

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MONEY SOURCE FINANCIAL SERVICES,  
INC.,

Plaintiff-Appellant,

v

ANN ARBOR COMMERCE BANK,

Defendant/Third-Party Plaintiff-  
Appellee,

and

NATIONAL CITY BANK,

Third-Party Defendant/Cross-  
Plaintiff-Appellee,

and

CONTINENTAL CAPITAL SECURITIES, INC.,  
and CONTINENTAL CAPITAL INVESTMENT  
SECURITIES,

Third-Party Defendants,

and

WILLIAM DAVIS and WILLIAM J. FAULKNER,

Third-Party Defendants/Cross-  
Defendants.

UNPUBLISHED  
February 24, 2009

No. 282894  
Washtenaw Circuit Court  
LC No. 03-001378-CZ

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Before: Whitbeck, P.J., and O'Connell and Owens, JJ.

MEMORANDUM.

After remand from this Court, the trial court entered judgment in favor of defendant Ann Arbor Commerce Bank (AACB) and third-party defendant National City Bank (National City). Plaintiff Money Source Financial Services, Inc., appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The facts underlying this case are summarized in the unpublished opinion that this Court issued in 2006. *Money Source Financial Services v Ann Arbor Commerce Bank*, unpublished opinion per curiam of the Court of Appeals, issued November 21, 2006 (Docket No. 270084). In that opinion, this Court reversed the trial court's grant of summary disposition in favor of plaintiff and remanded, stating, "[W]e hold that Money Source is liable to AACB and National City is not liable to AACB." *Id.*, slip op at 4.

On remand, AACB moved for entry of judgment. Plaintiff argued that the claims of conversion, waiver, and estoppel that it had raised in its original complaint had not been addressed by any court and remained viable. The trial court held that plaintiff's remaining claims had been addressed and disposed of, and it granted AACB's motion.

We review de novo whether the trial court correctly followed this Court's ruling on remand. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007).

Generally, this Court's ruling on an issue in a case will bind a trial court on remand and the appellate court in subsequent appeals. The law of the case doctrine provides:

"[I]f an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." The appellate court's decision likewise binds lower tribunals because the tribunal may not take action on remand that is inconsistent with the judgment of the appellate court.

"It is the duty of the lower court . . . , on remand, to comply strictly with the mandate of the appellate court." However, the law of the case doctrine applies only to issues implicitly or explicitly decided in the previous appeal. The law of the case doctrine's rationale is to maintain consistency and avoid reconsideration of matters once decided during the course of a single lawsuit; the doctrine does not limit an appellate court's power but, rather, is a discretionary rule of practice. A trial court fails to follow the law of the case when it revisits a matter on which this Court has already ruled. [*Id.* at 127-128 (citations omitted).]

This Court's 2006 opinion stated, "Money Source is liable to AACB and National City is not liable to AACB." *Money Source*, *supra*, slip op at 4. Therefore, the trial court was precluded from finding that plaintiff was *not* liable for some reason. Although this Court did not expressly address the issues of estoppel and waiver and the trial court only implicitly decided the question of waiver, plaintiff's liability was no longer an issue before the trial court on remand.

Therefore, the trial court did not err when it declined to consider plaintiff's liability claims and entered judgment in favor of AACB.

Affirmed.

/s/ William C. Whitbeck

/s/ Peter D. O'Connell

/s/ Donald S. Owens