

<b>Valle v Popular Community Bank</b>
2017 NY Slip Op 03120
Decided on April 25, 2017
Appellate Division, First Department
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Decided on April 25, 2017

Friedman, J.P., Richter, Feinman, Gische, Gesmer, JJ.

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**[\*1]Josefina Valle, et al., Plaintiffs-Respondents,**

**v**

**Popular Community Bank formerly known as Banco Popular North America., etc.,  
Defendant-Appellant.**

Lupkin & Associates PLLC, New York (Andrew E. Nieland of counsel), for appellant.

Tusa, P.C., Southhold (Joseph S. Tusa of counsel), for respondents.

Order, Supreme Court, New York County (Anil C. Singh, J.), entered on or about February 18, 2016, which, to the extent appealed from, denied in part defendant's motion to dismiss the cause of action under General Business Law § 349, unanimously affirmed, without costs.

The complaint states a claim under General Business Law § 349 by alleging that defendant employed a deceptive and misleading consumer-oriented policy, not disclosed to plaintiff, of high-to-low reordering of ATM transactions that resulted in plaintiffs' being charged an additional overdraft fee on April 18, 2012 (*see Gaidon v Guardian Life Ins. Co. of Am.*, 94 NY2d 330, 344 [1999]; *Levin v HSBC Bank USA, N.A.*, 2012 NY Slip Op 33164[U], \*32-33 [Sup Ct, NY County 2012], [compare \*Feld v Apple Bank\*, 116 AD3d 549](#) [1st Dept 2014], *lv denied* 23 NY3d 908 [2014]). The claim is also properly supported by allegations that defendant provided plaintiffs with inaccurate balance information, often showing a positive balance when in fact their account balance was negative, and failed to provide real-time notice that a given transaction would overdraw the account, despite the feasibility of doing so, and that these practices also resulted in additional overdraft fees.

We have considered defendant's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 25, 2017

CLERK

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