING THE WRIT

This case involves the law of the Commonwealth of Virginia, not federal law. Of the factors enumerated in Rule 10 to which this Court looks as informing the exercise of its discretion when considering a Petition for *certiorari*, Rules 10(b) and 10(c) are irrelevant; Studco has recourse only to the provision in Rule 10(a) discussing the entry of a "decision" of Court of Appeals that conflicts with a "decision" of another Court of Appeals on the same matter.

I. THERE IS NO CIRCUIT SPLIT

There is no cognizable circuit split. The district court decision in this case was an outlier, as counsel for Studco recognized when referring to the trial court's decision as a matter of first impression.[5]

5. "The result follows a first-of-its-kind trial in which the client sought compensation from the financial institution that played a role in the loss as opposed to the electronic fraudsters." https://www.clarkhill.com/news-events/news/clark-hill-successfully-represents-steel-building-manufacturer-in-business-email-compromise-case/ (last visited August 17, 2025); "As my colleague Myriah Jaworski Esq., CIPP/E, CIPP/US notes, this may be the first verdict in the country holding a recipient of a misdirected wire transfer following a business email compromise responsible for the dissipation of those misdirected funds." https://www.linkedin.com/posts/chiraghareshpatel_studco-trial-decision-order-activity-7021542451932786689-eYC9 (last visited August 17, 2025).

Studco points to two decisions from the Eleventh Circuit, *Julio J. Valdes, M.D., P.A. v. Customers Bank, Inc.,* 830 F. App. 598 (11th Cir. 2020) (per curiam) and *Peter E. Shapiro, P.A. v. Wells Fargo Bank, N.A.,* 795 Fed. Appx. 741 (11th Cir. 2019). Studco argues that these decisions conflict with the decision of the Fourth Circuit below.

(a) The 11th Circuit Opinions are non-precedential and unpublished.

Both of these Eleventh Circuit opinions are from the 11th Circuit's non-argument calendar. Not surprisingly, they are unpublished, as are almost all cases from the non-argument calendar. 11th Cir. R. 36-2, addressing "Unpublished Opinions," provides that "[u]npublished opinions are not considered binding precedent, but they may be cited as persuasive authority." The 11th Circuit Internal Operating Procedures under Rule 36-2 explain, "Opinions that the panel believes to have no precedential value are not published. Although unpublished opinions may be cited as persuasive authority, they are not considered binding precedent." "The court generally does not cite to its 'unpublished' opinions because they are not binding precedent." 11th Cir. R. 36-2, I.O.P. 6, 7.

(b) The cited statements from the Eleventh Circuit are *dicta*.

Studco cites only *dicta* from these two opinions, not to their "decisions." The defendant financial institutions prevailed in both of these Eleventh Circuit cases involving claims of mis-designation of beneficiary under Section 207, both at the district court level and in the court of appeals.

In the *Customers' Bank* case:

> Valdes never alleged that Customers Bank had actual knowledge of the discrepancy. Valdes identified no occasion when a bank employee was aware of or was told that Urling's account number did not refer to Valdes. See Fla. Stat. § 671.201(27). Nor could the bank have known of the discrepancy from the face of the payment orders because they were processed using an automated system that read only the number of the designated bank account. See id. § 670.207 cmt. n.2. Valdes also alleged no facts to establish that Customers Bank failed to exercise due diligence. See id. § 671.201(27). Customers Bank "maintaine[d] [a] reasonable routine[ ]," id., in which its automated processing system "rel[ied] on the [account] number as the proper identification of the beneficiary of the order," id. § 670.207(2)(a).

830 Fed. Appx. at 601. And in the *Wells Fargo* case:

> The district court granted th[e] motion for summary judgment, reasoning that Wells Fargo was entitled to complete the funds transfer under Fla. Stat. § 670.207(2) notwithstanding the name mismatch because the payment order identified a valid Wells Fargo account number and no individual person had actual knowledge of the discrepancy.

795 Fed. Appx. at 745. The Eleventh Circuit opinion then describes its rationale for its decision:

Thus, [plaintiff] will succeed in obtaining a reversal of the district court's grant of summary judgment only if he is able to demonstrate a genuine issue of material fact as to Wells Fargo's failure to exercise due diligence in processing the Shapiro wire. This he cannot do. To begin, the relevant UCC provision expressly provides that, in cases involving payment orders that identify both an account name and an account number, where the bank lacks actual knowledge that the account name and number do not match, the beneficiary's bank (here, Wells Fargo) "may rely on the number as the proper identification of the beneficiary of the order." Fla. Stat. § 670.207(2)(a). Indeed, the beneficiary's bank "need not determine whether the name and number refer to the same person." Id.

* * * * *

[W]e must determine whether knowledge of the name mismatch should be imputed to Wells Fargo because it failed to exercise due diligence within the meaning of Fla. Stat. § 671.201(27) by implementing and using an automated funds transfer system that ignores potential name mismatches. Stated in the relevant language of the statute, the question we must answer is did Wells Fargo "maintain[ ] reasonable routines for communicating significant information to the person conducting the transaction" and then reasonably comply with that routine?

> Considering the clear intention of the statute, which is to allow for the automated processing by banks of a large number of payment orders on a daily basis, while reducing both transaction costs and the potential for clerical error, we easily conclude that Wells Fargo maintained and complied with reasonable routines, and thus exercised due diligence, with respect to the processing of Shapiro's payment order through its automated MTS. In reaching this conclusion, we emphasize that § 671.201(27) operates to impute organizational knowledge only when an organization fails to maintain "reasonable routines for communicating significant information" to the person conducting the transaction. In processing the payment order Shapiro originated, it was not unreasonable for Wells Fargo to allow its automated payment system to ignore a potential name mismatch and "rely on the number as the proper identification of the beneficiary of the order." Fla. Stat. § 670.207(2)(a). Indeed, this is expressly allowed by § 670.207(2)(a). See id. ("The beneficiary's bank need not determine whether the name and number refer to the same person."). Because the statute expressly permitted Wells Fargo to do that, we cannot conclude that Wells Fargo failed to maintain a reasonable routine.

795 Fed. Appx at 748.

In other words, while both of these unpublished opinions contain language suggesting some form of diligence standard, that standard was "easily" met by

the use of an automated processing system, even one that ignored potential mismatches. 1st Advantage would have prevailed under the language, even the *dicta*, in either Eleventh Circuit case; there is no conflict.

II. CERTIORARI IS NOT APPROPRIATE TO ADDRESS A SINGLE APPELLATE JUDGE'S VIEW THAT 1ST ADVANTAGE WAS ENTITLED TO PREVAIL ON AN ARGUMENT MADE IN THE TRIAL COURT AND PRESSED BY AMICUS

The Fourth Circuit decision was unanimous, and Studco's petitions for re-hearing and re-hearing *en banc* were denied. Two of the most experienced appellate judges in the nation, Hon. J. Harvie Wilkinson and Hon. Paul V. Niemeyer, with a collective 76 years on the federal Court of Appeals, joined the majority opinion, reversing the trial court judgment because there was neither evidence nor a finding of fact that 1st Advantage had actual knowledge of the mis-designation at the time it accepted the transfers. The third experienced jurist, Hon. James Andrew Wynn, wrote:

> I fully agree with the majority's interpretation of the Uniform Commercial Code, which allows a bank to process an ACH deposit based solely on account number so long as the bank does not have actual knowledge of a misdescription between the account name and account number. And I agree that the actual knowledge requirement means that an 'individual' employee at the bank must have actual knowledge of the misdescription at the time of deposit.

Appendix A to Petition at 26a. Where Judge Wynn parted ways with the majority was in his belief that a factfinder "could infer" actual knowledge on the part of one employee, who was not involved in the accceptance of deposits, based on his investigation of funds transferred out of the account before the final two deposits. Whether or not a factfinder could make that inference, in this case the factfinder did not in fact make that inference: the detailed findings of fact by the trial court in its decision, which is 84 pages long, are devoid of any finding of actual knowledge.[6]

Nonetheless, Judge Wynn concurred in reversing the trial court, because under the statute Studco's remedy was not against 1st Advantage. Here, Studco urges this Court to consider whether Judge Wynn abused his discretion in considering that matter, which is not of a kind regularly considered a reason to grant *certiorari*.

In any event, 1st Advantage raised this defense repeatedly before the trial court, proffering findings of fact and conclusions of law consistent with it. 1st Advantage's post-trial proposed findings of fact and conclusions of law make this explicit:

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6. Studco also argues that the Court should grant *certiorari* and remand to allow the trial judge to reconsider the evidence under the "proper" standard of "actual knowledge." Such a use of the Court's resources seems inconsistent with the guidance found in Rule 10. In any event, the trial court well-knew the proper legal standard: the district court's opinion on 1st Advantage's unsuccessful motion to dismiss the UCC claim under Fed. R. Civ. P. 12(b)(6) recites, "'[k]now' means actual knowledge." Appendix E to Petition at 88e. And Studco repeatedly, but futilely, urged the trial court to find "actual knowledge."

13. Section 207 contains limited statutory remedies, none of which allow recovery by Studco against 1st Advantage.

* * *

13(b) "In a case covered by 207(b)(1), if the beneficiary's bank (i.e., 1st Advantage) rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, **the amount paid may be recovered from that person** to the extent allowed by the law governing mistake and restitution." 207(d). **The statute does not permit recovery from 1st Advantage.**

(c) " **If the beneficiary's bank (i.e., 1st Advantage)** either pays the beneficiary by name rather than account number, or **has actual knowledge that the account number and name do not match**, where the originator (here, Studco) is not a bank, **Studco is not liable to pay its order to its own bank,** "unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary." **If such notice was provided to Studco by its own bank, Studco bears the loss. If such notice was not provided to Studco by its own bank, Studco's bank bears the loss. Va. Code Section 8.4A-207(c)(2).**

It is unclear why Studco believes this argument was not made in the district court.

Nonetheless, *Amici* briefed the issue in the Court of Appeals, and Studco responded it. And it is, after all, the law. There is no reason to "remedy" Judge Wynn's consideration of this issue, and were this Court inclined to use *certiorari* to modify the ability of an appellate court to address such issues, this case would be a poor vehicle for that exercise.

CONCLUSION

1st Advantage Federal Credit Union respectfully requests that this Court deny the petition for *certiorari*.

Respectfully submitted,

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