

JAN 26 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk) *fl.*

- For Publication on Court's Web Site -

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

AVIATION INDUSTRY
REPORTING SYSTEM, INC.;
CONTINENTAL AIRLINES,
INC.; and, NORTHWEST
AIRLINES, INC.,

Plaintiffs/
Counter-Defendants

v.

COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS TRAVEL AGENCY,
INC.,

Defendant/
Counter-Plaintiff

v.

BANK OF GUAM,

Counter-Claim
Defendant

Civil No. 03-0039

ORDER: (1) GRANTING
COUNTER-CLAIM
DEFENDANT BANK OF
GUAM'S MOTION FOR
SUMMARY JUDGMENT;
(2) DENYING AS MOOT
BANK OF GUAM'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT; and,
(3) GRANTING SUMMARY
JUDGMENT FOR BANK OF
GUAM ON CLAIMS
THIRTEEN AND FOURTEEN

1 THIS MATTER is before the court on counter-claim defendant Bank of
2 Guam's December 17, 2004, motions for summary judgment and for judgment
3 on the pleadings (or, as to the latter, in the alternative, summary judgment), and
4 December 20, 2004, motion for partial summary judgment for limitation of
5 damages. Movant Bank of Guam appeared by and through its attorney, David
6 G. Banes; no opposition was filed by CNMI Travel, Inc., whose attorney was
7 allowed to withdraw by order dated January 21, 2005.
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11 In the interests of conserving the resources of the court and the Bank of
12 Guam, the pending motions will be decided without the necessity of oral
13 argument.
14

15 Summary judgment "shall be rendered forthwith if the pleadings,
16 depositions, answers to interrogatories, and admissions on file, together with the
17 affidavits, if any, show that there is no genuine issue as to any material fact and
18 that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P.
19 56(c).
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23 The court, having considered all evidence submitted in support of the
24 motions for summary judgment, makes the following findings of fact and
25 conclusions of law.
26

1 Findings of Fact.

2 For purposes of this decision, the court finds that there is no genuine issue
3 as to these material facts:
4

5 1. To the extent relevant, the findings of fact and conclusions of law in
6 the court's order of January 12, 2005, are incorporated herein.
7

8 2. Prior to February, 1996, CNMI Travel opened checking account No.
9 0103-115727 (the "first CNMI Travel Account") at Bank of Guam ("BoG"). See
10 Plaintiffs' Proposed Findings of Fact, Exhs. 22 - 24.¹
11

12 3. CNMI Travel signed an authorization-to-charge agreement, authorizing
13 automatic direct debits from this first CNMI travel account to plaintiff Aviation
14 Industry Reporting System, Inc. ("AIRS"). See Plaintiffs' Proposed Findings of
15 Fact, ¶¶ 30, 31; Exhs. 22 - 24.
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18 4. As part of this contract, CNMI Travel authorized BoG to charge its
19 Travel Account and to transfer funds to AIRS "provided there [were] sufficient
20 funds" in the account. See Plaintiffs' Proposed Findings of Fact, Exh. 22.
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26 As in the court's decision of January 12, 2005, for uniformity and ease of
reference almost all citations will be to plaintiffs' exhibits.

1 5. In the same contract, CNMI Travel agreed:

2 ...to indemnify and hold Bank of Guam harmless from loss and
3 liability, including costs and expenses, inclusive of reasonable legal
4 fees, which Bank of Guam may incur by reason of compliance with
5 the provisions of this Authorization. *Id.*

6 6. CNMI Travel further agreed:

7 ...that if such transfer [to AIRS] be rejected or dishonored, whether
8 with or without cause and whether intentionally or inadvertently,
9 [Bank of Guam] shall be under no liability whatsoever even though
10 such rejection or dishonor results in a default under the [AIRS]
11 Agreement. *Id.*

12 7. The first CNMI travel account was subsequently closed, due to a fire at
13 CNMI Travel's office and subsequent concern about checks which had not been
14 accounted for. Declaration of David G. Banes ("Banes Decl."), ¶ 13.

15 8. On or about July 31, 1998, CNMI Travel opened a new checking
16 account at Bank of Guam, No. 0103-132375 (the "second CNMI Travel
17 Account"). At the same time, CNMI Travel executed a Deposit Account
18 Agreement and Signature Card (the "Signature Card Agreement"). *See* Marcie
19 Tomokane Declaration ("Tomokane Decl."), ¶¶ 18 - 20 and Exhs. 1 and 2 ; Banes
20 Decl. ¶ 7, Exhs. 14, 15.
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9. The Signature Card Agreement provided in relevant part that:

- a. the funds from CNMI Travel would be deposited in a checking account in the Bank of Guam “subject to the terms of this signature card and the present or future rules and regulations and practices of the Bank”.
- b. CNMI Travel “acknowledge[d] receipt of [the] Bank’s deposit account brochure and...concurr[ed] with the same....”
- c. Bank of Guam “may charge to the account on which it is drawn any check otherwise properly payable . . .”
- d. And, “By signing below [CNMI Travel] acknowledge[s] receipt of the Bank’s Deposit Account Agreement and Disclosure...and Deposit Account Agreement and Signature Card concurring with the same....” *Id.*

CNMI Travel’s President/General Manager Dina Ecret [*nee* Aguon], Chairman/Owner David Ecret, and Corporate Secretary Rosario Untalan each signed the signature card agreement. *Id.*; Banes Decl. at p. 15.

10. The signature card agreement specifically acknowledged receipt of Bank of Guam’s deposit account agreement and disclosures (“deposit agreement”):

By signing below I/We acknowledge receipt of [the deposit agreement], concurring with the same.... *Id.*

1 11. The deposit agreement provided that check deposits were posted
2
3 subject to "final payment;" that is, BoG would not allow withdrawal unless there
4 were sufficient funds on hand in the account. The deposit agreement also
5 provided that BoG would place a hold on checks deposited at least until the next
6 business day, and perhaps longer for certain checks, up to a maximum of eleven
7 days:
8

9
10 DEPOSIT RULES:

11 * * *

12
13 (B) Final Agreement. All non-cash items (for checks) deposited to
14 your Account are posted subject to our receipt of final payment by
15 the payor Bank. Upon receipt of final payment, the item becomes a
collected item. * * *

16 (D) Crediting of Deposits. The Funds Availability Policy
17 Disclosure provided to you reflects our policies relating to the
availability of deposited funds.

18 WITHDRAWAL RULES:

19 * * *

20
21 (B) Withdrawal Restrictions and Overdrafts. We do not have to
22 allow you to make a withdrawal from your Account if you don't
23 have sufficient funds in the Account to cover the full amount of
24 withdrawal.
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1 FINANCIAL INSTITUTION LIABILITY:

2 You agree that if we do not properly complete a transaction
3 according to the Agreement, we will not be liable in any event for
4 losses or damages in excess of the amount of the transaction. And
5 we will not be liable if circumstances beyond our control prevent
6 the transaction.... In no event will we be liable for consequential
7 damages. In receiving items from you for withdrawal or deposit, we
act only as your agent. * * *

8 FUNDS AVAILABILITY POLICY. YOUR ABILITY TO
9 WITHDRAW FUNDS AT BANK OF GUAM. Our Policy is to
10 make funds from your deposits available to you on the first business
11 day after the day we receive your deposit.... Once they are available,
12 you can withdraw the funds in cash and/or we will use the funds to
pay checks that you have written.

13 RESERVATION OF RIGHT TO HOLD

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15 In some cases, we will not make all the funds that you deposit by
16 check available to you on the first business day after the day of your
17 deposit. Depending on the type of check you deposit, funds may
18 not be available until the eleventh (11th) business day after the day
of your deposit. * * *

19 LONGER DELAYS MAY APPLY

20 We may delay your ability to withdraw funds deposited by check
21 into your account an additional number of days for these reasons:
22 (1) You deposit checks totaling more that \$5,000 on one day; (2)
23 You redeposit a check that has been returned unpaid; (3) You have
24 overdrawn your account repeatedly in the last six months; (4) We
25 believe a check you deposit will not be paid; (5) There is an
26 emergency, such as failure of communications or computer
equipment. We will notify you if we delay your ability to withdraw
funds for any of these reasons, and we will tell you when the funds

1 will be available. They will generally be available no later than the
2 eleventh (11th) business day after the day of your deposit.

3 See Tomokane Decl. ¶ 7, Exh. 1.

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5 12. On September 19, 2000, CNMI Travel signed another agreement to
6 allow automatic debits to AIRS from this second CNMI Travel Account (the
7 “second authorization agreement”). Banes Decl. ¶ 14, Exh. 5. The Agreement
8 begins by providing that Bank of Guam:
9

10 ...[is] hereby authorized, as a convenience to me, to pay and charge
11 to my above account any transfer of funds...for payments under a
12 certain Industry Settlement Plan Participation Agreement, provided
13 there are sufficient collected funds in such account to pay the same
14 on the scheduled transfer date(s) under the Agreement. Since the
15 Bank undertakes to provide this additional service for CNMI
16 Travel’s convenience, the authorization, for such consideration,
provides the BoG with the following protection:

17 I agree to indemnify [BoG]... * * * I further agree that, if any
18 such transfer be rejected or dishonored, whether with or without
19 cause and whether intentionally, [BoG] shall be under no liability
20 whatsoever even though such rejection or dishonor results in a
default under [the AIRS] agreement.

21 13. CNMI Travel acknowledged that the automatic debiting was a special
22 service provided by the bank to allow CNMI Travel to participate in the AIRS
23 contract. Banes Decl. ¶ 13.
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1 14. The deposit agreement, together with the signature card agreement
2 and the first and second authorization letters, formed the contract between the
3 parties.
4

5 15. On numerous occasions in the six months preceding August 26, 2003,
6 CNMI Travel had insufficient funds in its second CNMI Travel Account to pay
7 items. Tomokane Decl. ¶ 15.
8

9 16. CNMI Travel failed to pay AIRS a scheduled remittance which was
10 due on or about February 24, 2003. Plaintiffs' Proposed Findings of Fact ¶¶ 44 -
11 47. CNMI Travel claimed it lacked sufficient funds in its account because Bank
12 of Guam had placed a hold on one of its deposits. Banes Decl. ¶ 18; Aguon
13 Depo. 62 - 63, Plaintiffs' Proposed Findings of Fact, Exhs. 13, 15.
14

15 17. CNMI Travel claimed the hold placed on its deposited check was
16 "wrong," but acknowledged that the Bank never wrote a letter to AIRS stating
17 the failure to make the February remittance was due to a bank error. Plaintiffs'
18 Proposed Findings of Fact, ¶ 51. As of at least February 28, 2003, CNMI Travel
19 knew the Bank placed holds on check deposits. Aguon Depo., pp. 62 - 63.
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21 18. CNMI Travel knew as of February, 2003, that Janet Kikku was not a
22 member of the Bank's management. Banes Decl. ¶ 18; Aguon Depo. p. 69.
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1 19. On or about August 22, 2003, CNMI Travel knew it would not have
2 enough funds in its BoG Account to cover the payment to AIRS scheduled for
3 August 25, 2003. Plaintiffs' Proposed Findings of Fact, ¶¶ 61-63.

4
5 20. Dina Aguon of CNMI Travel acknowledged that funds were not
6 available to cover the \$82,069.00 settlement amount to be remitted to AIRS on
7 August 25, 2003. Plaintiffs' Proposed Findings of Fact, ¶ 63 and exhibits
8 referenced therein.
9

10
11 21. On August 22, 2003, the board of directors of CNMI Travel met to
12 discuss the insufficient funds in its Bank of Guam account to cover the
13 remittance amount due to AIRS on August 25, 2003. Plaintiffs' Proposed
14 Findings of Fact, ¶ 61.
15

16
17 22. At that board meeting, the board of directors approved a loan of
18 \$20,000.00 from board member Richard Untalan to CNMI Travel to cover the
19 deficiency. Plaintiffs' Proposed Findings of Fact ¶ 63.
20

21 23. On August 26, 2003, Dina Aguon came to see Ms. Janet Kikku at the
22 Bank between 10:15 - 10:30 a.m. Ms. Aguon told Ms. Kikku that she was
23 expecting \$82,069.00 to be charged to CNMI Travel's checking account and
24 asked Ms. Kikku to see if that amount had been taken from the account yet. Ms.
25
26

1 Kikku checked and told Ms. Aguon that the amount had not yet been taken
2 from the account. Kikku Decl. ¶ 8; CNMI Travel's Response to BoG's First Set
3 of Interrogatories, Response No. 1, pp. 3 - 4.
4

5 24. Ms. Kikku also told Ms. Aguon that CNMI Travel's available balance
6 was only \$64,545.21. Ms. Aguon told Ms. Kikku that "the amount of \$20,000.00
7 was being deposited" in order "to cover the scheduled AIRS draw." Ms. Kikku
8 replied, "OK." Banes Decl. ¶ 11; CNMI Travel's Interrogatory Response, No.
9 1, p.4 l. 1 - 11; Kikku Decl. ¶ 9.
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12 25. While Ms. Aguon did tell Ms. Kikku that there was going to be a
13 deposit, she did not tell her it was going to be a regular deposit drawn on a First
14 Hawaiian Bank ("FHB") account. *Id.*; Kikku Decl. ¶¶ 10, 14; Banes Decl. ¶ 17;
15 and, CNMI Travel's Response No. 1.
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18 26. Ms. Kikku understood the \$20,000.00 deposit was going to be cash or
19 its functional equivalent, such as a cashier's check or a BoG check, as holds are
20 not placed on such deposits. Kikku Decl. ¶ 25.
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23 27. Ms. Aguon also asked Ms. Kikku to contact her when the \$82,069.00
24 AIRS charge appeared. CNMI Travel Interrog. Response No. 1, p. 4; Kikku
25 Decl. ¶ 10.
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1 28. When Ms. Kikku left work on August 26, 2003, the AIRS debit had
2 not yet occurred. Kikku Decl. ¶ 11.

3
4 29. On August 26, 2003, a woman working for a carrier service deposited
5 at Bank of Guam a \$20,000.00 check payable to CNMI Travel and drawn on a
6 First Hawaiian Bank account on Guam. The check was deposited on Guam, not
7 Saipan. The teller told the courier that a hold would be placed on the deposit.
8 See Susan Rosario Affidavit, ¶¶ 2, 3.

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11 30. On August 27, 2003, Ms. Kikku came to work and, as part of her
12 normal work duties, she checked the log to see if any demands for payment had
13 been rejected. She noticed that CNMI Travel's account had a returned item--the
14 automatic debit from AIRS--which had come in during the night. Kikku Decl.
15 ¶ 12.

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18 31. On August 27, 2003, at about 10:30 a.m., Ms. Kikku called Ms. Aguon
19 (as she had promised to do) and told her that AIRS' attempted automatic draw
20 had been returned due to insufficient funds in CNMI Travel's account. Ms.
21 Aguon reminded Ms. Kikku of the \$20,000.00 deposit and faxed her a copy of
22 the deposit slip. CNMI Travel Interrogatory Response No. 1, p. 4, l. 16 - 22;
23 Kikku Decl. ¶¶ 13, 16 Exh. 2.; Banes Decl. ¶ 17, Exh. 6. The deposit slip
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1 indicated only that a deposit had been made; it did not show the deposit was
2 from a check drawn on First Hawaiian Bank. *Id.* Ms. Aguon asked Ms. Kikku
3 if the \$20,000.00 deposit would “take care of [the] AIRS’ report,” and Ms. Kikku
4 replied, “it should.” *Id. cf* Kikku Decl. ¶ 12.
5

6
7 32. Ms. Kikku then consulted the register log and saw that the \$20,000
8 deposit was from a check drawn on the First Hawaiian Bank and that a hold had
9 been placed on the deposit. The register did not show if the check was a cashier’s
10 check or a regular check. Kikku Decl. ¶ 14.
11

12
13 33. Bank of Guam then, through its own investigation, determined that
14 the \$20,000.00 deposit was from a check drawn on First Hawaiian Bank. In
15 keeping with Bank of Guam’s policy, the deposit would be posted to CNMI
16 Travel’s account but the proceeds would be “on hold” until the final payment
17 was made. Kikku Decl. ¶ 17; Tomokane Decl. ¶¶ 5 - 6.
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19
20 34. Because this routine hold had been placed on the First Hawaiian Bank
21 check, there were insufficient funds in the CNMI Travel account available to
22 pay AIRS on August 26, 2003.
23

24 35. CNMI Travel had no further contact with anyone from Bank of
25 Guam between August 28 and September 4, 2003.
26

1 36. In keeping with its customary business practices, the Bank of Guam
2 mailed a notice of insufficient funds to CNMI Travel on August 28, 2003, at
3 approx. 11:00 a.m. Aguon Depo., Exh. 29; Banes Decl. ¶ 18.

4
5 37. The proceeds of the First Hawaiian Bank check cleared on August 29,
6 2003. Kikku Decl. ¶ 21.

7
8 38. CNMI Travel learned of the failed AIRS remittance by at least
9 September 4, 2003. Aguon Depo., p. 103.

10
11 39. CNMI Travel admitted that its failure to pay remittances to AIRS
12 after August 26, 2003 were not caused by any error by Bank of Guam.
13 Plaintiffs' Proposed Findings of Fact, ¶ 97.

14
15 40. CNMI Travel did not give a copy of the AIRS Agreement to the Bank
16 of Guam. CNMI Travel also never told anyone at the Bank, prior to September
17 10, 2003, that if the August 26, 2003, AIRS debit was dishonored, AIRS could
18 terminate CNMI Travel's contract. Banes Decl. ¶ 12; Tomokane Decl. ¶ 16;
19 Kikku Decl. ¶ 19.

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21 41. AIRS did not have any communications with BoG related to CNMI
22 Travel between January 1, 2003, and September 11, 2003. Banes Decl. ¶ 6.
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1 42. The hold placed on the First Hawaiian Bank check was prudent
2 business policy, done to protect the Bank from potential loss if the check
3 “bounced.” The hold was consistent with the CNMI Travel’s deposit
4 agreement. Tomokane Decl. ¶ 6.
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7 43. There is absolutely no evidence that the hold was placed on the check
8 as part of a conspiracy to destroy CNMI Travel or to cause AIRS to terminate its
9 contract with CNMI Travel. Tomokane Decl. ¶ 16; Kikku Decl. ¶ 24.
10

11 44. Bank of Guam’s decision to put a hold on the check was consistent
12 with the deposit agreement and the Bank’s policy, and was not due to any desire
13 to injure CNMI Travel. Kikku Decl., ¶ 25; Tomokane Decl. ¶¶ 7, 16; Quitugua
14 Decl., ¶ 3.
15

16
17 45. CNMI Travel admitted that Bank of Guam did not lie to it or
18 intentionally give wrong information to it. CNMI Travel agreed that Ms.
19 Kikku was “trying her best to help and assist” and that Bank of Guam made an
20 “honest mistake.” Banes Decl., ¶ 9.
21

22
23 46. CNMI Travel intentionally defaulted on its September 9, 2003,
24 payment to AIRS. Although not dispositive of this motion, this failed payment
25 provided another, independent reason for AIRS to terminate its contract with
26

1 CNMI Travel. Plaintiffs' Proposed Findings of Fact, ¶¶ 68 - 70, 77 - 79, and 104
2 - 106.
3

4 47. On September 10, 2003, Marcie Tomokane, the Saipan Branch
5 Manager of the Bank of Guam, met with CNMI Travel and was asked to write a
6 letter stating the August 25, 2003, dishonor was due to bank error. Tomokane
7 Decl. ¶ 9; CNMI Travel Interrogatory Response No. 1, p. 6.
8

9 48. Ms. Tomokane stated she would need to conduct further
10 investigation. *Id.*
11

12 49. On September 11, 2003, AIRS learned that CNMI Travel had also
13 defaulted on its required September 9th payment. Plaintiffs' Proposed Findings
14 of Fact, ¶ 81.
15

16 50. Also on September 11, 2003, Ms. Tomokane wrote a letter to CNMI
17 Travel stating that after her investigation she had concluded that there had been
18 no bank error. Tomokane Decl. ¶ 14; CNMI Travel Interrogatory Response
19 No. 1, p. 7.
20

21 51. AIRS could also have terminated its contract with CNMI Travel
22 because of CNMI Travel's failure to pay the September 9, 2003, remittance.
23 Banes Decl., ¶ 4.
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1 52. AIRS terminated its contract with CNMI Travel on September 12,
2 2003. Plaintiffs' Proposed Findings of Fact, ¶ 75.

3
4 53. Although not dispositive of this motion, each of the following
5 remittances were dishonored by the Bank of Guam because CNMI Travel had
6 insufficient funds in the designated Bank of Guam account on the settlement
7 date: the February 24, 2003, remittance of \$18,856.56; the July 22, 2003,
8 remittance of \$40,408.71; the August 25, 2003, remittance of \$82,069.00; the
9 September 8, 2003, remittance of \$56,645.27; the September 15, 2003, remittance
10 of \$53,635.10; the September 22, 2003, remittance of \$50,867.92; and, the
11 September 29, 2003, remittance of \$32,309.26. Plaintiffs' Proposed Findings of
12 Fact, ¶ 45.

13
14 54. CNMI Travel acknowledges that each of the other six dishonored
15 remittances of 2003 was due to insufficient funds in its Bank of Guam account.
16 Plaintiffs' Proposed Findings of Fact, ¶ 97.

17
18 55. The AIRS contract provided that CNMI Travel could apply for
19 reinstatement as an agent after one year, with no requirement that the Bank of
20 Guam provide a letter. Banes Decl., ¶¶ 4 - 5. CNMI Travel has failed to so
21 apply. *Id.*

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Conclusions of Law

1. Absent a special relationship, which was not present here, banks do not owe a fiduciary duty to their customers; the relationship is merely contractual. *See e.g. COBANK, ACB v. Reorganized Farmers Cooperative Assoc.*, 334 F.Supp.2nd 1273, 1277 (D.Kan. 2004) (a normal creditor-borrower relationship does not rise to the level of a fiduciary relationship); *Call v. Ellenville Nat'l Bank*, 774 NYS2nd 76, 78 (S.Ct.App.Div.2nd Dept. 2004). There was no breach of fiduciary duty and judgment is granted to Bank of Guam on the fourth claim for relief.²

2. The contract between Bank of Guam and CNMI Travel consisted of the signature card and related deposit agreements. At all times the Bank of Guam acted in full accordance with the terms of its contract with CNMI Travel and, because it did not have a fiduciary duty to CNMI Travel, Inc., it was not improper for the Bank to place a hold on the personal, off-island check drawn on a different bank. Manifestly, the funds were made available to CNMI Travel within a commercially reasonable time. 5 N.Mar.I. Code § 4 - 213 (the Uniform Commercial Code, as adopted in the Commonwealth). There was no breach of

²

The first, second, and third claims for relief were against AIRS, only.

1 the contract and judgment is granted to Bank of Guam on the fifth claim for
2 relief.

3
4 3. Likewise, Bank of Guam did not violate its implied covenant of good
5 faith and fair dealing because it did nothing to prevent CNMI Travel from
6 receiving the benefits and protections available to it under their contract. *See e.g.*
7 Wells Fargo Bank v. Arizona Laborers, et al., 38 P.3d 12, 28 (S.Ct. Ariz. 2002)
8 (*en banc*). Judgment is granted to Bank of Guam on the fifth claim for relief on
9 this ground, as well.
10
11

12 4. Bank of Guam did not wrongfully dishonor the August 26, 2003, debit
13 because it was not properly payable due to insufficient funds in CNMI Travel's
14 account at the scheduled time the debit was due to be made. 5 N.Mar.I. Code §
15 4 - 401. Judgment is granted to Bank of Guam on claim for relief seven.
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17

18 5. CNMI Travel utterly failed to present any evidence that Bank of Guam
19 intentionally interfered with the existing AIRS-CNMI Travel contract or any
20 prospective business relationship with AIRS, and the CNMI does not recognize
21 the tort of negligent interference with contract. Lucky Dev. Co., Ltd. v. Tokai
22 USA, Ltd., 3 NMI Rptr. 379 (1992) (the tort of negligent interference with
23 contract has not been adopted by the Restatement of Law and, hence, the
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1 Commonwealth). Judgment is entered in favor of Bank of Guam on claims for
2 relief six, eight, and nine.
3

4 6. There was no evidence presented by CNMI Travel that Bank of Guam
5 made any negligent or fraudulent misrepresentations and judgment is entered in
6 its favor on the tenth and eleventh claims for relief.
7

8 7. Commonwealth law does not recognize a claim for violation of the
9 Consumer Protection Act between contracting parties based on conduct which
10 merely constitutes breach of contract. 4 N.Mar.I. Code §§ 5103(a), 5104(b),
11 5105, and 5112(a); La Mode, Inc. v. Wang Tai Ent. (Int'l) Dev. Ltd., Order
12 Granting Defendants' Motion to Strike (DNMI Civ. No. 99-0023 May 18, 2000).
13 Judgment is granted in favor of Bank of Guam on the twelfth claim for relief.
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17 8. Because evidence outside the pleadings was presented, summary
18 judgment, rather than judgment on the pleadings, is granted in favor of Bank of
19 Guam on CNMI Travel's thirteenth and fourteenth claims for relief, which are
20 based on the Expedited Funds Availability Act. Relevant portions of that Act
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1 do not apply to Guam or the Commonwealth of the Northern Mariana Islands.

2 12 Code of Federal Regulations part 229, §§ 10 - 30, 43(a).

3
4 FOR THE FOREGOING REASONS, and as set out above, Bank of
5 Guam's motion for summary judgment is granted in all respects. Bank of Guam
6 is awarded its costs. 28 U.S.C. § 1920; Fed.R.Civ.P. 54(d)(1).
7

8 IT IS SO ORDERED.

9 DATED this 26th day of January, 2005.
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14 ALEX R. MUNSON
15 Judge
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