

STATE OF MICHIGAN
COURT OF APPEALS

MONEY SOURCE FINANCIAL SERVICES,
INC.,

Plaintiff-Appellee,

v

ANN ARBOR COMMERCE BANK,

Defendant/Third-Party Plaintiff-
Appellant,

v

NATIONAL CITY BANK,

Third-Party Defendant/Cross
Plaintiff-Appellee,

and

WILLIAM DAVIS, and WILLIAM FAULKNER,

Third-Party Defendants-Cross
Defendants.

MONEY SOURCE FINANCIAL SERVICES,
INC.,

Plaintiff-Appellee,

v

ANN ARBOR COMMERCE BANK,

Defendant/Third Party Plaintiff-
Appellee,

and

UNPUBLISHED
November 21, 2006

No. 270084
Washtenaw Circuit Court
LC No. 03-001378-CZ

No. 270104
Washtenaw Circuit Court
LC No. 03-001378-CZ

NATIONAL CITY BANK,

Third-Party Defendant/Cross
Plaintiff-Appellant,

v

WILLIAM DAVIS, and WILLIAM FAULKNER,

Third-Party Defendants-Cross
Defendants.

Before: Murphy, P.J., and Meter and Davis, JJ.

PER CURIAM.

In this consolidated appeal, defendant Ann Arbor Commerce Bank (“AACB”) and third party defendant National City Bank (“National City”) appeal as of right two orders granting summary disposition. The first was granted to plaintiff Money Source against AACB, and the second was granted to AACB against National City. We reverse and remand.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider all evidence submitted by the parties in the light most favorable to the nonmoving party and grant summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120. We likewise review de novo questions of statutory construction, with the fundamental goal of giving effect to the intent of the Legislature. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175, amended on other grounds 468 Mich 1216 (2003).

We are first presented with an issue of law: whether the undisputed facts of this case constitute an “imposter” situation or a “forgery” under Michigan’s Uniform Commercial Code (“UCC”). We agree with the trial court’s resolution of this question.

Plaintiff Money Source Financial Services (“Money Source”), a company in the business of making money loans, is one of Ann Arbor Commerce Bank’s clients. In January 2003, William Davis approached Thomas P. McLinden, president of Money Source, seeking a \$125,000 loan for Davis’s company, Continental Capital. McLinden ultimately agreed to loan the money to Davis, conditioned on Davis obtaining the signatures of William Faulkner and Ronald McMaster, who were both shareholders in Continental Capital, as co-obligors on the loan. McLinden did not witness Faulkner or McMaster sign any of the pertinent documents, and Faulkner testified that he signed the documents but did not observe McMaster sign them. Davis assured Faulkner that McMaster had in fact signed them, and Davis presented documents

purporting to have been signed by all three individuals to McLinden. On the basis of his trust in Davis, McLinden approved the loan.

A check for \$125,000 was paid out of plaintiff's account at AACB, endorsed, and deposited into Continental Capital's account at National City. National City presented the check to AACB, which then paid the money to National City. On January 27, 2003, McMaster discovered two notes from Money Source on loans bearing his forged signature, whereupon he informed McLinden that his signature on the \$125,000 loan at issue in this case was forged. McMaster further stated that he was never contacted by plaintiff, directly, indirectly, or through any agents, regarding the loan; and he received no benefit therefrom.

Once informed that McMaster's endorsement was forged, AACB credited Money Source's account. However, National City did not credit AACB. Subsequently, AACB concluded that the signature was not forged but rather an imposter's endorsement, so AACB reversed the earlier credit to Money Source's account.

Money Source commenced this suit against AACB seeking return of the money. AACB filed a third party complaint against National City seeking return of the \$125,000 on the basis of presentment and transfer warranties allegedly made by National City. The trial court concluded that McMaster's signature had been forged because it was not signed by McMaster, and it concluded that there had been no imposter situation because at no time did any individual present themselves as McMaster to plaintiff. The trial court therefore granted summary disposition to plaintiff against AACB, and it granted summary disposition to AACB against National City on the basis of the presentment and transfer warranties.

AACB and National City argue, in essence, that McMaster's signature was not a "forgery" by operation of the "imposter rule," set forth by MCL 440.3404(1) as follows:

If an imposter, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the imposter, or to a person acting in concert with the imposter, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

We agree with the trial court's characterization of this transaction as being one involving forgery. The UCC does not independently define "impersonate" or "imposter." The common definition of "impersonate" is "to assume the character or appearance of; pretend to be." *Random House Webster's College Dictionary* (2001). The legal definition of "impersonation" is, in relevant part, "the act of pretending or representing oneself to be another." *Black's Law Dictionary* (6th ed). The evidence simply fails to show that Davis at any time represented himself to any other individual as actually being McMaster or as actually being someone authorized to act on McMaster's behalf. To the contrary, Davis represented himself as acting on behalf of Continental Capital, and he represented that McMaster *himself* had in fact signed the instruments.

McMaster's signatures were merely forged, so the relevant instruments were unauthorized. MCL 440.3403. They were consequently not "properly payable," MCL 440.4401(1), and National City violated its presentment warranties. MCL 440.3417; MCL 440.4208. Thus, as the trial court properly found, the forged endorsement makes AACB liable to Money Source, and it makes National City liable to AACB. However, notwithstanding the trial court's correct conclusion regarding applicability of the "imposter rule," we find the ultimate resolution of liability incorrect.

National City argues in the alternative that the intended payee actually received the proceeds of the check, so the "intended payee defense" shields National City from liability to AACB and shields AACB from liability to Money Source. We agree.

In Michigan, "a bank may escape liability for honoring a check on a faulty or improper endorsement, or even with no endorsement, if the bank can prove that the intended payee received the proceeds of the check." *Comerica Bank v Michigan Nat'l Bank*, 211 Mich App 534, 538; 536 NW2d 298 (1995). This defense requires that "(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 improper payment." *Pamar Enterprises, Inc v Huntington Banks of Michigan*, 228 Mich App 727, 737; 580 NW2d 11 (1998). Here, this satisfies two basic requirements of justice: prevention of unjust enrichment and imposition of liability onto the party best able to avert the fraud to begin with.

Although the check here was superficially payable to Davis, Faulkner, and McMaster, the loan was not intended for them personally, but rather for Continental Capital, which in fact received the proceeds when the check was deposited into Continental Capital's account. Equally significantly, Money Source, as the loan originator, was clearly in the best position to discover and avert the fraudulent conduct underlying this matter, and Money Source failed to do so out of simple carelessness. McLinden expressly declined to contact Faulkner or McMaster, to have their signatures notarized, or even to witness them sign the instruments personally. The proximate cause of any injury in this case was Money Source's own carelessness, and given that they were in the best position to prevent the fraud to begin with, permitting Money Source to avoid liability would therefore be irrational and unjust.

We affirm the trial court's finding that the imposter rule is inapplicable. However, on the basis of the intended payee defense, we hold that Money Source is liable to AACB and National City is not liable to AACB. The trial court's orders granting summary disposition are reversed, and we remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Patrick M. Meter

/s/ Alton T. Davis