

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID H. MARION, Receiver for : CIVIL ACTION
Robert L. Bentley, Bentley :
Financial Services, Inc. and :
Entrust Group :
 :
 :
v. :
 :
 :
BUFFALO PRAIRIE STATE BANK, :
et al. : NO. 03-05913-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

October , 2004

Plaintiff is Receiver for Robert L. Bentley, Bentley Financial Services, Inc. and Entrust Group. Pursuant to his order of appointment entered November 7, 2001, the Receiver is engaged in assuming control of all of the assets of the three entities for whom he is Receiver. Among those assets were numerous CD's in various banks, ten of whom are the defendants in this action.

Plaintiff asserts that, when he notified the banks of his appointment, and sought return of the estate's assets, the defendant banks - unlike various other banks - returned only the net amount of the CD's, after deducting penalties for early withdrawal. Plaintiff has brought this action to recover the withheld penalties. The parties have filed cross-motions for summary judgment.

The contracts between the depositors and the banks which issued the certificates of deposit clearly provided that, if the funds were withdrawn before maturity, there would be specified penalties. Plaintiff seeks to avoid the consequences of these contractual provisions by asserting (1) that this court's order requiring him to marshal assets precluded the bank from retaining the early-withdrawal penalties, and (2) that the banks should have interpreted his demands for payment as seeking only the return of interest then due, rather than seeking early withdrawal of the CD principal. I find these arguments ingenious, but not persuasive.

Absent any assertion or proof that the banks were involved in Mr. Bentley's wrongdoing, it seems clear that the Receiver, vis-a-vis the banks, has no greater rights than the original depositors would have. Stated otherwise, the "asset" to be recovered was the property interest defined in the CD contract in each case. And the letters seeking return of the funds cannot reasonably be interpreted as seeking only any interest which might then have been due; at the very least, the defendant banks were justified in construing the requests as early withdrawals.

Plaintiff's motion for summary judgment will be denied, and the defendants' cross-motion will be granted.

An order follows.

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ORDER

AND NOW, this day of October 2004, upon consideration of the motion for summary judgment of the plaintiff, and the defendants' cross-motion for summary judgment, IT IS ORDERED:

1. Plaintiff's motion for summary judgment is DENIED.
2. Defendants' motion for summary judgment is GRANTED.
3. This action is DISMISSED with prejudice.

John P. Fullam, Sr. J.