

Community Natl. Bank, N.A. v Carver Fed. Sav. Bank
2009 NY Slip Op 32877(U)
December 4, 2009
Supreme Court, New York County
Docket Number: 108906/2008
Judge: Michael D. Stallman
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: J.S.C.
Justice

PART 7

Community National Bank NA

INDEX NO. 108906/2008

- v -

Carver Federal Savings Bank

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits <u>Off to X Mot + memo</u>	<u>3-5</u>
Replying Affidavits <u>support of X Mot (+ memo)</u>	<u>6-7</u>
	<u>8</u>

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion and cross motion are
determined in accordance with the read and opinion of the
justice, order and judgment filed herewith.

FILED
DEC 09 2009
NEW YORK
COUNTY CLERKS OFFICE

MICHAEL D. STALLMAN

Dated: 12/4/09 _____ [Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 7

-----X
COMMUNITY NATIONAL BANK, N.A.,

Plaintiff,

-against-

CARVER FEDERAL SAVINGS BANK,

Defendant.

-----X
HON. MICHAEL D. STALLMAN, J.:

FILED
DEC 09 2009
NEW YORK
COUNTY CLERK'S OFFICE

Index No. 108906/08

Decision and Order

Plaintiff Community National Bank, N. A. (Community) moves, pursuant to CPLR 3124, to compel defendant Carver Federal Savings Bank (Carver) to respond to plaintiff's First Notice of Discovery and Inspection and plaintiff's First Set of Interrogatories, both dated August 7, 2008. Carver cross-moves for summary judgment dismissing the complaint and granting costs, disbursements and attorneys' fees, under 22 NYCRR § 130-1.1. In the alternative, if the cross motion is denied, then defendant requests that a preliminary conference be scheduled to address all outstanding discovery.

BACKGROUND

This is an action for unjust enrichment and money had and received. Community seeks to recover the money earned by Carver on monies that were miscredited by the Federal Reserve Bank of New York (Federal Reserve) to Carver's account, when the deposit was intended for Community's account.

Community maintained an account with the Federal Reserve and utilized certain services provided by the Federal Reserve, including check handling services. Carver's predecessor Community Capital Bank (CCB) maintained a similar account with the Federal Reserve Bank of

Philadelphia.¹ On December 26, 2006, Community made a deposit in the amount of \$1,339,675.74 into its account with the Federal Reserve. The deposit did not appear on Community's daily account statement the following day, as was customary. Plaintiff did not report the missing deposit to the Federal Reserve until February 29, 2008, some 14 months later.

The Federal Reserve investigated Community's complaint and determined that it had made an overpayment of \$1,339,675.74 to CCB as part of \$5,435,796.96 deposit into CCB's Federal Reserve account on December 26, 2006. Upon discovering its error, the Federal Reserve notified CCB, now Carver, by letter dated March 10, 2008. Carver confirmed that there was an overpayment and that it owed the Federal Reserve the sum of \$1,339,675.74. On March 20, 2008, the Federal Reserve requested that Carver return the overpayment, and instructed Carver to wire the funds to Community to satisfy the Federal Reserve's obligation to Community. Carver complied with the Federal Reserve's instructions that day by issuing a wire transfer for that sum required to Community.

Thereafter, Community demanded that Carver compensate it for lost interest income in the sum of \$81,538.21, representing the amount that could have been earned by Carver at the federal funds rate for the period commencing December 26, 1996 until March 20, 2008, which constituted the time Carver held the misdirected funds. Carver, claiming it had no responsibility to provide interest, refused to pay Community, and this litigation ensued.

The complaint alleges two causes of action. The first cause of action is a claim to recover the aforementioned interest under a theory of unjust enrichment. The second cause of action seeks the same relief, but is a claim for money had and received.

¹ For convenience purposes, both the Federal Reserve Bank of New York and the Federal Reserve Bank of Philadelphia shall both be deemed the Federal Reserve.

Defendant contends that Community did not have a possessory interest in the funds Carver received from Federal Reserve, and that such an interest is a necessary component of claims for either unjust enrichment or money had and received. Defendant asserts that the relationship between Community, as account holder, and the Federal Reserve, as depositary institution, was that of creditor and debtor respectively, and that when Community made the subject deposit, the funds became the property of the Federal Reserve, and that, as a result, the Federal Reserve became indebted to Community to pay on demand the amount on deposit, which payment would be from the Federal Reserve's general funds. Carver further claims that when Carver withdrew the monies in its account with the Federal Reserve on December 27, 2006, that payment came from the Federal Reserve's general funds, so that Carver never received the property of Community, and has no obligation to provide it with interest. Carver asserts that Community's claim, if any, lies with the Federal Reserve.²

Community argues that Carver has failed to establish that Community's claims fail as a matter of law. Community maintains that summary judgment is precluded, because there are issues of fact regarding: 1) who had the right to possession of the funds at the time the funds were deposited into Carver's general funds; 2) how Carver used the funds while they were in its possession; and 3) to what extent Carver profited from the use of the funds.

² All parties who handle items through the Federal Reserve system are bound by Regulation J, 12 C.F.R. § 210.1 et seq and the Federal Reserve's Operating Circulars (*see* 12 C.F.R. § 210.3 [b] [2008]). Under Federal Reserve Bank Operating Circular 1 § 4.1 and Operating Circular 3 § 15.1, plaintiff had a duty to monitor its daily statements, and if notice of an error is not made within 30 days, the statement is deemed approved and final. The Federal Reserve limits the recovery of interest caused by its error to 45 days, where there has been timely notification (*see* Federal Reserve's Financial Control Manual, Ch.5, Calculations). Where, as here, there has been a failure to so advise, the delay deprives plaintiff of the right to interest from FRBNY.

LAW AND ANALYSIS

On an action for unjust enrichment, a plaintiff must establish that the defendant is not entitled to a benefit that in “equity and good conscience he should not have been obtained or possessed because it rightfully belonged to [plaintiff]” (*Bugarsky v Marcantonio*, 254 AD2d 384, 384 [2d Dept 1998]). Community alleges that Carver received the benefit of the funds belonging to Community that it had deposited with the Federal Reserve, and that equity requires that Carver is not entitled to retain the benefit of any earnings on the misdirected deposit.

Whether the funds received by Carver belonged to Community depends upon whether the deposit made by Community to the Federal Reserve was a general or special deposit. The Supreme Court in *Marine Bank v Fulton Bank* (69 US [2 Wall] 252, 256 [1864]) long ago explained the difference as follows:

All deposits made with bankers may be divided into two classes, namely, those in which the bank becomes a bailee of the depositor, the title of the thing deposited remaining with the latter and that other kind of deposit which the depositor for his own convenience, parts with the title to his money, and loans it to the banker; and the latter in consideration of the loan of the money and the right to use it for his own profit, agrees to refund the same amount, or any part thereof, on demand.

The determination of whether a deposit is general or special “depends upon the mutual understanding and intention of the parties at the time such deposit is made, and a deposit made in the ordinary course of business is presumed to be general” (*Peoples Westchester Sav. Bank v Federal Deposit Ins. Corp.*, 961 F2d 327, 330 [2d Cir 1992] citing *Keyes v Paducah & I.R. Co.*, 61 F2d 611, 613 [6th Cir 1932]). Community, as the depositor, has the burden of proof in overcoming the presumption by establishing that the deposit was made upon such terms and condition as to

* 6]
Community can be read into its compliance with the Federal Reserve's directive.

The cases cited by Community are not on point. Since, as a matter of law Community has not demonstrated that the monies deposited incorrectly in Carver's account belonged to Community, an action for unjust enrichment will not lie.

Similarly, in an action for money had and received "the plaintiff must show that 'defendant received money belonging to plaintiff'" (*Grain Traders, Inc. v Citibank, N.A.*, 960 F Supp 784 [SD NY 1997] [citations omitted], *aff'd* 160 F3d 97 [2d Cir 1998]). As discussed above, the money received by Carver did not belong to Community, but rather was the property of the Federal Reserve. Consequently, this claim also fails.

In light of the foregoing, because the complaint is to be dismissed, there is no need to address Community's discovery motion.

Carver's request for relief under 22 NYCRR § 130-1.1 is denied.

CONCLUSION

Accordingly, it is

ORDERED that the cross motion for summary judgment is granted and the complaint is dismissed with costs and disbursement to defendant as taxed by the Clerk of the Court; and it is further

ORDERED that the motion to compel discovery is denied; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: December 4, 2009

New York, New York

ENTER:



J.S.C.

FILED
DEC 09 2009
NEW YORK
COUNTY CLERK'S OFFICE