

Case Register..... Umatilla Co Circuit Court Status Open
Case#..... CVH120083 Oregon Hay Products Inc/Community Bank
Civil Money Action

Case Filed Date..... 4/11/12 Starting Instrument.. Complaint
Case Started Date... 4/11/12 Originating From..... Original filing
At Issue Date..... Previous Court.....
First Setting Date.. Previous Court Case#.
Trial Scheduled Date Master Case Number...
Trial Start Date.... Relation to Master...
Length of Trial..... Amount Prayed for.... \$223,500.00
Disposition Date.... Termination Stage....
Final Order Date.... Termination Type.....
Reinstated Date.....

Judgment Type.....
Judgment Status.....
Judgment Volume/Page.

ROLE	PLAINTIFF	ATTORNEY
1 Plaintiff	Oregon Hay Products Inc	Cahn Bruce H

ROLE	DEFENDANT	ATTORNEY
1 Defendant	Community Bank	Criswell David W

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
1 4/11/12	4/11/12	Complaint not sub to mand arbitration djh			
2 5/01/12	4/30/12	Service/Acceptance of David Criswell *service date may not be correct* DEF 1 Community Bank PRV 2 Criswell David W 4/20/11 Accepted & Acknowledged Related event # 1			
3 6/05/12	6/04/12	Answer Affirmative Scheduled DEF 1 Community Bank PRV 2 Criswell David W Related event # 1 Cancelled	6/05/12		RDY
4 7/19/12	7/19/12	Hearing Scheduled To discuss aspects of the case that impact trial and pre trial schedule. Related event # 5	8/23/12	9:30 AM	CTR
5 7/19/12	7/19/12	Notice Hearing			
6 8/13/12	8/09/12	Order court's civil pre-trial orders 8/09/12 Signed JUD 1 Hill Daniel J			
7 8/23/12	8/23/12	Hearing #5;09:29-09:37;aty Ryan &			

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		Schroder by phone; motions to be filed by 1/1/13, response by 2/1/13; further ptc hg 1/11 13 @ 8:15a to discuss setting of motions and possible trial			
		PTF 1 Oregon Hay Products Inc			
		DEF 1 Community Bank			
		JUD 1 Hill Daniel J			
8	8/23/12	8/23/12 Hearing Pre-trial C Scheduled	1/11/13	8:15 AM	CTR
		to set any pending motions and possibly setting of trial dates			
		Related event # 9			
		1/02/13 Cancelled			
9	8/23/12	8/23/12 Notice Hearing			
10	9/06/12	9/04/12 Stipulated Orders			
		stipulated protective order			
		PTF 1 Oregon Hay Products Inc			
		DEF 1 Community Bank			
		PRV 1 Roy David P			
		PRV 2 Criswell David W			
		9/04/12 Stipulated			
		JUD 1 Hill Daniel J			
11	12/26/12	12/26/12 Affidavit			
		of Margaret E. Schroeder in support of unopposed motion and order extending motions deadline to March 1, 2013			
		PTF 1 Oregon Hay Products Inc			
		PRV 1 Roy David P			
12	1/03/13	12/28/12 Order			
		with unopposed motion and order extending motions deadline to March 1, 2013			
		PTF 1 Oregon Hay Products Inc			
		PRV 1 Roy David P			
		12/27/12 Granted			
		JUD 1 Hill Daniel J			
		Related event # 11			
13	1/08/13	1/08/13 Hearing Pre-trial C Scheduled	3/22/13	8:15 AM	CTR
		to set any pending motions and possibly setting of trial dates			
		Related event # 14			
14	1/08/13	1/08/13 Notice Hearing			
15	1/15/13	1/08/13 Substitution of Attorney			
		PTF 1 Oregon Hay Products Inc			
		PRV 3 Cahn Bruce H			
16	3/01/13	3/01/13 Motion Summary Judgment			
		and memorandum in support			
		Oral Argument request			
		expected hearing length: 45 minutes telecommunication requested:			
		PTF 1 Oregon Hay Products Inc			
		PRV 3 Cahn Bruce H			
17	3/01/13	3/01/13 Declaration			
		of Gary Frederickson in			

ENTER DT	FILE DT	EVENT/FILING/PROCEEDING	SCHD DT	TIME	ROOM
		support of plaintiffs motion4 for summary judgment PTF 1 Oregon Hay Products Inc PRV 3 Cahn Bruce H Related event # 16			
18	3/01/13	3/01/31 Declaration of Pamela L. Kuns in support of plaintiff's motion for summary judgment PTF 1 Oregon Hay Products Inc PRV 3 Cahn Bruce H Related event # 16			
19	3/01/13	3/01/13 Declaration of Lance James in support of plaintiff's motion for summary judgment PTF 1 Oregon Hay Products Inc PRV 3 Cahn Bruce H Related event # 16 ***** END OF DATA *****			

2012 APR 11 PM 2:09

CLERK OF DISTRICT COURT

BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF UMATILLA

OREGON HAY PRODUCTS, INC., an
Oregon corporation,

Plaintiff,

v.

COMMUNITY BANK, an Oregon chartered
commercial bank,

Defendant.

Case No.

CVH120083

COMPLAINT

(Violation of ORS 74A.2010 *et seq.*)

Amount of Claim: \$223,500

Demand for Jury Trial

**NOT SUBJECT TO
MANDATORY ARBITRATION**

Plaintiff Oregon Hay Products, Inc., for its Complaint against defendant
Community Bank, alleges as follows:

THE PARTIES

1.

Plaintiff Oregon Hay Products, Inc. ("Oregon Hay") is now, and at all relevant
times has been, an Oregon corporation duly organized under the laws of the state of Oregon,
in good standing, and registered to do business in Oregon with its principal place of business
in Boardman, Oregon.

1 2.

2 Defendant Community Bank is now, and at all relevant times has been, an
3 Oregon chartered commercial bank with its principal place of business in Joseph, Oregon.

4 **GENERAL ALLEGATIONS**

5 3.

6 Oregon Hay buys and sells alfalfa and hay for shipping overseas to customers
7 located in the Pacific Rim.

8 4.

9 At all material times herein, Oregon Hay banked with Community Bank at
10 Community Bank's North Hills Branch Office located in Hermiston, Oregon.

11 5.

12 On or about September 14, 2009, two Community Bank representatives from
13 Community Bank's North Hills Branch Office visited Oregon Hay's office to market
14 Community Bank's online banking services. Oregon Hay agreed to enroll in online banking
15 with Community Bank and elected to impose a \$75,000 limit on all wire transfers.

16 6.

17 In order to access its bank account online, Oregon Hay was instructed to select
18 a security password and a separate wire transfer pin number.

19 7.

20 On information and belief, unknown and unauthorized parties made three
21 unauthorized wire transfers totaling \$223,500 on three consecutive days beginning on
22 September 1, 2010, each in an amount just under Oregon Hay's \$75,000 limit for wire
23 transfers, from Oregon Hay's checking account to JSC ASTRA BANK in Kiev, Ukraine,
24 specifically:

- a. \$74,800 on September 1, 2010 to JSC ASTRA BANK;
- b. \$74,500 on September 2, 2010 to JSC ASTRA BANK; and
- c. \$74,200 on September 3, 2010 to JSC ASTRA BANK.

8.

All three of these unauthorized wire transfers originated from IP addresses that Oregon Hay had never used before.

9.

These unauthorized transactions were discovered by Oregon Hay on September 14, 2010 when it attempted to access its bank account online and was unable to do so. Oregon Hay promptly notified Community Bank about the unauthorized transfers the same day. A copy of Oregon Hay's written notice letter to Community Bank on September 14, 2010 is attached hereto as Exhibit 1.

10.

Despite the fact that only minimal wire transfers had previously been initiated from Oregon Hay's account, none of which were to JSC ASTRA BANK, the Ukraine, or anywhere near the \$75,000 limit, Community Bank never contacted Oregon Hay to confirm that the unusual wire transfer activity from its account was in fact authorized by Oregon Hay.

11.

Oregon Hay's account was charged \$223,500 for the full amount of the unauthorized wire transfers.

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12.

Oregon Hay's attorney sent a letter to Community Bank on July 21, 2011 notifying Community Bank that Oregon Hay would file a lawsuit against Community Bank unless Community Bank agreed to repay to Oregon Hay the \$223,500 of Oregon Hay's money that Community Bank failed to protect in Oregon Hay's account at Community Bank.

FIRST CLAIM FOR RELIEF

(Violation of ORS 74A.2010 *et seq.*)

13.

Oregon Hay realleges and incorporates by reference the allegations in paragraphs 1 through 12 above as though fully set forth herein.

14.

As described above, on September 1, 2010, September 2, 2010, and September 3, 2010, Community Bank received fraudulent wire transfer instructions from the perpetrators who infiltrated Oregon Hay's accounts.

15.

These wire transfers and transfers of funds between accounts were not authorized by Oregon Hay or its agents.

16.

The wire transfers described in paragraph 7 above were not effective as payment orders of Oregon Hay under ORS 74A.2020(2) in that the security procedures used by Community Bank were not a commercially reasonable method of providing security against unauthorized payment orders or wire transfers for a number of reasons, including but not limited to the following:

.....

1 (a) Community Bank failed to act promptly to alert Oregon Hay when
2 wire transfers were initiated from different IP addresses that Oregon Hay had never used
3 before;

4 (b) Community Bank failed to act promptly to alert Oregon Hay when
5 unusual wire transfers were initiated of a size, type, and frequency unlike those normally
6 issued by Oregon Hay;

7 (c) Community Bank failed to detect and prevent the fraudulent wire
8 transfers even though three large wire transfers were initiated on three consecutive dates
9 when:

10 (i) Oregon Hay had only initiated eight wire transfers on its own
11 in the one year period between when it first started using Community Bank's online banking
12 services and the date of the three fraudulent wire transfers in September 2010; and

13 (ii) The wire transfers were originated from IP addresses that
14 Oregon Hay had never before used;

15 (iii) The wire transfers sent the funds to a bank account in Kiev,
16 Ukraine to which Oregon Hay had never before transferred funds; and

17 (d) Community Bank knew that Oregon Hay had only initiated eight wire
18 transfers online in the year prior to September 2010 and thus transaction verification with
19 respect to Oregon Hay would not have been a burden to Oregon Hay or Community Bank.

20 17.

21 The wire transfers referenced above were not effective as payment orders of
22 Oregon Hay under ORS 74A.2020(2), as Community Bank did not accept the payment orders
23 issued on September 1, 2010, September 2, 2010, and September 3, 2010 in good faith.

24

18.

Community Bank's security procedures lacked commercial reasonableness, and Community Bank cannot prove that it acted in good faith and in accordance with the parties' written agreement and is therefore liable to Oregon Hay for Oregon Hay's losses from the hacking attacks that occurred on September 1, 2010, September 2, 2010, and September 3, 2010.

19.

As a result of the hacking attacks that occurred on September 1, 2010, September 2, 2010, and September 3, 2010, Oregon Hay's accounts have been improperly charged by Community Bank and Oregon Hay has been damaged in an amount to be proven at trial, but currently estimated at \$223,500.

20.

The date and amount of damage is readily ascertainable and Oregon Hay is entitled to prejudgment interest from the date of the damage until entry of judgment pursuant to ORS 74A.5060.

21.

Plaintiff hereby demands a jury trial.

WHEREFORE, plaintiff Oregon Hay Products, Inc. prays for judgment against defendant Community Bank as follows:

1. For monetary damages in an amount to be proven at trial, but currently estimated at \$223,500;

2. For pre-judgment interest from the date of loss until entry of judgment pursuant to ORS 74A.5060;

.....

- 1 3. Post-judgment interest at the statutory rate of 9% from the entry of
2 judgment until paid in full;
3 4. For plaintiff's costs and disbursements;
4 5. For prevailing party fees as provided by statute;
5 6. For such other relief as the Court finds just and equitable.

6 DATED this 10th day of April, 2012.

7 BLACK HELTERLINE LLP

8
9 By: Margaret E. Schroeder
10 David P. Roy, OSB No. 763178
11 Margaret E. Schroeder, OSB No. 025748
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18 Trial Attorney: Margaret E. Schroeder
19 OSB No. 025748
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OREGON HAY PRODUCTS, INC.

P.O. BOX 109

BOARDMAN, OR. 97818

541-481-2822 or 541-481-3030 fax

Community Bank
N. Hill Branch
50 E. Theatre Lane
Hermiston, OR 97838

Sept. 14, 2010

We hereby give notice that 3 unauthorized transactions totaling \$223,500.00 were made from our checking account. The transactions occurred in 3 consecutive days:

9/1/10 \$74,800.00 to JSC ASTRA BANK, Ref# 901100001, Routing# 04439424
9/2/10 \$74,500.00 to JSC ASTRA BANK, Ref# 902100001, Routing# 04439424
9/3/10 \$74,200.00 to JSC ASTRA BANK, Ref# 903100001, Routing# 04439424


These transactions were discovered in our on-line checking account activity on Sept. 14, 2010, by employee Pamela Kuns.

When Pamela attempted to log into the account, it would not accept the password. She phoned the North Hill Branch, where the bank employee, Kayla, re-set the login password for on-line banking. After Pamela re-logged in with the new temporary password, she changed the password, and then tried to access Cash Manager, where the User Id was accepted, but the password was not. Pamela again called and asked for this password to be re-set. After again logging in and using the new temporary password, Pamela then changed to a new password and was able to gain access to the account. She immediately recognized an error in the checking balance and investigated the account transactions where the 3 suspicious wires were discovered. She immediately called the branch to report the errors and to seek more information. The resulting information as of Sept. 14, 2010 was unclear as to who received the funds.

The company has no record of these amounts owed to any vendor or outside interest. Minimal wires are initiated from this account, but ACH payments are on-going. The last wire transfer was made in August to a Canadian account, but not thru on-line services, only thru direct communication with the branch.

We are waiting for assistance from Community Bank to help resolve this situation and recoup the loss of funds.

Sincerely,



Gary Frederickson, Owner