

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

DEBRA VALDEZ,
Plaintiff and Appellant,

v.

BANK OF AMERICA, NATIONAL
ASSOCIATION,
Defendant and Respondent.

A131384

(San Francisco City & County
Super. Ct. No. CGC-09-493440)

Debra Valdez sued defendant Bank of America, National Association (Bank), for alleged wrongful termination by the Bank in 2009. She appeals from a summary judgment in the Bank’s favor, in which the trial court ruled two of Valdez’s four causes of action were preempted by the National Bank Act,¹ because undisputed evidence showed she had been an “officer” of the Bank while employed there. Valdez claims the court erred in making this determination. We conclude after a de novo review that Valdez was, in fact, an officer of the Bank—within the meaning of the National Bank Act—for a number of years prior to her termination. Accordingly, we affirm the judgment.

BACKGROUND

Valdez worked for the Bank for over 29 years prior to the Bank’s termination of her employment on February 20, 2009. At the time of her termination, she had worked for a number of years in the position of “Teller Operations Specialist.”

¹ 12 U.S.C. § 21 et seq. (See 12 U.S.C. § 38.)

Valdez filed a complaint against the Bank in October 2009. She pleaded four causes of action for damages: (1) breach of an express contract entitling Valdez to severance pay; (2) breach of the implied covenant of good faith and fair dealing, in that the Bank terminated Valdez’s employment on grounds of poor performance in order to avoid giving her severance pay; (3) breach of an implied contract limiting the Bank’s right to terminate her employment for good cause only; and (4) defamation because Valdez was subsequently forced to publish the Bank’s stated reason for her termination—that her poor performance had caused the Bank to lose trust and confidence in her.

Following discovery proceedings, the Bank filed a motion seeking summary judgment or summary adjudication as to all four causes of action. Among other grounds stated, the Bank contended Valdez’s third and fourth causes of action—for breach of an implied contract to terminate only for good cause and for defamation—were preempted by the National Bank Act, because undisputed evidence showed Valdez had been an “officer” of the Bank within the meaning of section 24 of the Act. (See 12 U.S.C. § 24, Fifth.)

On December 28, 2010, the trial court granted the Bank’s motion, ruling in part Valdez’s third and fourth causes of action were preempted by the National Bank Act as a matter of law.² Subsequently, the court entered judgment in the Bank’s favor and Valdez initiated this appeal. (See Code Civ. Proc., § 437c, subd. (m)(1).)

DISCUSSION

A. *Standard of Review*

We review a grant of summary judgment independently. (*Knight v. Hayward Unified School Dist.* (2005) 132 Cal.App.4th 121, 128; see *Kolodge v. Boyd* (2001) 88 Cal.App.4th 349, 355–356.) Summary judgment is proper “if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is

² The trial court granted summary judgment as to the first and second causes of action on the ground that undisputed evidence showed there was no express contract entitling Valdez to severance pay, and she was not entitled to severance pay in any event because her job had not been eliminated. Valdez’s appeal does not challenge this portion of the ruling.

entitled to a judgment as a matter of law” (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*)). A defendant seeking summary judgment must thus establish that one or more essential elements of the plaintiff’s cause of action cannot be established or there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 850; see also *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.)

B. Preemption of State Causes of Action Under the National Bank Act

Section 24 of the National Bank Act provides, among other things, that National Banks have the power “[t]o elect or appoint directors, and by its board of directors to appoint a president, vice president, cashier, *and other officers*, define their duties, . . . *dismiss such officers or any of them at pleasure*, and appoint others to fill their places.” (12 U.S.C. § 24, Fifth, italics added.) It is well established that this provision of the National Bank Act preempts all state law causes of action by a bank “officer” for breach of an employment agreement. (*Wells Fargo Bank v. Superior Court* (1991) 53 Cal.3d 1082, 1087–1088 (*Wells Fargo*)).

The Supreme Court in *Wells Fargo* listed four requirements to establish an individual is a bank officer for purposes of the National Bank Act preemption. These require that: (1) the employee “holds an office created by the board of directors and listed in the bank’s bylaws;” (2) the employee “is appointed by the board of directors, either directly or pursuant to a delegation of board authority set forth in the bylaws;” (3) the employee “has the express legal authority to bind the bank in its transactions with borrowers, depositors, customers, or other third parties by executing contracts or other legal instruments on the bank’s behalf;” and, (4) the employee’s “decision making authority, however it might be limited by bank rule or policy, relates to fundamental banking operations in such a manner as to affect potentially the public’s trust in the banking institution.” (*Wells Fargo, supra*, 53 Cal.3d at p. 1091.) “If a particular bank employee holds a position possessing these features, he or she may be viewed as the bank itself in the eyes of third parties [and he or she] is an ‘officer’ [who] serves at the pleasure of the board of directors.” (*Ibid.*)

C. Applying the Wells Fargo Preemption Analysis

Valdez contends she did not possess the third and fourth requirements of a bank officer articulated in *Wells Fargo*,³ and thus her state law causes of action for wrongful termination and defamation were not preempted by the National Bank Act. Valdez argues, in effect, the Bank's evidence failed to establish, as a matter of law, either that she had "express legal authority to bind the bank in its transactions with borrowers, depositors, customers, or other third parties by executing contracts or other legal instruments on the bank's behalf," or that she had "decision making authority . . . relat[ing] to fundamental banking operations in such a manner as to affect potentially the public's trust in the banking institution." (*Wells Fargo, supra*, 53 Cal.3d at p. 1091.)

Valdez characterizes her position as Teller Operations Specialist as not "materially different" from the position of a bank teller, and cites to dictum in *Wells Fargo* in which the court observed "bank employees such as janitors, tellers, or others *who do not hold offices or enjoy the requisite authority to deal with third parties on the bank's behalf* do not fall within the scope of section 24" of the National Bank Act. (*Wells Fargo, supra*, 53 Cal.3d at p. 1094, italics added.) She points to her own opposing declaration, in which she stated she spent about 60 percent of her time performing duties as a "regular teller," and "was not allowed to bind the bank with anyone outside it." As such, she urges her position was *not* analogous to that of a bank branch manager, a position that the court in *Wells Fargo* concluded was one that potentially "could affect the integrity of the bank and the public trust reposed in it." (See *Wells Fargo, supra*, 53 Cal.3d at p. 1092, citing *Rutherford v. Rideout Bank* (1938) 11 Cal.2d 479, 484–485, and *Graddon v. Knight* (1956) 138 Cal.App.2d 577, 583.)

³ She concedes the Bank satisfied the first two criteria, that she held an office created by the bank's board of directors and listed in its bylaws, and that she was appointed to that office by the board either directly or through delegated authority set out in the bylaws. (*Wells Fargo, supra*, 53 Cal.3d at p. 1091.) Whereas Valdez worked in the position of "Teller Operations Specialist," she had additionally been appointed since 1982 as an "Authorized Officer"—an office created by the Bank's board of directors and listed in its bylaws.

We look not to plaintiff's title, but to the operating functions entrusted to her by the Bank. Turning to the evidence relevant to the issue whether Valdez was an "officer" of the Bank within the meaning of section 24 of the National Bank Act, we have already noted she was appointed to the Bank office of "Authorized Officer" in 1982, and performed this office thereafter during her tenure as a Teller Operations Specialist. (See fn. 3, *ante*.) As an "Authorized Officer" Valdez had authority to engage in certain transactions with customers, including signing cashier checks up to \$100,000, approving deposits up to \$100,000, and approving wire transfers up to \$100,000. She also had authority to approve overdrafts. Although Valdez testified she never used this authority, she conceded that it involved "lending authority" or, practically speaking, an extension of credit. Valdez additionally was authorized to waive holds on deposited funds—another transaction that effectively extended credit by granting immediate access to funds not ordinarily accessible. It was only during her last year of employment at the Bank that a policy change limited such authority to the branch manager. Even then, however, Valdez testified that she was the "person in charge" of the bank branch whenever the manager and assistant manager were absent, and at those times her authority was equal to the branch manager's. One of her duties was to coach and train the regular tellers. Because Valdez oversaw the operations of branch tellers and her approval limits exceeded that of tellers, she would often be called upon to approve customers' transactions, such as a deposit approval, when completion of the transaction exceeded the teller's authority limits. As one of the branch's "senior" officers, she took turns with others for the responsibility of opening or closing the branch. Valdez routinely dealt with customers who brought complaints to the branch. In connection with this responsibility, she testified at one point that customers were familiar with her as she had worked at one particular branch in Sunnyvale for over 10 years. She said "most of [the customers] thought I was the banking center manager because I was the one constant person there, so they would always come to me." For example, when a teller refused to override a hold on a deposit, Valdez testified that the customer "wanted to speak to me."

This evidence, mostly drawn from Valdez’s deposition testimony, was not disputed. The evidence establishes, as a matter of law, that in her capacity as Authorized Officer, Valdez had been given express authority “to bind the bank in its transactions with borrowers, depositors, customers, or other third parties by executing . . . legal instruments on the bank’s behalf.” (*Wells Fargo, supra*, 53 Cal.3d at p. 1091.) In our view, it similarly establishes that her “decision making authority, however it might be limited by bank rule or policy, relate[d] to fundamental banking operations in such a manner as to affect potentially the public’s trust in the banking institution.” (*Ibid.*) As Valdez herself conceded, branch customers regarded her as the “one constant person” at the branch, to whom they would turn when dissatisfied with the action of a regular teller. She came to be viewed, in other words, “as the bank itself in the eyes of third parties.” (*Ibid.*) As such, we conclude the trial court correctly determined Valdez’s third and fourth causes of action were preempted under the National Bank Act, because she was a Bank “officer” within the meaning of section 24 of the Act.⁴

⁴ In its responding brief, the Bank noted the trial court had *alternately* granted summary judgment on Valdez’s third and fourth causes of action, not because they were preempted by the National Bank Act, but because undisputed evidence precluded any relief on the merits of these claims. In her reply brief, Valdez somewhat belatedly challenges these alternate rulings. Because we conclude these causes of action were preempted by federal law, we deem it unnecessary to address the validity of the alternate rulings.

DISPOSITION

The judgment is affirmed.

Marchiano, P.J.

We concur:

Margulies, J.

Banke, J.