

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

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CEMENT MASONS' UNION LOCAL	:	CIVIL ACTION
NO. 592 PENSION FUND and	:	
MIKE FERA, a fiduciary,	:	
	:	
Plaintiff,	:	
	:	
v.	:	NO. 99-6132
	:	
BARBARA FLETCHER and FIRST UNION	:	
NATIONAL BANK,	:	
	:	
Defendants.	:	

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MEMORANDUM

ROBERT F. KELLY, J.

DECEMBER 29, 2000

This lawsuit was brought by the Cement Masons' Union Local No. 592 Pension Fund and Mike Fera, a fiduciary ("Pension Fund"), for recovery of an \$82,311.94 check issued by the Pension Fund to Defendant Barbara Fletcher. Presently before this Court is the Motion for Summary Judgment filed by Defendant, First Union National Bank ("First Union"). For the reasons that follow, the Motion will be granted.

**I. FACTS.**<sup>1</sup>

John Fletcher, the husband of Barbara Fletcher ("Fletcher"), was a participant in the Pension Fund. Upon his death, the Pension Fund determined that funds should be paid to Fletcher, consisting of pre-retirement survivor benefits in the gross amount of \$82,311.94. Fletcher elected to receive a lump

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<sup>1</sup>The facts are undisputed.

sum distribution of the pre-retirement survivor benefit. The distribution was subject, however, to a mandatory federal withholding tax, resulting in a net payment of the pre-retirement survivor benefit to Fletcher in the amount of \$65,849.55.

Although Fletcher was entitled to only one \$65,849.55 check for her pre-retirement survivor benefit, the Pension Fund issued two checks made payable to Fletcher: a check in the amount of \$82,311.94 ("Full Benefit Check"); and a second check in the amount of \$65,849.55, representing the pre-retirement benefit elected by Fletcher, reduced by the required federal withholding tax ("Reduced Benefit Check"). The Full Benefit Check was mailed directly to Fletcher. She endorsed the check and deposited it into her Sun Bank account, and it was subsequently presented to and paid by First Union. The Reduced Benefit check was mailed to Fletcher's attorney.

Fletcher admits that she received the Full Benefit Check and the proceeds of the Reduced Benefit Check less her counsel's fees. She acknowledges that she received an overpayment from the Pension Plan and admits that she used the proceeds of the Full Benefit Check for her own use and benefit. She also admits that, despite having received duplicate payment of the pre-retirement survivor benefit, she has not made reimbursement to the Pension Fund for the overpayment.

Plaintiffs instituted this action against Fletcher and

First Union on December 2, 1999, alleging against First Union that the \$82,311.94 Full Benefit Check was improperly paid over one of two required signatures.<sup>2</sup> First Union asserted a cross claim against Fletcher for indemnity and unjust enrichment.<sup>3</sup> Fletcher, through her attorney, offered no defenses to the claim made against her by First Union. After First Union filed its Motion for Summary Judgment, Fletcher's counsel was permitted to withdraw and Fletcher was given additional time to retain new counsel and file a Response to the Motion for Summary Judgment. Her two-page pro se Answer was filed December 26, 2000.

## II. STANDARD.

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the initial burden of informing the court of those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could

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<sup>2</sup>First Union has resolved its dispute with the Plaintiffs. See Def.'s Mot. Summ. J. at 2, ¶ 5.

<sup>3</sup>Although Fletcher claims in her Answer to First Union National Bank's Motion for Summary Judgment that she has not seen First Union's cross claim filed against her, the cross claim was attached to First Union's Motion for Summary Judgment. See Def.'s Mot. Summ. J., Ex. E at 13-17.

find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). The non-moving party must produce evidence such that a reasonable juror could find for that party. Anderson, 477 U.S. at 248. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987). Further, where a plaintiff has failed to respond to a defendant's summary judgment motion, "the court need only examine the pleadings, including the complaint and the evidence attached to the defendant's motion." Bardaji v. Flexible Flyer Co., No. CIV.A.95-0521, 1995 WL 568483, at \*2 (E.D. Pa. Sept. 25, 1995)(citations omitted).

### **III. DISCUSSION.**

#### **A. Unjust Enrichment.**

First Union's initial argument in support of its motion for summary judgment is based on unjust enrichment. Fletcher admits that she received the Full Benefit Check and used the

proceeds to purchase a home and for living expenses. She acknowledges that the Full Benefit Check constituted overpayment to her of the benefits she was entitled to receive from the Pension Plan. First Union contends that these admissions demonstrate Fletcher's unjust enrichment by having presented and received payment of the Full Benefit Check from First Union.

The elements of unjust enrichment include "'benefits conferred on [one party by another], appreciation of such benefits by [the conferring party], and acceptance and retention of such benefits under such circumstances that it would be inequitable for [the conferred party] to retain the benefit without payment of value.'" Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa. Super. 1999)(quoting Styer v. Hugo, 619 A.2d 347, 350 (Pa. Super. 1993)(quoting Wolf v. Wolf, 514 A.2d 901 (Pa. Super. 1986))). This Court, in considering the validity of First Union's claim for unjust enrichment, must focus on "whether the enrichment of the defendant is unjust. The doctrine does not apply simply because the defendant may have benefited [sic] as a result of the actions of the plaintiff." Id. (citations omitted). In order to recover under a theory of unjust enrichment, First Union must show that a benefit was conferred upon Fletcher by First Union, the benefit was appreciated by Fletcher, and that the retention of the benefit without payment would be unjust. See Schenk v. K.E. David, Ltd.,

666 A.2d 327, 328 (Pa. Super. 1995).

Under Pennsylvania law, money paid under a mistake of fact may be recovered so that the party receiving the funds is not unjustly enriched. Gilberton Fuels, Inc. v. Phila. & Reading Coal & Iron Co., 20 A.2d 217 (Pa. 1941). Further, a person who is unjustly enriched as a result of receiving money to which he is not entitled is "obliged by the ties of natural justice and equity to refund the money." Wilson Co., Inc. v. Douredoure, 154 F.2d 442, 445 (3d Cir. 1946)(citation omitted). This is because "no one should unjustly enrich himself at the expense of another by reason of an incorrect mistake of law or fact entertained by the parties." Shipping Corp. of India Ltd. v. Sun Oil Co., 569 F. Supp. 1248, 1260 (E.D. Pa. 1983)(citing 13 Williston on Contracts, § 1582 (3d ed. 1970)). First Union argues that this Court should follow other courts which recognize that this principle extends to the situation when a bank makes a payment under a mistake of fact, regardless of whether the bank was negligent in making the mistake. (Def.'s Mem. Law in Supp. Mot. Summ. J. at 8-9 (citing Nat'l Bank of Canada v. Artex Indus., Inc., 627 F. Supp. 610 (S.D.N.Y. 1986)(holding that the bank was entitled to recover from the contractor the amount the bank paid to the contractor's supplier when the bank reccredited the contractor's account under the mistaken belief that it was unable to forward funds to supplier); Bank of Naperville v. Catalano,

408 N.E.2d 441 (Ill. App. Ct. 1980)(holding that the bank that erroneously applied funds from the depositor's savings account to obligations owed to the bank by other customers was entitled to restitution from customers whose obligations had been satisfied)).

The record shows that Fletcher was not entitled to the Full Benefit Check, yet she deposited the Full Benefit Check into her account and presented it to First Union for payment. She therefore received and used the overpayment of benefits and has been unjustly enriched by keeping and using the proceeds of the Full Benefit Check. However, as First Union correctly notes, a unilateral mistake of fact in and of itself will not bar recovery. Commonwealth Dep't of Gen. Servs. v. Collingdale Millwork Co., 454 A.2d 1176, 1179 (Pa. Cmwlth. 1983). Thus, neither the Pension Fund's conduct in issuing the Full Benefit Check to Fletcher nor First Union's payment of the Full Benefit Check excuses Fletcher's conduct nor prevents First Union's recovery from Fletcher under a theory of unjust enrichment.

**B. Indemnity.**

First Union also claims it is entitled to indemnification from Fletcher. Indemnification shifts the entire loss from one defendant to another defendant. TVSM, Inc. v. Alexander & Alexander, Inc., 583 F. Supp. 1089, 1091 (E.D. Pa. 1984)(citing Burch v. Sears, 467 A.2d 615, 622 (Pa. Super.

1983)). The Pennsylvania Supreme Court has stated that indemnification "is a right which enures to a person who, without active fault on his own part, has been compelled, by reason of some legal obligation, to pay damages occasioned by the initial negligence of another, and for which he himself is only secondarily liable." Id. at 1091 (quoting Builders Supply Co. v. McCabe, 77 A.2d 368 (Pa. 1951)). In Pennsylvania, "indemnity is available only from those who are primarily liable to those who are merely secondarily or vicariously liable. Id. (citing Burch, 467 A.2d at 622).

A claim for indemnity is separate and distinct from the underlying claim. It accrues when the loss is incurred, i.e., at the time of payment of the underlying claim, at the time of a judgment on the claim, or at the time of payment of a settlement. Borough of West View v. North Hills Sch. Dist., 418 A.2d 527, 530 (Pa. Super. 1980)(citation omitted). Indemnity differs, however, from contribution. Sirianni v. Nugent Bros., Inc., 506 A.2d 868 (Pa. 1986). Indemnity shifts the loss from a defendant held liable to the plaintiff by operation of law to a defendant actually responsible for the incident causing the loss. Id. at 871.

Fletcher contends that she had no reason to believe that she was not entitled to the Full Benefit Check because she received that check first and subsequent checks were sent to her

attorney who forwarded the proceeds of those checks without a distribution sheet. (Ans. Mot. Summ. J. at 2, ¶¶ 7-8.) Despite these contentions, First Union correctly opines that Fletcher's active role in taking and utilizing the proceeds of the Full Benefit Check for her own benefit indicates that her liability was active and primary rather than passive or secondary. (Def.'s Mem. Law in Supp. Mot. Summ. J. at 11.) Thus, Fletcher is liable to First Union for the amount paid by First Union to the Pension Fund.

**IV. CONCLUSION.**

For the foregoing reasons, First Union's Motion for Summary Judgment is granted.

An Order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CEMENT MASONS' UNION LOCAL	:	
NO. 592 PENSION FUND and	:	CIVIL ACTION
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Plaintiff,	:	
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v.	:	NO. 99-6132
	:	
BARBARA FLETCHER and FIRST UNION	:	
NATIONAL BANK,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 29th day of December, 2000, upon consideration of the Motion by Defendant, First Union National Bank ("First Union"), for Summary Judgment (Dkt. No. 15), and the Response of Defendant Barbara Fletcher ("Fletcher") thereto, it is hereby ORDERED that the Motion is GRANTED and judgment is hereby entered in favor of First Union and against Fletcher in the amount of \$82,311.94 plus interest.

The Clerk of Court is ORDERED to mark this case CLOSED.

BY THE COURT:

Robert F. Kelly,	J.
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