

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RICHARD W. VAGUE,	§	
	§	No. 511, 2003
Plaintiff Below,	§	
Appellant,	§	
	§	
v.	§	Court Below:
	§	Court of Chancery
BANK ONE CORPORATION,	§	of the State of Delaware
	§	in and for New Castle County
Defendant Below,	§	C.A. No. 18741-NC
Appellee.	§	

Submitted: February 24, 2004  
Decided: May 20, 2004

Before **BERGER, STEELE** and **JACOBS**, Justices.

ORDER

This 20<sup>th</sup> day of May, 2004, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Richard W. Vague appeals from a decision of the Court of Chancery granting summary judgment to Bank One Corporation. The trial court held that Vague's reliance on Bank One's misrepresentations concerning the exercise date for certain stock options was unreasonable as a matter of law, and that Bank One had no obligation to "cure" its misrepresentations by alerting Vague to the change in exercise date. We conclude that the reasonableness of Vague's reliance is a question of fact that requires a trial. Accordingly, we reverse.

2) Vague, who was Chief Executive Officer of First USA, Inc. (FUSA) from 1992 - 1999, was granted the disputed stock options in 1995 and 1996. A few years later, Bank One acquired FUSA. When Vague decided to retire in 1999, he inquired about his severance package and stock options. Clinton W. Walker, then general counsel of Bank One's FUSA unit, checked with the Human Resource Manager, and reported to Vague's accountant that Vague would have 3-5 years to exercise his options, depending on the specific grant. Bank One's option administrator sent Vague a summary as of December 30, 1999, that showed expiration dates in 2005 and 2006.

3) The information Walker gave to Vague, and the information provided in the December summary, was incorrect. Although summaries sent to Vague in March and June 2000 showed the correct exercise deadline of August 21, 2000, Vague did not review those summaries. Only after the deadline had passed did Vague learn that the options had expired. As a result of the options expiring, Vague suffered a loss in excess of \$5 million.

4) Whether Vague's claim sounds in fraud or negligent misrepresentation, he must establish that Bank One provided him false information and that he justifiably relied on the false information, thereby suffering damages.<sup>1</sup> The question of whether

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<sup>1</sup>*Gaffin v. Teledyne*, 611 A.2d 467, 472 (Del. 1992); *Steinman v. Levine*, 2002 WL 31761252, at \* 15 (Del. Ch.) *aff'd.*, 822 A.2d 397 (Del. 2003).

one's reliance was reasonable generally is a question of fact that cannot be determined on summary judgment.<sup>2</sup> The trial court recognized this general rule, but granted summary judgment because it was undisputed that Vague had been given accurate information in two mailings that he received before the expiration of the options.

5) The reasonableness of one's reliance on false information depends on all of the circumstances.<sup>3</sup> For purposes of this appeal, the facts establish that Vague relied on general counsel's representations, which were "confirmed" in writing by the first summary he received in January 2000. The later communications were quarterly statements that Vague had no reason to believe contained any new or different information. Vague was a departing Chief Executive Officer, who was relying on the bank's general counsel to give him accurate information involving millions of dollars. Under these circumstances, we cannot say as a matter of law that it was unreasonable of Vague to expect that Bank One would notify him directly of any change in the option expiration dates.

6) There are additional facts that will bear upon the final decision as to the reasonableness of Vague's reliance, including unanswered questions about Bank One's apparent failure to provide him the official benefits package that he was told he

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<sup>2</sup>*Wilmington Trust Co. v. Aetna Cas. & Sur.*, 690 A.2d 914, 916 (Del. 1996).

<sup>3</sup>*Darnell v. Myers*, 1998 WL 294012 at \*5-6 (Del. Ch.)

would receive. While we do not express any views on the ultimate decision, we are satisfied that this case should be decided on the merits after trial.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is, REVERSED. This matter is remanded for further action in accordance with this Order. Jurisdiction is not retained.

By the Court:

/s/ Carolyn Berger  
Justice