[J-83-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.

SPRINGFIELD TOWNSHIP AND JOSEPH M. GERBER, EDWARD G. BELL, JR., JOSEPH P. PHELPS, JR., ROY D. HANSHAW, JAMES R. SELSOR, MICHAEL W. CASSIDY AND GARY E. YEAGER, DONALD E. BERGER AND THOMAS MORTON, TRUSTEES FOR THE SPRINGFIELD PENSION PLANS,	:	No. 252 MAP 2003
	:	Appeal from the Order of the Superior Court entered on April 14, 2003 at No. 453 EDA 2002 affirming the Order of the Montgomery County Court of Common Pleas entered on January 29, 2002 at 93-08494
Appellees	:	
	:	ARGUED: April 14, 2004
v.	:	RESUBMITTED: June 17, 2005
MELLON PSFS BANK,	:	
Appellant	:	

DISSENTING OPINION

MR. CHIEF JUSTICE CAPPY **Decided: December 30, 2005**

I respectfully dissent. In my view, the Legislature intended that a bank have actual knowledge that it is dealing with a fiduciary in order for the bank to be entitled to the protections of Section 9 of the Uniform Fiduciaries Act ("UFA"), 7 P.S. §6393. Thus, I would affirm the order of the Superior Court.

According to the Majority, "[t]he plain language of [Section 9 of the UFA] states that if a fiduciary has the power to do that which the bank allows him to do, i.e., endorse and deposit checks 'in a bank to his personal credit' … the bank is not liable *regardless of whether it knew of his fiduciary status*." Majority Opinion at 9 (emphasis added). If,

indeed, the plain language of Section 9 of the UFA stated as such, the Majority obviously would be correct in concluding that a bank need not have actual knowledge that it is dealing with a fiduciary in order to enjoy the protections of Section 9 of the UFA. Section 9 of the UFA, however, is not nearly so lucid. Section 9 states as follows:

> **Deposit in fiduciary's personal account.** If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary; or of checks payable to him as fiduciary; or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon; or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks; or if he otherwise makes a deposit of funds held by him as fiduciary,--the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary, and the bank is authorized to pay the amount of the deposit, or any part thereof, upon the personal check of the fiduciary, without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

7 P.S. §6393. Based on the above, it is clear that Section 9 of the UFA does not contain "plain language" stating that a bank is protected from liability when dealing with a fiduciary "*regardless of whether it knew of [the] fiduciary['s] status*."[1]

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[1] If a plain language approach were to apply, then I would be inclined to follow the rationale employed in Larson v. Kleist Builders, Ltd., 553 N.W.2d 281 (Wis. Ct. App. 1996). In Larson, the Wisconsin Court of Appeals was called upon to determine whether a bank is protected from liability under its version of Section 9 of the UFA, Wis. Stat. 112.01(10). In doing so, the court found that Section 9 of the UFA clearly and unambiguously requires that in order for the statute to apply and protect a bank, the person that misappropriated the funds must have been, in fact, a fiduciary of the company. The court specifically stated the following, with which I concur:

> [Section 9 of UFA] applies when a bank is aware that it is dealing with a fiduciary. Indeed, *the statute presumes a bank's knowledge of the presenter as a fiduciary* and, contrary to [the defendant-bank's] argument,

(continued…)

Section 9 of the UFA is not explicit regarding the issue at hand, and therefore, the Court is to ascertain the intent of the Legislature by considering, among other matters, the factors delineated in Section 1921(c) of the Statutory Construction Act. 1 Pa.C.S. §1921(c) ("When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:" the factors enumerated (1) - (8).).[2]

While Section 9 of the UFA relieves a bank, acting honestly and in good faith, of much of its common law duty to inquire into whether a fiduciary will use entrusted funds for proper purposes, the statute's protections are not without limitation. The drafters of the UFA did not craft the Act in a manner which anticipates that a bank should benefit from the protections of the UFA when the bank is completely unaware of a person's status as fiduciary. As the Township aptly points out, "[t]he objective of Section 9 of the UFA, in particular, and the purpose and intent of the UFA, in general, establish that it was not enacted to reward serendipity." Township's Brief at 8.

(…continued)

> the "actual knowledge" and "bad faith" components of the statute relate to the known fiduciary's conduct with regard to the check presented.

[2] I also respectfully disagree with the Majority's reliance on "21st century" banking practices and modern banking legislation as support for its "plain language" resolution of the issue in this case. See Majority Opinion at 10 n.8. First, the Commissioners on Uniform State Laws drafted the UFA in 1922, and this Commonwealth adopted the UFA in 1923; therefore, "21st century" banking practices and legislative schemes have no bearing on the intent of the Legislature in adopting the UFA. Additionally, as to the issue raised in this case, the impact of the method by which a fiduciary deposits or withdraws money into and from a bank is irrelevant. Regardless of whether a fiduciary deposits or withdraws funds in person or via the internet or automatic teller, the question underlying this matter remains: if the fiduciary misappropriates the funds, does Section 9 of the UFA protect the bank from liability if the bank was unaware of the fiduciary's status as fiduciary?

In addition, Section 9 of the UFA provides two explicit ways a bank can forfeit the protections of the UFA: if the bank had actual knowledge that the fiduciary was breaching his or her obligations as fiduciary or if the bank's actions in dealing with the fiduciary amount to bad faith. 7 P.S. §6393. Simply stated, a bank could not act in bad faith or have actual knowledge that the fiduciary was breaching his or her obligations to a principal if the bank never knew the fiduciary was, in fact, a fiduciary. Thus, a bank's knowledge that it is dealing with a fiduciary is necessary in order for the statute to have meaning. Under the Majority's interpretation of Section 9, however, a bank has more incentive to remain ignorant of any relationship between a principal and a fiduciary than it does to learn of such a relationship.

Moreover, the drafters of the UFA specifically stated in the first line of the Act's Prefatory Note that "[t]he Act covers situations which arise where one person deals with another person *whom he knows to be a fiduciary*." Uniform Laws Annotated, Volume 7A, Pt. 1 (West 2002) (emphasis added). While a Prefatory Note does not control the disposition of the issue before the Court, it certainly demonstrates the drafter's intent, which is particularly relevant here since our Legislature adopted Section 9 of the UFA in the exact same substantive form as the uniform law drafted by the Commissioners on Uniform State Laws, and the emphasized language above clearly indicates that the drafters of the UFA intended for the Act to protect banks in situations where banks know that they are dealing with fiduciaries.

I also disagree with the Majority's uniformity analysis. See Majority Opinion at 12-14. According to the Majority, its interpretation of Section 9 of the UFA is consistent with the interpretation given by those jurisdictions that have applied the statute, save a federal court's decision in Terre Haute Industries, Inc. v. Pawlik, 765 F.Supp. 925 (N.D. Ill. 1991). I, however, respectfully submit that the cases cited by the Majority do not find that a bank is entitled to the protections of the UFA when it is unaware of a person's

status as fiduciary. Rather, these cases merely hold that a bank forfeits the protections of the UFA if the purported fiduciary was not, in fact, a fiduciary of the principal and if, in dealing with a fiduciary, the defendant-bank acted in bad faith or with actual knowledge that the fiduciary was misappropriating the principal's funds. These cases are aligned with our caselaw in this area, see, e.g., Davis v. Pennsylvania Co. for Insurances on Lives and Granting Annuities, 12 A.2d 66 (Pa. 1940), and are entirely consistent with my position.

Moreover, the cases from our sister states, which the Majority summarily dismisses, squarely demonstrate that all of these jurisdictions recognize the legal principal that the protections of the UFA are not triggered unless a bank knows that it is dealing with a fiduciary. E.g., Master Chemical Corporation v. Inkrott, 563 N.E.2d 26, 30 (Ohio 1990) ("The Uniform Fiduciaries Act shields a bank from liability when *the bank knows that the individual is acting for the benefit of another. The inquiry to be made is not only whether the bank had knowledge of the existence of the fiduciary relationship* but also whether the fiduciary in fact possessed the authority to conduct the transaction in question. This test is consistent with *the purposes of the Act to protect those who honestly deal with another knowing him to be a fiduciary* and to place the responsibility of employing honest fiduciaries on the principal.") (citations omitted and emphasis added); Zions First National Bank v. Clark Clinic Corporation, 762 P.2d 1090, 1101 (Utah 1988) ("*[T]he Act may shield a bank from negligence only when the bank knows that the party before it is acting for another.* Assuming then that the trial court correctly determined that [the fiduciary] was a fiduciary under the meaning of the Act and *that the bank knew he was acting as such,* the most significant determination for purposes of our review and for deciding whether [the defendant-bank] may be shielded from liability under the Act is whether [the fiduciary] was an authorized fiduciary empowered to conduct and consummate the transactions at issue.") (citation omitted and emphasis

added); see Boutros v. Riggs National Bank, D.C., 655 F.2d 1257, 1259 (D.C. Cir. 1981) (stating that *"[t]he [UFA] applies only 'when one person honestly deals with another knowing him to be a fiduciary'"* and finding that the trial court's grant of a judgment n.o.v. to the defendant-bank was improper because "a reasonable jury could have found that [the fiduciary] had not been authorized to make withdrawals from the account and *that [the defendant-bank] did not 'know' that it was dealing with a fiduciary*") (citation omitted).[3]

For these reasons, as I would affirm the order of the Superior Court, I respectfully dissent.

Messrs. Justice Nigro and Baer join this dissenting opinion.

[3] See also, Farmers Banking & Trust Co. of Montgomery County v. Bender, 3 A.2d 743, 745 (Md. 1939), UNR-Rohn, Inc. v. Summit Bank of Clinton County, 687 N.E.2d 235, 238 (Ind. Ct. App. 1997), Larson, 553 N.W.2d at 283, County of Macon v. Edgcomb, 654 N.E.2d 598, 601 (Ill. App. Ct. 1995), and Terre Haute Industries, Inc. v. Pawlik, 765 F.Supp. 925, 929 (N.D. Ill. 1991).