

MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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ANNA HOVHANNESSIAN,

Index
No.: 16578/02

Plaintiff,

-against-

ALICE YETEMIAN TOROSIAN,

Defendant.
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Plaintiff commenced this action to recover damages for conversion and fraud against the defendant. A non-jury trial was held on February 28, 2007, and it was agreed that JHO Sidney Leviss would hear and determine all issues. JHO Leviss died prior to rendering a decision in this matter. The matter was then transferred to this Part, and as the parties did not want a re-trial of this matter, they entered into a stipulation in which it was agreed that a decision would be rendered based upon the transcript and documents submitted into evidence at trial.

FINDINGS OF FACT:

Plaintiff was the first witness to testify at trial. Plaintiff testified that she received a \$30,000.00 personal injury award as a result of an accident she suffered as a child. The money was deposited in an interest bearing guardianship account in the name of plaintiff's father, Saro Hovhannessian, at

the Greenpoint Savings Bank on June 27, 1983. Plaintiff stated that no money was ever withdrawn from the account until March 24, 1995, two days after plaintiff's eighteenth birthday. By March 24, 1995, the account had grown to \$83,727.96.

Plaintiff testified that on March 24, 1995, she withdrew all the money in the Greenpoint account and entrusted the money to her aunt, the defendant herein. Plaintiff explained that her mother, the defendant's sister, was concerned that the plaintiff was going to spend all the funds, and, thus, asked her to put the money into a joint account held by the defendant and the plaintiff's mother. Plaintiff stated that she was assured by her mother that once she graduated from college, the money would be returned to her. Plaintiff further testified that she had defendant's verbal assurances that she would safeguard her money. Plaintiff withdrew the money from the Greenpoint account as two checks, one in the amount of \$50,000.00 and one in the amount of \$33,727.96. The \$50,000.00 check was deposited at Astoria Federal Savings Bank in what plaintiff thought was a joint account between defendant and her mother. Plaintiff testified that she did not know what ultimately happened to the second check for \$33,727.96. Plaintiff testified that there was no written agreement between her and her mother or the defendant regarding the money.

By October 4, 1999, the money in the Astoria account had

grown to \$83,866.84. Plaintiff testified that she agreed to allow defendant to withdraw \$10,000.00 from the account and give this sum to plaintiff's mother, who needed the funds. Defendant also withdrew the remainder of the money in this account, \$73,866.84, and deposited it in a new account at Astoria in defendant's name. (Plaintiff's Exhibit 6). Plaintiff stated that on December 24, 1999, defendant withdrew \$74,683.48, the balance in this new account, which included interest. Plaintiff did not learn until early 2001 that the defendant had withdrawn the entire amount of these funds. Plaintiff stated that on March 13, 2001, she wrote a letter to the defendant demanding that, within five days, she return all the funds, but the letter was ignored. (Plaintiff's Exhibit 7). Plaintiff stated that she never received any of this money.

The second witness to testify was the defendant. Defendant testified that plaintiff's mother, her sister, was worried that when the plaintiff turned 18, she would waste the money in the Greenpoint account. She explained that her sister asked her to hold the plaintiff's money when she turned eighteen. She also testified that whenever her sister would ask her for money from the account, she would give it to her. Defendant testified that she made various payments to her sister from the account between 1995 and 1999. She stated that in 1995 she paid her sister approximately \$10,000.00, in 1996, she paid approximately

\$15,000.00, in 1997, she paid approximately \$20,000.00, in 1998, she paid approximately \$10,000.00, and in 1999, she paid approximately \$20,000.00. Defendant stated that she paid out a total of \$75,000 to her sister between 1995 and 1999. She stated that she never paid any money to the plaintiff, only to her sister inasmuch as her sister was the one who always asked for money.

Plaintiff then called plaintiff's mother, Yeprouhi Hovhannessian, as a rebuttal witness. Ms. Hovhannessian testified that she and the defendant encouraged the plaintiff to put her money into an account held by her and the defendant until the plaintiff finished college. Ms. Hovhannessian testified that she was present when the plaintiff withdrew her money from the Greenpoint account, and she, plaintiff and the defendant later went to Astoria Federal Savings Bank, where the defendant opened up a new account. Ms. Hovhannessian denied that the defendant ever made any payments to her, except for \$10,000.00 in October 1999. Ms. Hovhannessian also denied that her signature was on the back of a check made out by the defendant to her on February 17, 1997 in the sum of \$20,000.00 (Plaintiff's Exhibit 19). On cross examination, Ms. Hovhannessian stated that someone else signed her name to that check.

CONCLUSIONS OF LAW:

In order to establish a cause of action to recover damages

for conversion, a plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the thing in question to the exclusion of plaintiff's rights. (Eight in One Pet Products v Janco Press, Inc., 37 AD3d 402, 402 [2007]; Batsidis v Batsidis, 9 AD3d 342, 342 [2004]; Di Siena v Di Siena, 266 AD2d 673, 674 [1999].) In order to have a conversion, tangible personal property or specific money must be involved. (Independence Discount Corp. v Bressner, 47 AD2d 756, 757 [1975][citations omitted].)

The elements of a cause of action for fraud are (i) a material misrepresentation of an existing fact, (ii) made with knowledge of its falsity, (iii) made for the purpose of inducing the other party to rely upon it, (iv) justifiable reliance by the other party on the misrepresentation and (v) ensuing damages. (Lama Holding Co. v Smith Barney Inc., 88 NY2d 413, 421 [1996]; Shovak v Long Is. Commercial Bank, 50 AD3d 1118, 1120 [2008]; Orlando v Kukielka, 40 AD3d 829, 830 [2007].)

In the matter at hand, the evidence establishes that the plaintiff was the owner of the funds in the guardianship account at Greenpoint Savings Bank. Plaintiff agreed to turn over these funds to the defendant until the plaintiff graduated from college. However, the evidence establishes that defendant did not return these funds to the plaintiff, despite plaintiff's

written demand in 2001. Thus, the court finds that defendant exercised unauthorized dominion over the funds to the exclusion of the plaintiff's rights. The evidence is insufficient to support defendant's position that she paid various amounts to plaintiff's mother between 1995 and 1999. Indeed, when defendant testified, she was unclear and evasive as to the amounts she allegedly repaid to plaintiff's mother. In any event, any amounts that were repaid should have been paid to the plaintiff, who was the owner of the funds. Defendant conceded in her testimony that she never paid any money to the plaintiff, but only to the plaintiff's mother.

The evidence also establishes that the defendant misled the plaintiff into believing that defendant would hold the plaintiff's money for plaintiff's future benefit. The evidence further shows that plaintiff, as a result of her close personal relationship with the defendant, justifiably relied on defendant's promise to hold the money for her until she graduated from college. Such reliance resulted in damages to the plaintiff since none of the money was ever returned to her.

VERDICT:

Based upon the testimony of the witnesses and the documentary evidence presented at trial, the court finds that plaintiff is entitled to a judgment against the defendant in the amount of \$73,866.64, the amount requested in the complaint.

Accordingly, plaintiff is given leave to enter judgment in the Office of the County Clerk against the defendant in the sum of \$73,866.64, plus interest from March 24, 1995, together with taxable costs and disbursements.

This constitutes the decision and order of the court.

Dated: January 9, 2009

AUGUSTUS C. AGATE, J.S.C.