

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION**

IN RE:

**BILL KENNY LUCKY II
ANGELA L. LUCKY**

CASE NO. 05-54625

ANGELA L. LUCKY

PLAINTIFF

v.

ADV. NO. 10-5085

KENTUCKY BANK

DEFENDANT

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND JUDGMENT IN FAVOR OF KENTUCKY BANK**

This matter came before the Court for hearing on Monday, February 28, 2011, on the Motion for Summary Judgment (Doc. 18) filed by Defendant Kentucky Bank against Plaintiff Angela L. Lucky. The Court has reviewed the record, including the Motion, Lucky's Response (Doc. 24), Kentucky Bank's Reply (Doc. 28), and the parties' joint stipulations of fact and admissibility of exhibits (Doc. 17, 23 and 25). The Court, having fully considered the record, briefs, arguments of counsel, and being otherwise sufficiently advised, hereby finds, orders and adjudges as follows:

Entry of a summary decision is proper if the pleadings, the discovery and disclosure materials on file, and any affidavits show there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. FED. R. CIV. P. 56, FED. R. BANKR. P. 7056. The initial burden of persuasion is with the movant, however, the opposing party cannot defeat the motion without presenting some affirmative evidence showing there is a genuine issue of material fact. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). A summary decision is proper "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will

bear the burden of proof at trial.” *Novak v. MetroHealth Medical Center*, 503 F.3d 572, 577 (6th Cir. 2007).

Examining all materials properly before the court in the light most favorable to Lucky, the record and evidence show there is no material dispute of fact to preclude summary judgment in favor of Kentucky Bank against Lucky.

The following facts are not disputed:

1. Lucky began her banking relationship with Kentucky Bank when Kentucky Bank acquired First Federal in Cynthiana.

2. Dr. Richard Riser has been Lucky’s primary family physician for at least ten years.

3. Lucky filed a petition under Chapter 13 of the Bankruptcy Code on October 10, 2005, which was assigned case number 05-54625.

4. Kentucky Bank received notice of the bankruptcy filing. Following entry of counsel’s December 9, 2005, notice of appearance (Doc. 23), Kentucky Bank received filings made in this case via CM/ECF.

5. Lucky maintained an account with Kentucky Bank.

6. On December 20, 2005, Kentucky Bank, through its outside counsel, filed a proof of claim in Lucky’s bankruptcy case which was assigned Claim Number 4-1.

7. Claim 4-1 contained Lucky’s social security number, full date of birth, checking account number and other information.

8. Lucky visited Dr. Riser on August 26, 2008, complaining she is “under a fair amount of stress...” (Joint Stipulations, Exhibit 8).

9. Lucky visited Dr. Riser on March 25, 2010, complaining of “a lot of stress and anxiety,” stating the symptoms have been coming on for the last one to one-and-a-half months, and stating it was affecting her relationship with her husband, mother and son. (Joint Stipulations, Exhibit 8).

10. On March 25, 2010, Dr. Riser prescribed prescription medication to treat Lucky’s stress and anxiety.

11. Lucky received a call from her bankruptcy counsel in late March 2010. On April 1, 2010, Lucky and her husband met with counsel who told her that Kentucky Bank had filed a proof of claim that included her social security number.

12. A motion to restrict public access to the Kentucky Bank proof of claim was filed by Lucky on July 2, 2010. The motion was granted on July 6, 2010.

13. Kentucky Bank received notice of both the motion to restrict and the order.

14. Neither Lucky, nor her bankruptcy counsel contacted Kentucky Bank to express concerns about Claim 4-1.

15. Kentucky Bank received notice of Lucky’s concerns about Claim 4-1 when the motion to restrict was filed.

16. Kentucky Bank amended Claim 4-1 on July 8, 2010.

17. Lucky filed this adversary proceeding on September 1, 2010.

18. The Complaint contains eight causes of action:

- a. First Cause of Action: Objection to the Kentucky Bank Proof of Claim (including a request that the claim be disallowed without permitting an amended or substituted claim)
- b. Second Cause of Action: Violation of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 – 6809
- c. Third Cause of Action: Contempt of Court for Violations of Federal District Court and Bankruptcy Court Orders and Policies

- d. Fourth Cause of Action: Contempt of Court for Violation of Federal Rule of Bankruptcy Procedure 9037
- e. Fifth Cause of Action: Invasion of Privacy and Intentional or Negligent Infliction of Emotional Distress
- f. Sixth Cause of Action: Violation of the Kentucky Consumer Protection Act
- g. Seventh Cause of Action: Breach of Contract

19. On January 31, 2011, Lucky filed joint stipulations of the parties (Doc. 17) which included an Authorization to Protect Health Care Information containing Lucky's full social security number and date of birth.

20. The joint stipulations contained transcripts of the Luckys' depositions which include their full dates of birth.

21. Kentucky Bank had no involvement in the filing of the Authorization to Protect Health Care Information.

22. On February 23, 2011, the Court entered an order restricting public access to the stipulations document (Doc. 30) pursuant to Lucky's motion filed February 21, 2011 (Doc. 29).

23. Lucky has not suffered an injury in fact due to the actions of Kentucky Bank.

24. Lucky has not suffered from any of the following: financial identity theft, criminal identity theft, identity cloning, business/commercial identity theft, or medical identity theft.

25. Since October 10, 2005, Lucky has applied for credit one time. In 2008 she applied for and received a Kohl's credit card.

26. Lucky has not been denied credit since October 10, 2005, the date of her bankruptcy filing.

27. Lucky has never been contacted about any debts that were not her debts.

28. Lucky has never been named in a lawsuit or threatened with a lawsuit regarding a debt that is not her debt.

29. Lucky has not obtained a credit report from any credit reporting agency or any other entity since April 2010.

Based on the findings and the legal authorities presented, the Court concludes as follows:

In the six non-tort causes of action, Lucky seeks damages for the filing of an unredacted proof of claim containing her social security number, among other personal information. A plaintiff will not have standing if the plaintiff lacks an “injury in fact.” *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2136 (1992) (an injury in fact is an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical). Lucky’s deposition testimony and the parties’ joint stipulations of fact state that Lucky is not aware of anyone viewing the private information before the claim was restricted or of any damage to her credit history or identity due to the bank’s unredacted filing.

One court examining the standing issue under facts similar to this case determined that the alleged disregard for the rules and orders of the court are an injury to the court and not to plaintiff. *In re Davis*, 430 B.R. 902, 906 (Bankr. D. Colo. 2010). The *Davis* court also determined the attorney fees incurred arise from plaintiff’s decision to bring an adversary proceeding instead of filing a motion, not from any act of the defendant. *Id.* at 907. The court continued, “the harm Plaintiff asserts is not ‘actual’ or ‘imminent,’ for there is no evidence that Plaintiff’s personal information has been accessed or misused by an unauthorized third party...” *Id.*

In this case, as in *In re Davis*, where a plaintiff cannot plead and show there is an injury in fact, the plaintiff lacks standing to bring the actions and summary judgment for the defendant is proper on that basis, alone.

In addition to the failure to establish standing, in six of the seven causes of action the cited statutes and rules do not create a private right of action for any plaintiff, including Lucky.

Each cause of action is addressed in turn.

OBJECTION TO THE PROOF OF CLAIM

In this cause of action Lucky asserts the Court should order the Kentucky Bank proof of claim stricken and the underlying debt discharged. (Complaint para. 24-28). The relief requested by Lucky cannot be granted as a matter of law under two distinct grounds.

First, Lucky's plan is completed and she was granted a discharge on August 13, 2010. (Order of Discharge, Case No. 05-54625, Doc. 59). The Kentucky Bank proof of claim, as amended, was allowed and paid in accordance with the Luckys' confirmed plan. (Trustee's Final Report and Account, Case No. 05-54625, Doc. 67). Disallowing the claim at this time would be a meaningless exercise.

Second, courts have consistently held a proof of claim may only be disallowed upon the nine statutory reasons enumerated in 11 U.S.C. § 502(b) of the Bankruptcy Code. *In re Lentz*, 405 B.R. 893, 897-98 (Bankr. N.D. Ohio 2009). Lucky has not premised her objection to the claim on 11 U.S.C. § 502(b).

Lucky cites FED. R. BANKR. P. 9037 as authority for this count. Courts are in agreement that neither 11 U.S.C. § 107(c) nor Rule 9037, both of which address privacy concerns in court papers, are intended to create private causes of action. *In re Barnhart*, 2010 WL 724703 (N.D. W. Va. 2010); *In re Lentz*, 405 B.R. 893 (Bankr. N.D. Ohio 2009); *In re French*, 401 B.R. 295, 306-07 (Bankr. E.D. Tenn. 2009). Rule 9037 also does not support disallowance of a proof of claim. *In re Chubb*, 426 B.R. 695 (Bankr. E.D. Mich. 2010) (violation of Rule 9037(a)(4) does not support the trustee's request to disallow proof of claim under § 502). A few courts, however,

have held offending creditors in contempt when supported by the facts. *In re Gregg*, 428 B.R. 345 (Bankr. D.S.C. 2009) (court entered order directing an amended and redacted filing and creditor did not comply). The facts in this case, however, do not support a contempt finding under Rule 9037.

The remedy for a violation of Rule 9037 is provided in subsection (d) of the Rule which allows the court, for cause, to require redaction of the offending information or limit access to the proof of claim. FED. R. BANKR. P. 9037(d); *In re French*, 401 B.R. at 307. Lucky asks the court to “disable” the proof of claim within PACER so that the claims are not available to the general public. (Complaint para. 28). Public access to the original claim was restricted in conjunction with the court’s entry of the order granting Lucky’s motion to restrict. This request for relief was moot when the Complaint was filed.

There are no legal grounds supporting the relief requested in this cause of action and judgment for Kentucky Bank is proper as a matter of law.

VIOLATION OF THE GRAHAM-LEACH-BLILEY ACT

In the second cause of action Lucky asserts that a violation of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801-6809, provides a basis for payment of damages by Kentucky Bank. (Complaint para. 29-36). The GLB Act obligates financial institutions to respect their customers’ privacy, and protect security and confidentiality of the customers’ nonpublic personal information. 15 U.S.C. § 6801(a). Courts consistently agree the GLB Act does not give rise to an actual or implied private cause of action. *Dunmire v. Morgan Stanley DW, Inc.*, 475 F.3d 956 (8th Cir. 2007); *In re Davis*, 430 B.R. 902 (Bankr. D. Colo. 2010); *In re Gjestvang*, 405 B.R. 316 (Bankr. E.D. Ark. 2009).

The relief requested in count two may not be granted as a matter of law. Therefore, Lucky cannot prevail under the second cause of action and judgment for Kentucky Bank is proper.

CONTEMPT OF COURT FOR VIOLATIONS OF FEDERAL
DISTRICT COURT AND BANKRUPTCY COURT ORDERS AND POLICIES

In the third cause of action Lucky alleges violations of federal district court and bankruptcy court policies and procedures adopted in accordance with the E-Government Act of 2002.¹ (Complaint para. 37-44). Additionally, Lucky alleges the court has inherent ability to enforce the court's orders and rules under 11 U.S.C. § 105.

Just as with the Gramm-Leach-Bliley Act, there is no private right of action for violations of the E-Government Act. *In re French*, 401 B.R. at 313.

Section 105 confers equitable powers on a bankruptcy court. This section provides a bankruptcy court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. The "title" referred to in this first sentence of § 105 is title 11, the Bankruptcy Code.

The bankruptcy court for the Northern District of Ohio discussed the application of § 105 under similar circumstances:

The language of § 105 does not, however, "confer on courts broad remedial powers." *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2000). "The provisions of this title denote a set of remedies fixed by Congress [and] a court cannot legislate to add to them." *Id.* The *Pertuso* court opined that § 105 does not itself create a private right of action, but may be invoked to *preserve a right elsewhere in the Code*. *Id.*; *In re Yancey*, 301 B.R. 861, 868 (Bankr. W.D. Tenn. 2003).

¹ Pub. L. No. 107-347, Title II, 2002 H.R. Rep. 2458 (Dec. 17, 2002).

In re Lentz, 405 B.R. at 900 (Emphasis supplied). Section 105 allows this court to preserve a right provided in the Bankruptcy Code. It does not allow this court to create a remedy under the E-Government Act.

There are no legal grounds supporting the relief requested in the third cause of action and judgment for Kentucky Bank is proper as a matter of law.

**CONTEMPT OF COURT FOR VIOLATIONS
OF BANKRUPTCY COURT RULES**

In the fourth cause of action Lucky asserts violations of Rule 9037, Federal Rule of Civil Procedure 5.2 and 11 U.S.C. § 105 provide a basis for relief. (Complaint para. 45-51).

As previously discussed, neither Rule 9037 nor § 105 provide legally sufficient grounds for the requested relief. The remedy for violations of Rule 9037 is redaction or limited access to the offending document, FED. R. BANKR. P. 9037(d), and § 105 does not give a bankruptcy court the power to create a private right of action. *In re Lentz*, 405 B.R. at 900.

Rule 5.2 of the Federal Rules of Civil Procedure governs privacy protections for documents filed with the court. The rule provides in pertinent part:

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) The last four digits of the social-security number and taxpayer-identification number;
- (2) The year of the individual's birth;
- (3) The minor's initials; and
- (4) The last four digits of the financial-account number.

...
(h) Waiver of Protection of Identifiers. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

Lucky filed joint stipulations of the parties which included her full social security number and date of birth. Even if Lucky were able to establish an injury in fact resulting from the filing of her social security number and other information, Kentucky Bank cannot be held responsible. By filing the joint stipulations which included her social security number and date of birth, and then waiting twenty-one days before moving to restrict public access, Lucky waived the privacy protections for her personal identifiers and would be unable to prove damages, if any were alleged, are attributable to the actions of Kentucky Bank rather than her own actions.

There is no private right of action for violations of either Rule 9037 or Rule 5.2 and § 105 does not allow this court to create such rights. Thus, there are no legal grounds supporting the relief requested in this cause of action and judgment for Kentucky Bank is proper.

INVASION OF PRIVACY AND INTENTIONAL OR
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

In the fifth cause of action Lucky seeks actual and punitive damages, legal fees and costs for mental and emotional anguish and distress allegedly caused by Kentucky Bank's commission of three distinct torts – invasion of privacy, intentional infliction of emotional distress and negligent infliction of emotional distress. (Complaint para. 52-60).

Invasion of Privacy

Invasion of privacy is a common law privacy tort. There are four separate theories under which a person may recover for an invasion of privacy: (1) intrusion upon seclusion of another, (2) appropriation of another's name or likeness, (3) unreasonable publicity given to another's private life, or (4) publicity that unreasonably places another in a false light before the public. *Barbo v. Kroger Co.*, 2007 WL 2350179, at *2 (W.D. Ky. 2007). While the Complaint is not clear as to what type of invasion is alleged, the arguments of counsel make it clear the theory alleged is an unreasonable publicity given to another's private life.

To establish a claim for invasion of privacy based on publicity given to private life, a plaintiff must prove: (1) publicity given to private information about plaintiff, (2) that is highly offensive to a reasonable person, and (3) the information is not of legitimate concern to the public. RESTATEMENT (SECOND) OF TORTS § 652D. This tort requires a communication that “reaches, or is sure to reach, the public.” *Id.* Liability does not attach for publicity given to information about the plaintiff that is already public or are matters of public record, like the date of birth, the fact of a marriage or pleadings filed in a lawsuit. *Id.* If the record is not open to the public there is an invasion of privacy when publication of the information is made. *Id.* The details of the private life must be those that have the capability to result in harm to a plaintiff’s reputation based on the publicity.

In her deposition Lucky stated she was unaware of anyone in the public viewing the personal information in the claim. (Doc. No. 17, Exhibit 5, p. 26). One who gives *publicity* to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, only if the matter is *publicized*... See RESTATEMENT (SECOND) OF TORT § 652D (Emphasis supplied). “The simple fact that all documents filed in a bankruptcy case file are technically ‘public records’ does not satisfy the ‘publicity’ element necessary to state a claim for invasion of privacy....” *In re French*, 401 B.R. at 318 (interpreting Tennessee invasion of privacy law which, like Kentucky law, is based on RESTATEMENT (SECOND) OF TORT § 652D).

Additionally, Lucky included her own social security number and date of birth in filing the joint stipulations. Lucky’s own public disclosure would make it impossible to determine the source of an injury, if an injury were to occur.

In the instant matter, Lucky admits she is not aware that anyone has accessed or obtained her social security number from the proof of claim. (Doc. No. 17, Exhibit 5, p. 26; Exhibit 7,

p.11). Lucky admits she has not been the victim of financial identity theft, criminal identity theft, identity cloning, business/commercial identity theft, or medical identity theft. (Doc. No. 17, p. 2, para. 15). Lucky has not been denied credit since the date of her bankruptcy filing and actually applied for and received a credit card in 2008. (*Id.* at para. 16-17).

The record contains no evidence indicating the unredacted claim was accessed by anyone other than her attorney, attorneys for Kentucky Bank, or court personnel. As such, Lucky has failed to allege facts in support a claim based on an invasion of privacy. There is no dispute that through her own actions and those of Kentucky Bank, Lucky's private information was publicly available, but evidence of the communication of the private information is lacking. No one in the public obtained the information or utilized the information to harm Lucky. Lucky cannot succeed on a claim based on an invasion of privacy and judgment for Kentucky Bank is proper as a matter of law.

Intentional Infliction of Emotional Distress

Kentucky courts have set a high threshold for claims based on intentional infliction of emotional distress. *Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781, 788 (Ky. 2004). The conduct at issue must be a "deviation from all reasonable bounds of decency and is utterly intolerable in a civilized community." *Craft v. Rice*, 671 S.W.2d 247, 250 (Ky. 1984). A defendant's conduct must be extreme and outrageous. *Id.* Acting with tortious or even criminal intent is not enough. *Stringer*, 151 S.W.3d at 789. "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member

of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’” *Id.*

The parties stipulated, and the medical records show, that on March 25, 2010, Lucky complained to her personal physician about “a lot of stress and anxiety” and symptoms present for the prior one to one and one-half months. (Doc. No. 17, p. 2, para. 8). At that time, Lucky considered herself to be “absolutely broken with stress and anxiety and emotionally distraught.” (Doc. No. 17, Exhibit 5, p. 34). Her physician prescribed medications to treat stress and anxiety more than one week before the April 1, 2010, meeting at which Lucky was made aware of the unredacted claim.

“It is for the court to decide whether the conduct complained of can reasonably be regarded to be so extreme and outrageous as to permit recovery.” *Goebel v. Arnett*, 259 S.W.3d 489, 493 (Ky. Ct. App. 2007) citing *Whittington v. Whittington*, 766 S.W.2d 73, 74 (Ky. Ct. App. 1989). The allegations against Kentucky Bank, even if true, do not establish conduct that gives rise to a claim under Kentucky law.

The record lacks evidence of a casual connection between the Kentucky Bank proof of claim and Lucky’s emotional distress. *Humana of Kentucky, Inc. v. Seitz*, 796 S.W.2d 1, 2-3 (Ky. 1990). Therefore, Lucky cannot succeed on an intentional infliction of emotional distress claim and judgment for Kentucky Bank is proper as a matter of law.

Negligent Infliction of Emotional Distress

While Kentucky law is sparse on claims for negligent infliction of emotional distress, courts have consistently held that a “touching” of the plaintiff’s person is traditionally required before plaintiff may recover for negligent infliction of emotional distress. *Norris v. Premier Integrity Solutions, Inc.*, 2009 WL 3334900, at *6 (W.D. Ky. 2009); *Steel Technologies, Inc. v.*

Congleton, 234 S.W.3d 920 (Ky. 2007) (“It is well established in this jurisdiction that an action will not lie for fright, shock or mental anguish which is unaccompanied by physical contact or injury.”); *Brown v. Crawford*, 177 S.W.2d 1, 3 (Ky. 1943) (“In ordinary actions for mere negligence or where the injury to another is not willful, there can be no recovery for mental suffering where there has been no physical contact.”).

There is no allegation of a touching in the Complaint. Lucky cannot succeed on a negligent infliction of emotional distress claim because Kentucky courts have consistently held there must be physical contact before there can be recovery. Judgment for Kentucky Bank is proper as a matter of law.

VIOLATION OF KENTUCKY CONSUMER PROTECTION ACT

In the sixth cause of action, Lucky seeks statutory, actual and punitive damages, legal fees and costs for violations of state statutes referred to as the Kentucky Consumer Protection Act (KRS 367.110-.360) (KCPA). (Complaint para. 61-67). The KCPA was enacted to protect Kentucky consumers from unfair, false, misleading or deceptive acts or practices in the conduct of trade. KRS 367.170(1). The purpose of the KCPA is protection of Kentucky consumers from those who may try to take advantage of them.

Lucky claims that the disclosure of private information in a bankruptcy proof of claim violates the KCPA. Section 367.220 of the KRS provides a private right of action under the Consumer Protection Act for a person who has purchased or leased goods or services primarily for personal, family or household purposes. The right of action accrues when the person “suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by KRS 367.170.”

KRS 367.220(1). It is undisputed that Lucky has suffered no ascertainable loss of money or property as a result of the Kentucky Bank proof of claim.

Furthermore, KRS 367.220(5) requires that an action under the statute must be brought within two years after the violation of KRS 367.170. The unredacted claims were filed in December 2005 which is more than two years prior to the September 2010 filing of the Complaint.

Kentucky courts recognize the terms “false, misleading, and deceptive,” as used in the KCPA “have meanings which are generally well understood by those who want to understand them.” *Craig & Bishop, Inc. v. Piles*, 247 S.W.3d 897, 905 (Ky. 2008). The act of including a social security number in a proof of claim is not “false, misleading, or deceptive” as would be understood by the public. Such an action in no way provided Kentucky Bank with an unfair advantage over Lucky. The concerns addressed by the KCPA are not present in a bankruptcy proceeding where the court, trustee, and debtor’s counsel oversee the process.

The filing of a proof of claim is not done in the “conduct of trade” as required for a claim based on the KCPA, therefore the KCPA does not provide Lucky a private right of action and the sixth cause of action also fails. Judgment for Kentucky Bank is proper as a matter of law.

BREACH OF CONTRACT

In her final cause of action, Lucky asserts a breach of contract claim based on Kentucky Bank’s violation of its published privacy policy. (Complaint para. 68-76). The success of a cause of action based on an alleged breach of contract requires the plaintiff to show: (1) the existence of a valid contract, (2) defendant’s material breach of the contract, and (3) plaintiff’s loss or damages resulting from the breach. *Metro Louisville/Jefferson County Government v. Abma*, 326 S.W.3d 1, 8 (Ky. Cy. App. 2009); *Barnett v. Mercy Health Partners-Lourdes, Inc.*,

233 S.W.3d 723, 727 (Ky. Ct. App. 2007). A valid and enforceable contract “must contain definite and certain terms setting forth promises of performance to be rendered by each party.” *Barnett*, 233 S.W.3d at 727 quoting *Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997).

The Kentucky Bank privacy policy was not made a part of this record.² Further, there is no evidence that a privacy policy existed when Lucky opened her account with Kentucky Bank’s predecessor, First Federal. Lucky testified at her deposition that she did not ask to see First Federal’s privacy policy when she opened her checking and savings accounts with First Federal more than ten years ago. (Doc. No. 17, Exhibit 5, pp. 13-15). Lucky fails to allege any performance or promise of performance required of her under the privacy policy. In the Complaint and the Response to the Motion for Summary Judgment, Lucky fails to explain how the privacy policy constitutes a contract between Lucky and Kentucky Bank. Moreover, Lucky fails to assert any damages flowed from the alleged breach of contract.

Lucky alleges insufficient grounds for a breach of contract claim and judgment in favor of Kentucky Bank is warranted on this cause of action.

² The url, <http://www.kybank.com/privacy-policy.aspx>, is included in para. 21 of the Complaint which purports to link to the Kentucky Bank privacy policy. Plaintiff makes no allegation whether this is the same version of the policy in existence in December 2005 when the proof of claim was filed.

SUMMARY JUDGMENT

For the reasons set forth above, it is hereby ordered and adjudged, the motion for summary judgment filed by Kentucky Bank is granted. Judgment as to all claims and causes of action asserted by Angela L. Lucky is entered in favor of Kentucky Bank.

It is further ordered this adversary proceeding shall be and is hereby dismissed.

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Monday, March 21, 2011**  
**(jms)**