

**Wells Fargo Bank, N.A. v Mann**

2009 NY Slip Op 31842(U)

August 11, 2009

Supreme Court, New York County

Docket Number: 103671/05

Judge: Walter B. Tolub

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUB

PART 15

Index Number : 103671/2005  
**WELLS FARGO BANK, N.A.**  
 VS.  
**MANN, ALEXANDER K.**  
 SEQUENCE NUMBER : 001  
 SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
 MOTION DATE 6/27/09  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
 Answering Affidavits — Exhibits \_\_\_\_\_  
 Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the accompanying memoranda opinion.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**

AUG 18 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8/12/09

WALTER B. TOLUB  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----x  
WELLS FARGO BANK, N.A. and WELLS FARGO  
BANK, N.A. as Trustee of the  
Marguerite K. Stone Testamentary Trust,

Plaintiffs,

-against-

ALEXANDER K. MANN,  
JPMORGAN CHASE BANK, N.A., and  
DOES 1-10,

Defendants.

Index No. 103671/05  
Mtn Seq. 001

**FILED**  
AUG 18 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

-----x

**WALTER B. TOLUB, J.:**

This action raises the question of whether a bank may be held liable for honoring more than \$300,000 worth of unsigned checks issued to a deceased Trust beneficiary.

By this motion, plaintiffs Wells Fargo Bank, N.A. ("Wells Fargo") and Wells Fargo Bank, N.A., as Trustee of the Marguerite K. Stone Testamentary Trust (collectively, "plaintiffs") move pursuant to CPLR 3212 for summary judgment against defendant JPMorgan Chase Bank, N.A. ("Chase"). In addition, plaintiffs seek an order awarding (1) \$300,643.69 in damages plus pre-judgment interest; and (2) costs and expenses associated with this action. Defendant Chase cross-moves for summary judgment and dismissal of the complaint.

History

In 1979, plaintiff Wells Fargo was appointed as Trustee for the Marguerite K. Stone Testamentary Trust ("the Trust"). The

appointment of Wells Fargo as Trustee was made by virtue of an Order and Decree of Preliminary Distribution without Accounting issued by the California Superior Court for Montgomery county (Notice of Motion, Exhibit C).<sup>1</sup> Under the terms of the Trust, Marguerite's sister, Nell K. Mann ("the beneficiary"), was to be paid a percentage of the Trust's income for the duration of her lifetime. Upon the beneficiary's death, the terms of the Trust dictated that the remaining assets were to be distributed to various enumerated charities (id.).

The beneficiary, Nell K. Mann, is the mother of defendant Alexander K. Mann. Beginning in 1979, Wells Fargo, in accordance with the terms of the Trust, began sending the beneficiary quarterly trust distribution payments to her reported New York address. It is clear both to the court, and to the parties, that at some point, Alexander Mann learned of his mother's status as a Trust beneficiary. It is also clear to the court that the quarterly distribution payments were deposited into a joint account held with defendant Chase in the name of Nell K. Mann and Alexander K. Mann.

Nell K. Mann died at the age of 93 on June 15, 1995 (Notice of Motion, Exhibit D). Neither Wells Fargo nor Chase were informed of her death. Additionally unbeknownst to Wells Fargo

---

<sup>1</sup>One-fourth of the corpus of the Stone Testamentary Trust was derived from a living trust established by Marguerite K. Stone. The trustee for the living trust was defendant Chase.

was that at some point, and it remains unclear as to when, Alexander Mann had begun forging his mother's signature on all of the documents issued by Wells Fargo regarding the Trust disbursements. The resulting forgery induced Wells Fargo to continue paying the scheduled trust disbursements which, as a result of a telephone call claimed to have been made to Wells Fargo on behalf of the beneficiary, were now being mailed to Alexander Mann's residence (see, Notice of Motion; Affirmation of Leonard Weintraub, p. 2).

Nine years elapsed before Wells Fargo discovered the death of the beneficiary and defendant's forgery. The ensuing investigation revealed that between September of 1995 and September of 2004, a total of 39 checks totaling \$300,643.69 were posthumously issued to Nell K. Mann. Each of these checks, bearing only the phrase, "Deposit to Account of Nell K. Mann For Deposits [sic] Only", were presented and deposited into a joint bank account held by Alexander Mann and Nell K. Mann with defendant Chase (Notice of Motion Exhibit F).

Criminal and Civil actions followed, and in 2005 plaintiffs commenced litigation asserting a total of six causes of action. Three of the causes of action asserted are against defendant Alexander Mann. The remaining three causes of action, alleging breach of implied and express warranties, negligence, and conversion, are asserted against defendant Chase.

### Discussion

Plaintiffs' motion for summary judgment is primarily based on the claim that defendant Chase is strictly liable for breaching its warranty under UCC §4-207, and specifically argues that Chase lacked good title to the checks it presented to Wells Fargo for payment. Plaintiff's argument, on its face, is simple: by accepting and depositing the presented checks from Alexander Mann, Chase breached its warranty to the payor bank (Wells Fargo) that either the presenter of the check held good title to the instrument or was authorized to obtain payment or acceptance on behalf of someone who did (UCC §4-207).<sup>2</sup>

Plaintiffs' argument however, is problematic for several reasons. First and foremost, as a general rule, the drawer of a check does not have a direct cause of action against a depository bank for collecting a check that is improperly indorsed (Horovitz v. Roadworks of Great Neck, Inc., 76 NY2d 975 [1990]; Spielman v. Manufacturers Hanover Trust Co., 60 NY2d 221 [1983]). The narrow exception to this rule is seen in situations where a bank, in honoring the improperly indorsed check, is found to have

---

<sup>2</sup> UCC 4-207(1)(a) in pertinent part states:  
 (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that  
 (a) he has good title to the item or is authorized to obtain payment or acceptance on behalf of one who has good title; and  
 (b) he has no knowledge that the signature of the maker or drawer is unauthorized.

committed a gross violation of banking practices (see, for example, Underpinning & Foundation Constructors, Inc. v. Chase Manhattan Bank, N.A., 46 NY2d 459 [1979] (direct action against depository bank allowed where bank paid funds in violation of restrictive indorsement)). Therefore, for plaintiff Wells Fargo in its capacity as a drawee bank to succeed, it must be demonstrated that (1) the presented instrument contained an improper indorsement; and (2) in honoring the presented instrument, the depository bank, Chase, committed a gross violation of banking practices.

Each of the presented checks in this action<sup>3</sup> contained a restrictive indorsement, a direction that the instrument be deposited into a specific account (see, UCC 3-205(c)). Contrary to plaintiffs' arguments, a restrictive indorsement does not require the signature of the depositor in order to be credited to the depositor's account (UCC 3-302(2); Spieiman, 60 NY2d 221).<sup>4</sup> In other words, when presented with a check containing a restrictive indorsement, the only obligation of a depository bank

---

<sup>3</sup> As an aside, the court notes, but declines to address in full for reasons which shall become apparent, that the sixteen checks drawn by plaintiffs between September 15, 1995 and February 19, 1999, are time-barred under the applicable six-year statute of limitations (see, Hechter v. New York Life Insurance Co., 46 NY2d 34 [1978]).

<sup>4</sup> The court further notes that there is no requirement that a restrictive indorsement contain a signature in both the pre-1990 and post 2002 versions of UCC §3-205 and §3-202.

is to apply the proceeds of the check in a manner that is consistent with the direction of the indorser (Spielman, 60 NY2d 221, 227; UCC §3-205). Since defendant Chase accepted the presented checks and deposited the funds into the account held by Nell K. Mann, defendant Chase cannot be said to have failed to comply with the direction of the depositor.

Plaintiffs' arguments that the restrictive indorsement itself was forged does not change this result, and is actually an incorrect characterization. First of all, the papers presented by the parties indicate that Alexander Mann is both a joint owner and signatory of the Nell K. and Alexander Mann Joint account. Since Alexander Mann was an authorized signatory, defendant Chase lacked a reason to automatically suspect that the checks being presented were acquired or indorsed in an improper manner. Furthermore, upon presentment of the indorsed instrument, defendant Chase had no choice but to follow the direction of the authorized depositor (Latallo Etablissement v. Morgan Guaranty Trust Co., 155 AD2d 214 [1<sup>st</sup> Dept. 1990]). Since the funds were presented by a joint account holder and deposited into the account of Nell K. Mann, defendant Chase, who followed the directions on the back of the check cannot be held liable for plaintiff's loss (Spielman, 60 NY2d 221).<sup>5</sup>

---

<sup>5</sup> The court notes that had Chase not followed the directions of the restrictive indorsement, liability may have indeed attached. For comparison, see Underpinning & Foundation

Moreover, even if Chase had deemed the presented checks as being "suspect", the indorsement would still have been recognized as valid. This is because under the UCC, if an imposter induces the drawer of a check to issue the instrument, and then indorses the instrument and deposits it into the rightful payee's account, the indorsement, notwithstanding its procurement by an imposter, is deemed valid (UCC §3-405(1)(a)).<sup>6</sup> That is precisely what occurred in this case. Using the mails and other communications, Alexander Mann successfully convinced the Trustee that his late mother, the trust beneficiary, was still alive and residing at his home address in New York City. On these misrepresentations, the Trustee continued to issue checks to the deceased trust beneficiary, and Alexander Mann, under the UCC, validly indorsed each check for deposit into the beneficiary's account.

Plaintiffs are also precluded from arguing that Chase was somehow negligent in accepting and depositing checks that had been issued to a deceased beneficiary. Since Chase had not been

---

Constructors, Inc. v. Chase Manhattan Bank, 46 NY2d 459 [1979] (drawer allowed to directly sue a depository bank which honored a check in violation of a forged restrictive indorsement where the forgery was effective).

<sup>6</sup> Pursuant to UCC §3-405 (1), an indorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee (UCC §3-405(1)(a)).

notified of the death of Nell K. Mann in 1995,<sup>7</sup> there was nothing to impede Chase from accepting each presented, but posthumously issued, check and depositing it into the joint account in accordance with the restrictive indorsement (see, UCC §4-405).

There is no question that Alexander Mann clearly helped himself to funds he was not entitled to receive. However, there is nothing contained within the papers to substantiate plaintiffs' claim that defendant Chase should have been alerted to the ongoing fraud, or even that they had the burden to uncover the problem in the first instance. Inasmuch as the papers presented fail to substantiate plaintiffs' claim of entitlement to judgment as a matter of law against defendant Chase premised upon the claim of breach of implied and express warranties (see, Zuckerman v City of New York, 49 NY2d 557 [1980]; see generally, Barr, Altman, Lipshie and Gerstman, New York Civil Practice Before Trial, §37:91-92 [James Publishing 2009]), plaintiffs' motion for summary judgment is denied, and dismissal of plaintiffs' fourth cause of action is warranted.

Dismissal of plaintiffs' fifth and sixth causes of action

---

<sup>7</sup> The court emphasizes that in the instant action, neither party had knowledge of the death of Nell K. Mann until considerable time had elapsed. The court additionally notes that plaintiffs, and in particular, the Trustee, first learned of the death of Nell K. Mann in 2004 (Transcript of Jennifer L. Sherry, p. 62, 70), and further emphasizes that the record is devoid of any evidence which would indicate that defendant Chase was somehow on notice of Mrs. Mann's death.

(negligence and conversion, respectively), are also warranted. Since the indorsements, as discussed *supra*, were not forged and were deposited into the correct payee's account, Chase cannot be held to have acted in a commercially unreasonable matter. Plaintiffs therefore cannot establish entitlement to recovery predicated upon theories of conversion under UCC §3-419<sup>8</sup> (see also, Prudential-Bache Securities, Inc. v Citibank, N.A., 73 NY2D 263, 272-273 (no action against defendant for conversion existed where checks drawn by Prudential-Bache were deposited in full compliance with the drawer's instructions. UCC unmistakably precluded recovery). Plaintiffs' claims of negligence similarly fail, as the papers simply do not support the claim that Chase was somehow negligent in their handling of the presented negotiable instruments. Accordingly, it is

ORDERED that the motion advanced by plaintiffs Wells Fargo Bank, N.A. ("Wells Fargo") and Wells Fargo Bank, N.A., as Trustee of the Marguerite K. Stone Testamentary Trust, for summary judgment against defendant JPMorgan Chase Bank, N.A., is denied; and it is further

ORDERED that the cross-motion for summary judgment advanced by defendant JPMorgan Chase Bank, N.A., seeking summary judgment

---

<sup>8</sup> Both UCC §3-419 (pre-1990 version) and the post-2002 version of UCC §3-420, define conversion as having occurred when an instrument is paid on a forged instrument (see, UCC §3-419(1)(c); compare UCC §3-420(a)).


\* 11 ]  
and dismissal of plaintiffs' fourth, fifth and sixth causes of action, is granted; and it is further

ORDERED that the complaint is severed and dismissed as against defendant JPMorgan Chase Bank, N.A., and the Clerk is directed judgment in favor of this defendant, with costs and disbursements as taxed by the clerk; and it is further

ORDERED that the remainder of this action shall continue. Counsel for the remaining parties are directed to appear for a Pre-Trial Conference in 1A Part 15, Room 335, 60 Centre Street, New York, New York at 11:00 a.m. on September 25, 2009.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 8/11/09

  
HON. WALTER B. TOLUB, J.S.C.

**FILED**  
AUG 18 2009  
COUNTY CLERK'S OFFICE  
NEW YORK