

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

CHRISTINE HARRIS : CIVIL ACTION
 :
 v. :
 :
 POLICE AND FIRE FEDERAL :
 CREDIT UNION, et. al. : NO. 98-5175

MEMORANDUM

Dalzell, J.

February 24, 1999

Plaintiff Christine Harris has filed a twelve-Count Complaint against her father, Kenneth Harris, three financial institutions--Police and Fire Federal Credit Union, Mellon Bank, and Meritor Savings Bank--as well as the Federal Deposit Insurance Corporation ("FDIC"), as Receiver for Meritor Savings Bank, seeking the return of funds that Ms. Harris received many years ago in a settlement of a prior civil suit when she was a child.¹ In the Complaint, she raises only state law claims for breach of contract, conversion, breach of a fiduciary duty, and negligence.² Defendant FDIC, as Receiver for Meritor Savings Bank, now moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss

¹ On December 17, 1998, we dismissed all claims against defendant Meritor Savings Bank for lack of prosecution. Similarly, on February 12, 1999, we granted defendant Mellon Bank's motion to dismiss as unopposed. Therefore, we are left with only three defendants: the FDIC, Kenneth Harris, and Police and Fire Federal Credit Union. Defendant FDIC has filed the current motion to dismiss. Defendant Kenneth Harris has filed a "motion to strike", which we will address in a separate Order. Defendant Police and Fire Federal Credit Union has filed an Answer to the Complaint. Parenthetically, we note that plaintiff has been represented by counsel at all times in this case.

² We have jurisdiction over this case because the FDIC is an agency of the United States. See 12 U.S.C. § 1819(b) and 28 U.S.C. § 1346. Our jurisdiction over the remaining defendants is based on our supplemental jurisdiction. See 28 U.S.C. § 1367.

the complaint for failure to state a claim upon which relief can be granted.³

Background

In her Complaint, Ms. Harris alleges that on October 15, 1981, a civil action was commenced in the Philadelphia Court of Common Pleas to recover for injuries that she, then a three year old minor, had sustained in an automobile accident. See Complaint at ¶ 10. On August 24, 1983, that civil action was settled and she received a net recovery of \$9,813.87. See Complaint at ¶ 11. On November 7, 1983, in connection with that settlement, a certificate of deposit was obtained from Meritor Savings Bank in the amount of \$9,813.87. See Complaint at ¶ 12 ("the Meritor CD"). The Meritor CD was titled, in accordance with a Court Order, "KENNETH HARRIS, FATHER AND NATURAL GUARDIAN OF MINOR, CHRISTINE HARRIS, NOT TO BE WITHDRAWN UNTIL MINOR BECOMES 18 YRS. OF AGE OR UNTIL FURTHER ORDER OF THE COURT." Id.

Five years later, on November 15, 1988, when Ms. Harris was ten years old, her father and guardian, Kenneth Harris,

³ A motion to dismiss should only be granted if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations" contained in the complaint. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). With a motion to dismiss, all allegations in plaintiff's complaint are accepted as true and we must draw any reasonable inferences from such allegations in plaintiff's favor. See Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1391 (3d Cir. 1994). On a motion to dismiss, we may consider only the complaint, "matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case." Id. at 1384 n.2; accord Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993).

allegedly withdrew the total value of the Meritor CD in the amount of \$15,186.74, and Meritor Savings Bank issued a check in that amount directly to Mr. Harris ("the Meritor Check"). See Complaint at ¶ 13. The Meritor Check was made payable to: "KENNETH HARRIS, FATHER AND NATURAL GUARDIAN OF MINOR, CHRISTINE HARRIS, NOT TO BE WITHDRAWN UNTIL MINOR BECOMES 18 YRS. OF AGE OR UNTIL FURTHER ORDER OF THE COURT." See Complaint at ¶¶ 12-15.⁴

On or about November 16, 1988, Kenneth Harris used the Meritor Check to open an account at Defendant Police and Fire Federal Credit Union in Philadelphia. See Complaint at ¶ 14. Ms. Harris alleges that Police and Fire Federal Credit Union allowed her father to continually withdraw funds from this account, despite the fact that the above instructions were written on the face of the check used to open the account. See Complaint at ¶ 15.

On December 11, 1992, the Comptroller of Currency closed Meritor Savings Bank and the FDIC was appointed as its Receiver. See Complaint at ¶ 19. On September 29, 1996, at Ms.

⁴ In addition, the FDIC has attached a copy of the Meritor Check as an exhibit to its reply brief. While, as a general matter, a district court should not consider matters extraneous to the pleadings on a motion to dismiss, an exception to the general rule is that a "document integral to or explicitly relied upon in the complaint" may be considered "without converting the motion [to dismiss] into one for summary judgment." Shaw v. Digital Equipment Corp., 82 F.3d 1194, 1220 (1st Cir. 1996). See also, Pension Benefit Guar. Corp. v. White Consol. Ltd., 998 F.2d 1192, 1196 (3d Cir. 1993) (holding that "a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document").

Harris's eighteenth birthday, she discovered that all of her settlement money had been withdrawn by her father from the Police and Fire Federal Credit Union in violation of the court order. See Complaint at ¶¶ 16-17. Ms. Harris alleges in her Complaint that she has "demanded her money from the FDIC, Meritor, Mellon, Police and Fire Federal Credit Union, and Kenneth Harris, to no avail." Complaint at ¶ 21. She claims that the FDIC, as Receiver for the now-defunct Meritor Savings Bank, should be liable for Meritor's November 15, 1988 transfer of the funds in the Meritor CD account to Kenneth Harris.⁵

Defendant FDIC, as Receiver for Meritor Savings Bank, argues in its motion to dismiss that plaintiff's Complaint fails to state a claim upon which relief can be granted because, taking the allegations in the Complaint as true, the Complaint does not allege that Meritor Savings Bank acted dishonestly or in bad faith in the transfer of the Meritor CD to plaintiff's father and guardian, Kenneth Harris, as the Uniform Fiduciaries Act requires. See 7 Pa. Cons. Stat. Ann. § 6351 et seq.

Legal Analysis

⁵ It should be noted that Ms. Harris's Complaint does not allege any improper conduct by Meritor Savings Bank during the five year period the Meritor CD was outstanding (between November 7, 1983 and November 15, 1988), or after Meritor transferred the Meritor CD funds to Kenneth Harris on November 15, 1988. Therefore, her claims against Meritor Savings Bank, and hence against the FDIC as Meritor's Receiver, are based solely on Meritor's November 15, 1988 transfer of the funds in the Meritor CD account to Kenneth Harris.

The Uniform Fiduciaries Act ("UFA"), was designed to facilitate banking transactions by relieving a depositary, such as a bank or savings and loan association, of the responsibility of ensuring that an authorized fiduciary uses the entrusted funds for proper purposes. See Robinson Protective Alarm Co. v. Bolger & Picker, 516 A.2d 299, 304 (Pa. 1986). To achieve this goal, the UFA limits the depositary's duty to that of "good faith" or "honesty" in the handling of funds held by a fiduciary, see id., and, thus, "shield[s] a depositary from liability where [the depositary] applies funds consistently with the indorsement on a negotiable instrument in reliance upon a fiduciary's authority to so indorse the instrument, without further inquiry into the fiduciary's actual authority to so apply the entrusted funds." Lehigh Presbytery v. Merchants Bancorp, Inc., 600 A.2d 593, 595 (Pa. Super. 1991) (emphasis in original); see also Manfredi v. Dauphin Deposit Bank, 697 A.2d 1025, 1030 (Pa. Super. 1997)(exploring prior cases where banks were relieved of liability by the UFA because the banks relied on the authority of the fiduciary and applied the funds "consistently with the named payees' endorsements on the instruments").⁶

⁶ The UFA provides that "[a] person who, in good faith, pays or transfers to a fiduciary any money or other property, which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary," 7 Pa. Cons. Stat. Ann. § 6361. The UFA further states that "A thing is done 'in good faith,' within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not." 7 Pa. Cons. Stat. Ann. § 6351(2).

The UFA governs Meritor Savings Bank's November 15,
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Under the UFA, a depository's mere negligence will not negate the UFA's "good faith" standard. See Robinson, 516 A.2d at 304. Furthermore, "even a failure to inquire under suspicious circumstances will not negate 'good faith,' unless the failure to do so is due to a deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect in the transaction." Id. "Conversely, if a bank has knowledge that a fiduciary intends to appropriate trust funds to his own use, and that to release funds to him will aid a breach of trust, then the bank will be held to have acted in 'bad faith.'" Id.

Here the FDIC argues that plaintiff's Complaint should be dismissed because the Complaint neither alleges that Meritor acted dishonestly or in bad faith, nor does it even aver any facts from which it can reasonably be inferred that Meritor acted dishonestly or in bad faith. Furthermore, the FDIC argues that while Ms. Harris's Complaint characterizes Meritor's alleged conduct nevertheless as a breach of contract, a conversion, a breach of fiduciary duty, and negligence, these labels for

⁶(...continued)

1988 transfer of funds in the Meritor CD account to Kenneth Harris. Under the UFA, Kenneth Harris, as the plaintiff's "father and natural guardian," is clearly a "fiduciary" within the meaning of the Act. See 7 Pa. Cons. Stat. Ann. § 6351(1) (defining "fiduciary" as including: "a trustee . . . executor, administrator, guardian, conservator, curator, receiver . . .") (emphasis added). Furthermore, Meritor Savings Bank is indisputably the type of depository that the Pennsylvania General Assembly intended to cover under the Act.

Meritor's conduct do not eliminate the protection that the UFA affords to Meritor.⁷

In response to the FDIC's motion to dismiss, Ms. Harris raises three arguments. First, she points to the language of the UFA's "good faith" provision and argues that it does not apply to this case because her father was not "authorized to receive" the funds from the Meritor CD on November 15, 1988. See 7 Pa. Cons. Stat. Ann. § 6361 ("[a] person who, in good faith, pays or transfers to a fiduciary any money or other property, which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary,") (emphasis added). In making this argument, plaintiff focuses on the recent decision of the Pennsylvania Superior Court in Manfredi v. Dauphin Deposit Bank, 697 A.2d 1025 (Pa. Super. 1997). In that case, the Pennsylvania Superior Court held that a fiduciary, "Louis", was not entitled to the protections of the UFA because he was not authorized to endorse a check on his own. See id. at 1030 (explaining that the bank had failed to secure the endorsement of both Louis and his co-fiduciary, "Charlotte").

⁷ The Supreme Court of Pennsylvania has held that the application of the UFA's "good faith" standard is not limited exclusively to suits for negligence. See Robinson Protective Alarm v. Bolger & Picker, 516 A.2d 299, 304 (Pa. 1986) ("There is nothing on the face of section 2 [of the UFA (the good faith provision)], or in any other provision of the UFA, that would restrict the immunity from liability to suits based on negligence--or preclude its applicability merely because a claim for recovery rests on a contract theory."). Accordingly, the UFA's "good faith" standard applies to plaintiff's claims of breach of contract, conversion, breach of fiduciary duty, and negligence.

Unlike the facts of Manfredi, the Meritor CD identified Kenneth Harris as the sole guardian for Christine Harris. See Complaint at 12. After five years, on November 15, 1988, Kenneth Harris transferred the funds from Meritor Savings Bank to the Police and Fire Federal Credit Union. As noted above, the Meritor Check, which allowed Kenneth Harris to withdraw the funds from Meritor Savings Bank and transfer them to the Police and Fire Federal Credit Union, was captioned with precisely the same title as when the funds were first deposited in Meritor Savings Bank in November, 1983. See Complaint at ¶¶ 12-15. Thus, unlike Manfredi, Kenneth Harris here (a) was authorized to receive the funds as the plaintiff's sole guardian, and (b) was issued the Meritor Check solely in his capacity as plaintiff's guardian, and in any event (c) the bank, relying on the authority of the fiduciary, "applied the funds consistently" with the named payee by making the Meritor Check payable in the exact style in which the account was titled. See Manfredi, 697 A.2d at 1030; see also Lehigh Presbytery, 600 A.2d at 595. We therefore reject plaintiff's first argument.

Next, Ms. Harris argues that "even if Kenneth Harris had the authority to receive the funds, the bank ignored an obvious irregularity which should have put them on notice of improper conduct by the fiduciary Kenneth Harris So the good faith test would not have been met anyway." Plaintiff's Memorandum at unnumbered page 4. In her Memorandum, Ms. Harris

does not specify what "obvious irregularity" should have put Meritor Savings Bank on notice of improper conduct.

Taking all of the allegations in the Complaint as true, we find nothing "irregular" about a fiduciary transferring the funds in a certificate of deposit when it matures after its five-year term. Meritor Savings Bank, upon the request of the guardian, complied with the guardian's request to withdraw the funds, and made the Meritor Check payable in the full detail in which the account was titled, see supra, and thus did all it reasonably could to prevent the conduct that allegedly happened here. As such, we find no "obvious irregularity" in this case.

The fact that the Meritor CD had a restriction that it was "NOT TO BE WITHDRAWN UNTIL MINOR BECOMES 18 YRS. OF AGE OR UNTIL FURTHER ORDER OF THE COURT," Complaint at ¶ 12, does not change our "good faith" analysis. As noted above, the purpose of the UFA is to facilitate banking transactions by relieving the depository of the responsibility of seeing that an authorized fiduciary uses the entrusted funds for proper purposes. See supra. Because Meritor Saving Bank placed the identical restrictions on the Meritor Check issued on November 15, 1988 as the restrictions imposed on the Meritor CD when it was first opened in November 1983, Meritor discharged its duties consistent with the UFA's standards.

To require Meritor Savings Bank to make further inquiry into Kenneth Harris's use of the funds (e.g. whether he was depositing the funds in another CD or if he was using the funds

for his own private purposes) would create a new, stricter and far more expansive duty of care which the Pennsylvania General Assembly could not have intended. Indeed, in the last analysis, it is hard to imagine what more Meritor Savings Bank could have done here, even with perfect hindsight. Should it have declined to remit the matured CD to Kenneth Harris without an Order from the Orphans' Court after full hearing, with the beneficiary's interest separately represented? If this were the legal regime the General Assembly ordained, no sane financial institution would ever touch fiduciary accounts, a perverse result for a law meant to protect such institutions.⁸

Accordingly, we will grant defendant FDIC's motion to dismiss.⁹

⁸ Plaintiff also argues that the Complaint alleges facts sufficient to find bad faith or dishonesty by Meritor Savings Bank. In particular, Ms. Harris points to paragraphs thirteen and twenty-seven of the Complaint, where she alleges that Meritor's issuance of the Meritor Check was "in contravention of the title of the certificate", Complaint at ¶ 13, and that Meritor "ignored [the] terms of the contract." Complaint at ¶ 27.

Taking these allegations as true, plaintiff has at worst alleged that Meritor Savings Bank was negligent in its issuance of the Meritor Check to Kenneth Harris on November 15, 1988. Nothing in the Complaint, however, can be read to mean that Meritor Savings Bank acted in bad faith or that it had knowledge that Kenneth Harris intended to appropriate the funds for his own use. See supra (discussing the "good faith" standard set forth by the Pennsylvania Supreme Court in Robinson Protective Alarm Co. v. Bolger & Picker, 516 A.2d 299, 304 (Pa. 1986)).

⁹ Plaintiff also argues that the UFA's "good faith" provision is a defense, and that plaintiff should not be required to plead "bad faith" or "dishonesty" in anticipation of possible defenses. Our Court of Appeals has held, however, that an

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After our dismissal of federal defendant FDIC, we are left solely with plaintiff's state law claims against defendants Kenneth Harris and Police and Fire Federal Credit Union.¹⁰ As we decline to exercise our supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367(c), we will dismiss plaintiff's state law claims against the remaining defendants without prejudice.¹¹

⁹(...continued)
affirmative defense may be considered on a Rule 12(b)(6) motion "if it presents an insuperable barrier to recovery by the plaintiff." Flight Systems Inc. v. Electronic Data Systems, 112 F.3d 124, 127 (3d Cir. 1997); see also Ala, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 n.9 (3d Cir. 1994). Given the restrictions on liability set forth in the UFA, we find that plaintiff's claims against defendant FDIC must fail. Furthermore, even if there was any merit to Ms. Harris's argument about anticipated defenses, taking all of her claims as true and viewing all inferences in the light most favorable to her, defendant FDIC would still be entitled to summary judgment pursuant to Fed. R. Civ. P. 56. Accordingly, as plaintiff is unable to muster any allegations of bad faith or dishonesty by Meritor Savings Bank (while complying with the requirements of Fed. R. Civ. P. 11), we will dismiss her Complaint with prejudice.

¹⁰ We note that the remaining parties fail to meet the requirements for diversity jurisdiction because they are all citizens of Pennsylvania and the amount in controversy is well below the jurisdictional threshold. See 28 U.S.C. § 1332. Furthermore, there is no longer original jurisdiction over this case, see 28 U.S.C. § 1331, with the dismissal of federal defendant FDIC. See 28 U.S.C. § 1346. Parenthetically, we note that the fact that defendant Police and Fire Federal Credit Union is a federal credit union, established pursuant to 12 U.S.C. § 1752, et seq., does not create a federal cause of action. See Heller v. CACL Fed. Credit Union, 775 F. Supp. 839 (E.D. Pa. 1991) (holding that there is no express or implied private right of action under 12 U.S.C. § 1786); Rosenberg v. AT&T Employees Fed. Credit Union, 726 F. Supp. 573 (D.N.J. 1989) (holding that there is no express or implied private right of action under the Federal Credit Union Act).

¹¹ We will enter a separate Order denying defendant
(continued...)

An Order follows.

¹¹(...continued)
Kenneth Harris's "motion to strike" as moot.

