

<b>Styles v TD Bank, NA</b>
2018 NY Slip Op 33902(U)
May 11, 2018
Supreme Court, Westchester County
Docket Number: 66963/17
Judge: Lewis J. Lubell
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PCP 6/4/18 @ 9:30 a.m.

To commence the 30 day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties

SUPREME COURT OF THE STATE of NEW YORK  
COUNTY OF WESTCHESTER

-----X

BERNADETTE STYLES,

Plaintiff,

-against -

TD BANK, NA and TOMMY DESIR,

Defendants.

-----X

LUBELL, J.

**DECISION & ORDER**

Index No. 66963/17

Sequence Nos. 1&2

The following papers were considered in connection with **Motion Sequence #1** by defendant Tommy Desir for an Order dismissing the verified complaint pursuant to CPLR 3211(a)(1) documentary evidence, CPLR 3211(a)(3) no legal capacity to sue, CPLR 3211(a)(7) for failure to state a cause of action; and **Motion Sequence #2** by defendant TD Bank, NA for an Order dismissing the verified complaint pursuant to Rules 3211(a)(1), 3211(a)(3) and 3211(a)(7):

<b>PAPERS</b>	<b>NYSCEF</b>
NOTICE OF MOTION/AFFIRMATION/AFFIDAVIT/ EXHIBITS A-D	5-13
NOTICE OF MOTION/AFFIRMATION/EXHIBIT A/ PROPOSED ORDER/AFFIDAVIT/EXHIBITS 1-4/ MEMORANDUM OF LAW	14-23
AFFIDAVITS IN OPPOSITION/AFFIRMATION/ EXHIBITS A-G	26-36
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MEMORANDUM OF LAW IN REPLY	38

This action concerns a dispute over the ownership of a TD Bank account. Both defendants, Tommy Desir ("Desir") and TD

Bank, NA ("TD Bank"), move to dismiss plaintiff Bernadette Styles's ("Styles") verified complaint alleging six causes of action, including: (1) negligence against TD Bank (plus interest and punitive damages); (2) breach of contract by TD Bank (plus interest) (3) breach of fiduciary duty by TD Bank; and (4) attorneys' fees, against TD Bank. The remaining two causes of action, five (5) and six (6), are against Desir and sound in conversion (plus punitive damages) and a demand for attorneys' fees, respectively, together with costs and disbursements.

#### A. Applicable Law

Under CPLR 3211(a)(1), a motion to dismiss on the ground that the action is barred by documentary evidence, may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations and conclusively establishes a defense as a matter of law. (Leon v. Martinez, 84 N.Y.2d 83, 88 [1994]).

On a defendant's motion to dismiss the complaint, under CPLR 3211(a)(3), based upon the plaintiff's alleged lack of standing, the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law. (Arch Bay Holdings, LLC-Series 2010B v. Smith, 136 A.D.3d 719 [2d Dep't 2016]). "To defeat a defendant's motion, the plaintiff has no burden of establishing its standing as a matter of law; rather, the motion will be defeated if the plaintiff's submissions raise a question of fact as to its standing." (Deutsche Bank Trust Co. Ams. v. Vitellas, 131 A.D.3d 52, 60 [2d Dep't 2015]).

Upon a motion to dismiss, under CPLR 3211(a)(7), for failure to state a cause of action, the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned which, taken together, manifest any cause of action cognizable at law, then the motion will fail. (U.S. Bank N.A. v. Stein, 81 A.D.3d 927, 928 [2d Dep't 2011] (internal quotation marks and citation omitted). The court must afford the pleading a liberal construction, accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory. (Goshen v. Mutual Life Ins. Co. of N.Y., 98 N.Y.2d 314, 326 [2002]).

B. Discussion

Styles's complaint properly alleges causes of action for negligence, breach of contract and breach of fiduciary duty against TD Bank, as well as a claim of conversion against her son, Desir. In short, Styles claims that an account at TD Bank was originally opened in the name of Desir and in trust for her. She also alleges that on July 18, 2016, she accompanied her son to a TD Bank branch and that she met with a TD bank employee to change the ownership of the account from her son to her. However, she contends that the transfer of the ownership of the account to her was not effectuated and that her son subsequently withdrew a large sum of money from what should have been her account.

Without passing on the veracity of her claims, which are strongly disputed by both co-defendants, Styles alleges that TD Bank negligently handled the transfer of the account and that Desir was allowed to improperly convert the funds to his use. Nothing in the documentary record utterly refutes her factual allegations, most importantly, her contentions concerning the events of the meeting of July 18, 2016 at the bank with her son and the bank employee. As a result, the motions to dismiss the First, Second, Third and Fifth causes of action are denied.

However, to the extent that the First and Fifth causes of action seek punitive damages against TD Bank and Desir, that demand is stricken. Styles does not in the least "allege facts demonstrating such a high degree of moral culpability so as to warrant a recovery for punitive damages." (Jakobsen v. Wilfred Laboratories, Inc., 99 A.D.2d 525, 527 [2d Dep't 1984]; see also Rose Lee Mfg. v. Chem. Bank, 186 A.D.2d 548, 550-51 [2d Dep't 1992] (in dismissing plaintiff's claim for punitive damages, the court stated that "neither the specific cause of action, nor the complaint as a whole, allege[d] facts demonstrating such a high degree of moral culpability as to warrant a recovery of punitive damages")). Further, Styles has failed to plead that the defendants' actions impacted anything other than their own relationship, as opposed to the public at large. (See Johnson v. Allstate Ins. Co., 33 A.D.3d 665, 666 [2d Dep't 2006] ("to recover punitive damages, conduct must be alleged which is part of a pattern directed at the public generally"))).

Finally, Styles's Fourth and Sixth causes of action seek attorneys' fees and costs against TD Bank and Desir respectively. The law is clear that absent statutory authority,

parties are responsible for their own fees and costs.

Based upon the foregoing, it is hereby

**ORDERED** that defendants' motions to dismiss the complaint are GRANTED in part and DENIED in part; and it is further

**ORDERED** that the Fourth and Sixth causes of action are dismissed; and it is further

**ORDERED** that plaintiff's demands for punitive damages in the First and Fifth causes of action are stricken; and, it is further

**ORDERED** that defendants shall service and file their answers by May 31, 2018 and the parties shall appear on Monday, June 4, 2018, at 9:30 a.m. in the Preliminary Conference Part, Courtroom 811, Westchester County Supreme Court, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York, prepared to conduct a preliminary conference.

The foregoing constitutes the Opinion, Decision, and Order of the Court.

Dated: White Plains, New York  
May 11, 2018



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