

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY D. CAMERON and DOUBLE DOWN
INVESTMENTS, L.L.C.,

UNPUBLISHED
August 6, 2009

Plaintiffs-Appellants,

v

No. 283929
Oakland Circuit Court
LC No. 2007-083531-CK

CHARTER ONE BANK, N.A.,

Defendant/Third-Party Plaintiff-
Appellee,

and

JP MORGAN CHASE BANK, N.A.,

Third-Party Defendant-Appellee.

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Plaintiffs Jeffrey D. Cameron and Double Down Investments, LLC (Double Down) appeal as of right from the trial court's order granting summary disposition in favor of defendant/third-party plaintiff, Charter One Bank, N.A. ("Charter One"), and third-party defendant, JP Morgan Chase Bank, N.A. ("Chase"). For the reasons set forth in this opinion, we affirm.

I. Facts and Procedural History

Plaintiff Cameron is the primary officer of plaintiff Double Down. In 2005, Cameron agreed to enter into an investment project with Gary Gerrits and Dean Hartzell to form a limited liability corporation called Commerce Self Storage, LLC, to build and run a storage facility in Commerce Township, Michigan. Cameron was to be a 48 percent owner in Commerce Self Storage, LLC. Cameron gave Gerrits two checks, in the amounts of \$10,000 and \$20,000, "as initial seed money for investment." The checks were payable to Commerce Companies, LLC (Commerce Companies), a corporation under the sole control of Gerrits. Gerrits was responsible for organizing the Commerce Self Storage, LLC, and for managing its finances. Cameron testified that these checks were written to Commerce Companies because the storage facility corporation had not yet been formed, and Gerrits was using Commerce Companies during the

formation process. After receiving the initial seed money, Gerrits requested additional contributions from Cameron and Hartzell, “based on [their] percentages of ownerships and the monies needed for [the corporation’s] expenditures.” Plaintiffs gave Gerrits four additional checks. Three of the checks were cashier’s checks purchased from Cameron’s bank, Charter One. They were in the amounts of \$20,000, \$50,000, and \$12,500. A fourth check was written from Double Down’s account with Charter One, in the amount of \$100,000. All four checks were made payable to “Commerce Storage, L.L.C.” Cameron states that he made a mistake when he failed to make the checks payable to “Commerce *Self* Storage, L.L.C,” the intended name of the joint corporation.

Gerrits endorsed the four checks made payable to “Commerce Storage L.L.C.” with a stamp reading, “For Deposit Only. Commerce Companies, L.L.C” and deposited the checks into Commerce Companies’ account with Chase. Chase honored the checks as endorsed and presented them for payment to Charter One. Charter One honored the checks and paid the funds to Chase.

In furtherance of the project, Gerrits entered into a purchase agreement to purchase the land on which the investors would build the storage facility. The buyer in the purchase agreement was identified as “Commerce Companies, L.L.C.” The agreement was conditional upon Commerce Township’s approval of the plan to build the storage facility. However, the township did not approve the plan, and in March 2006, Gerrits informed Cameron of this fact and the three investors decided to abandon the project. Cameron believed that Gerrits would return to him the money he had invested in the project, and in December 2006, Gerrits gave Cameron a check for \$212,500. However, when Cameron tried to deposit the check, the bank informed him that the check had been stopped. Cameron never received his investment back. Both Gerrits and Commerce Companies filed for bankruptcy in 2007. Cameron filed a claim for his money in bankruptcy court, which has not been resolved. When Gerrits was questioned regarding these events during his bankruptcy proceedings, he “decline[d] to answer, based on the Fifth Amendment.”

On June 8, 2007, plaintiffs filed a complaint against Charter One, alleging that it wrongfully honored the checks despite an improper endorsement. On September 10, 2007, Charter One filed a third-party complaint against Chase, alleging that it wrongfully accepted the checks from Gerrits, endorsed them, and presented them to Charter One for payment.

On October 24, 2007, Charter One filed a motion for summary disposition with respect to both plaintiffs and Chase. Charter One alleged that summary disposition was proper with respect to plaintiffs on the ground that, because “Commerce Storage, L.L.C.” never existed, it was proper for Gerrits to endorse the check with a substantially similar name and, therefore, for Charter One to honor the check upon presentment. Charter One also alleged that summary disposition was proper with respect to Chase because, even if the check was not properly endorsed by Gerrits, Chase breached its presentment warranties when it endorsed and presented the check to Charter One and is, thus, liable for any damages owed to plaintiffs.

After a hearing on January 30, 2008, the trial court issued an opinion and order, stating:

[T]here is no genuine issue of material fact that neither [Charter One] nor [Chase] is liable in this matter for the reason that the intended payee received the amounts

represented by the four checks at issue. Accordingly, [Charter One's] motions are granted. Furthermore, the Court grants summary disposition in favor of [Chase] pursuant to MCR 2.116(I)(1).

This appeal ensued.

II. Analysis

On appeal, plaintiffs argue that the trial court erred when it concluded that the intended payee of plaintiffs' checks received the funds represented by the checks and, thus, neither Charter One nor Chase were liable for honoring the checks. A decision to grant a motion for summary disposition is reviewed de novo on appeal. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In considering a motion for summary disposition pursuant to MCR 2.116(C)(10), a court views the pleadings, affidavits, depositions, admission and other documentary evidence submitted in a light most favorable to the nonmoving party, *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004), granting the motion if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law, *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002).

The question before this Court is whether the trial court erred in applying the "intended payee defense" to the facts presented by this case. We find that the trial court did not err and accordingly we affirm its judgment.

The "intended payee defense" was recognized by this Court in *Comerica Bank v Michigan Nat'l Bank*, 211 Mich App 534; 536 NW2d 298 (1995). Under this defense, a bank that honors a check on an improper endorsement may escape liability if the bank can prove that, despite the endorsement, the intended payee actually received the proceeds of the check. *Comerica Bank, supra* at 538. The "intended payee defense"

is grounded on two basic principles. First, it is aimed at preventing a drawer from being unjustly enriched by recovering for an improperly paid check where the proceeds of the check in fact were received by the payee. It is also justified where a bank's improper payment is not a cause of the drawer's injury flowing from the transaction. [*Id.*]

A bank is not liable under this defense if "(1) the proceeds of the check reach the person the drawer intended to receive them and (2) the drawer suffers no loss proximately caused by the drawee's [bank's] improper payment." *Pamar Enterprises, Inc v Huntington Banks of Michigan*, 228 Mich App 727, 737; 580 NW2d 11 (1998).

As stated above, plaintiffs wrote four checks payable to "Commerce Storage, L.L.C." and gave them to Gerrits. It is undisputed that plaintiffs intended, but mistakenly failed, to write the checks to "Commerce Self Storage, L.L.C." Thereafter, Gerrits endorsed the checks, "For Deposit Only. Commerce Companies, L.L.C.," and deposited them in Commerce Companies' account at Chase. Chase honored the checks, endorsed them, and presented them to Charter One for payment. Charter One, in turn, also honored the checks. Plaintiffs argue that Charter One and Chase improperly honored the checks. They assert on appeal that, because Commerce Self

Storage, LLC, was the intended payee of the checks and Commerce Companies received the funds represented by the checks, the “intended payee defense” is not available for Chase or Charter One.

Plaintiffs attempt to characterize Commerce Companies as an unrelated corporation, to which Gerrits was secretly funneling plaintiffs’ investment money, with the aid of the banks. The origin of Commerce Companies is not clear on the existing record, but it is clear that Commerce Companies was a significant player in the creation and development of the storage facility project. Furthermore, Cameron was fully aware of the existence of Commerce Companies and that Gerrits was the sole owner of the company. Cameron’s first two investment checks for the storage facility venture, before the checks at issue in this case, were expressly payable to Commerce Companies. Further, Commerce Companies is listed as the buyer on a purchase agreement that was integral to the realization of this project; if the project had gone forward, the site on which the storage facility would have been built would have been owned by Commerce Companies. Cameron testified that Gerrits had full control over the financial and planning aspects of this new venture. Finally, irrespective of how Gerrits managed the money, Cameron testified that, to his knowledge, Gerrits was using the money for the purposes of furthering the storage facility project.

The facts of *Comerica Bank* are particularly illustrative. In that case, the plaintiff made a loan to an entity called South Central Investment Associates for the purposes of purchasing and developing land. *Comerica Bank*, *supra* at 536. The principals of that organization endorsed and deposited the check as SCI Professional Associates, another entity formed by the same partners. *Id.* SCI Professional Associates was the buyer on the prospective purchase agreement, *which had been reviewed by the plaintiff. Id.* at 539. When South Central Investment Associates was unable to pay the loan back, the plaintiff sued the depository bank. *Id.* at 537. The trial court recognized the intended payee defense, stating that, no matter how the funds were transferred, the plaintiff clearly intended for SCI Professional Associates to receive the funds in order to make the purchase of land. *Id.* at 538-539.

We find our decision in *Comerica Bank* persuasive and directly on point. We concur with the trial court’s ruling that the proceeds of the checks reached the person for whom they were intended, Gerrits, and that the loss suffered by plaintiff Cameron was not a result of the drawee’s improper payment. Accordingly, we affirm the trial court’s grant of summary disposition in this matter.¹

¹ We note that plaintiff also rebuts two additional arguments raised by Charter One and Chase in the trial court, but not addressed by the trial court because it was unnecessary given the court’s conclusion with respect to the intended payee defense. Because these issues were not addressed by the trial court, they are unpreserved for appeal. *Polkton Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Further, because these issues are unpreserved, and consideration of them is unnecessary given our conclusion above that summary disposition was proper, we decline to review them. *Heydon v MediaOne of Southeast Mich, Inc*, 275 Mich App 267, 278; 739 NW2d 373 (2007).

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Stephen L. Borrello