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

**PRESENT:** **HON. DAKOTA D. RAMSEUR** **PART** **34M**

*Justice*

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IRENA PRZYBYL, JULIAN PRZYBYL, BARBARA KROL, BARTOSZ MARCIN PRZYBYL, SZYMON GRZEGORZ PRZYBYL

Plaintiff,

- v -

JPMORGAN CHASE, N.A.,

Defendant.

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**INDEX NO.** 152073/2022

**MOTION DATE** N/A

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISSAL.

In March 2022, plaintiffs Irena Przybyl, Julian Pryzbyl, Barbara Krol, Bartosz Przybyl, and Szymon Przybyl (all of whom are Polish citizens) commenced this action, as alleged beneficiaries to decedent Ursula Osburne's estate under Polish law, to recover monies in two bank accounts maintained by defendant JP Morgan Chase Bank, NA ("Chase") in decedent's name. Plaintiffs assert two causes of action: the first, a declaratory judgment that plaintiffs are entitled to the assets in the two bank accounts as the beneficiaries of decedent's estate under applicable law; the second, for unlawful conversion of said assets after defendant refused to distribute them to plaintiffs. In this motion sequence (001), defendant moves pursuant to CPLR 3211 (a) (1) and (a) (7) to dismiss plaintiffs' conversion cause of action. For the following reasons, defendant's motion is granted.

## BACKGROUND

On October 30, 2019, Ursula Osburne died intestate in Gdansk, Poland. According to a Deed of Succession Certificate, duly executed in Poland on April 23, 2020, the named plaintiffs are the sole beneficiaries of Osburne's Estate. (NYSCEF doc. no. 18, Deed of Succession.) That estate includes two bank accounts that Osburne opened with defendant in 2013. The first is a checking account with a balance of $527,345.29; the other is a savings account with a balance of $15,614.68 (hereinafter, collectively "the Accounts"). The two accounts have a current total balance of $542,959.97.

When she opened the accounts, Osburne agreed to be bound by the terms and conditions of the bank's Deposit Account Agreement. (NYSCEF doc. no. 10, Deposit Account Agreement.) Paragraph 17 of this agreement, entitled "Death or incompetence of account owner or sole signer," permits defendant, upon notice of death, to freeze the account and refuse to accept

transactions or deposits; it allows defendant to refuse requests to release the funds until it receives documents verifying the death and who is entitled to the funds; and it provides that defendant "may require a personal representative to be appointed by a court in a United States jurisdiction" for account holders who die outside the United States (*Id.*) The Deposit Account Agreement also states that the agreement is binding on "your personal representative, executors, administrators, and successors, and on our successors and assigns." (*Id.* at ¶13.)

Plaintiffs allege that they presented the Deed of Succession to a representative at one of defendant's Manhattan branches (NYSCEF doc. no. 1 at ¶11, Complaint), but defendant refused to distribute the assets in these two accounts until plaintiffs provided a Letter of Administration identifying authorized representatives of the Osburne's Estate. On January 14, 2021, plaintiffs filed a petition for ancillary letters of administration in Surrogate's Court in Suffolk County. On April 23, 2021, the court denied the petition. It explained: (1) the petitioner is not the fiduciary of decedent's estate and had not "submitted proof that letters of administration of the estate have been issued by a competent court in the decedent's domicile;" (2) the situs of the bank accounts—being intangible assets—are in Poland; and (3) since both the situs of the accounts is in Poland and all the distributees of the estate are domiciled in Poland, there is no basis for the court to exercise jurisdiction over the accounts. (NYSCEF doc. no. 11, Suffolk County Surrogate's Court Decision.) Thereafter, plaintiff reiterated its demand to defendant that it distribute the assets to plaintiffs. After defendant again refused to do so, plaintiffs commenced this action. As described above, defendant now moves to dismiss plaintiffs' cause of action for conversion pursuant to CPLR 3211 (a) (1) and (a) (7). (NYSCEF doc. no. 6, Notice of Motion.)

## DISCUSSION

*Motion to Dismiss Pursuant to CPLR (a) (7)*

On a motion to dismiss for failure to state a cause of action under CPLR 3211 (a) (7), courts afford the pleadings a liberal construction, accept the facts as alleged in the complaint as true, and give the plaintiff the benefit of every possible favorable inference. (*Leon v Martinez*, 84 NY2d 83, 87 [1994]; *JF Capital Advisors, LLC v Lightstone Group, LLC*, 25 NY3d 759, 764 [2015].) The courts' inquiry is limited to assessing the legal sufficiency of the plaintiff's pleadings; accordingly, its only function is to determine whether the facts as alleged fit within a cognizable legal theory. (*JF Capital Advisors*, 25 NY3d at 764.) Since conversion takes place "when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession" (*Family Health Mgt., LLC v Rohan Devs., LLC*, 207 AD3d 136, 138 [1st Dept 2022], quoting *Colavito v New York Organ Donor Network, Inc*, 8 NY3d 43, 49-50 [2006]), the Court must determine whether plaintiffs sufficiently allege: (1) the property in question is subject to a conversion cause of action, (2) they have a possessory right or interest in the accounts, and (3) defendant's maintained dominion over the accounts or interfered with their possessory interest. (*Petrone v Davidoff Hutcher Citron, LLP*, 150 AD3d 776, 777 [2d Dept 2017].)

Defendant contends that general bank deposit accounts—like the two in Osburne's name—cannot be the subject of a conversion action. (NYSCEF doc. no. 12, Def. Memo of Law.) The Court agrees. Where the subject of the alleged conversion is money, as here, the general rule

is that the plaintiff must allege a "specific, identifiable fund and an obligation to return or otherwise treat [it] in a particular manner." (*Family Health Mgt.*, 207 AD3d at 139, citing *Manufacturers Hanover Trust Co. v Chemical Bank*, 160 AD2d 113, 124 [1st Dept 1990].) As the District Court for the Southern District of New York explained in *Kirschner v Bennett* (759 F. Supp. 2d 301 [SDNY 2010]), under New York law, the depositing of funds into an unsegregated account actually transfers title of the funds to the bank for its use, with other unsegregated funds, in conducting its business. (*Id.* at 32-329.) As opposed to the use of a segregated account, where the depositor retains title to its funds, deposits into an unsegregated funds make it so that the deposited funds are no longer specific and identifiable. (*Id.* at n 25; *Citadel Mgmt., Inc. v Telesis Trust, Inc.*, 123 F Supp 2d 133, 148 [SDNY 2000], citing *Westchester Savings Bank v FDIC*, 961 F2d 327, 330 [2d Cir 1992].) The First Department described it thus: "The rules gleaned from *Manufacturers Hanover Trust Co.* and *Thys* [is that only] 'money, specifically identifiable and *segregated*, can be the subject of conversion (citations omitted) (emphasis added).'" (*Family Health Mgt.*, 207 AD3d at 139.)

The case law cited by plaintiffs is inapplicable to the circumstances at hand. They cite to *Payne v White* (101 AD2d 975, 976 [3d Dept 1984]) for the proposition that clearly identifiable funds from a specific bank account are subject to a conversion claim. (NYSCEF doc. no. 16 at 9, Plaint. Memo of Law.) However, this case involved a plaintiff asserting a cause of action against a relative who had withdrawn funds from the specific bank account in question—not against the bank itself while it held the funds. Plaintiffs contends that in *Thys v Fortis Sec. LLC* (74 AD3d 546 [1st Dept 2010]) actually supports its position. There, the Appellate Division, First Department reversed a dismissal where the defendant improperly retained funds that were given to it in consideration for recalculating the plaintiff-employee's bonus. (*Id.* at 547.) Again, however, this case does not implicate whether general deposit accounts with a financial institution are subject to conversion.

The Court's own research revealed cases that plausibly support the position that certain funds may be the subject of a conversion claim without regard for their status in segregated versus unsegregated accounts. For example, in *Family Health Mgt.*, the First Department reviewed its past decisions and noted that *Manufacturers Hanover Trust*'s finding that the funds at issue were "specifically identifiable" did not turn on the nature of the account that the funds were held in. (*Family Health Mgt.*, 207 AD3d at 141.) Later, the Court wrote: "as a review of the above cases demonstrate, when the funds at issue in an action for the conversion of money constitute a 'specific sum,' one that is 'determinate,' and reflects an 'ascertained' amount, the money is 'specifically identifiable.'" (207 AD3d at 145.) In describing the important features of what constitutes "specifically identifiable" (notably by leaving out the type of account), the court plausibly includes deposit accounts—which, quite obviously, can be for a specific, determinate, and ascertained amount.

However, in squaring its holding with that of *SH575 Holdings LLC v Reliable Abstract Co.* (195 AD3d 429 [1st Dept 2021])—a case which explicitly determined that funds were no longer "specifically, identifiable" once they were placed in an unsegregated account—the *Family Health Mgt* court wrote that, unlike in *SH575*, the funds at issue therein remained plaintiff's, that title had not passed, even when placed in an unsegregated account. (*Family Health Mgt*, 207 AD3d at 149.) To the court, "the fund's temporary presence" in the unsegregated account was of

such a short duration that the funds did not commingle "under any measure pertinent to this cause of action" with other assets in the unsegregated account. (*Id.*) In this regard, then, the funds in question in *Family Health Mgt.* are distinguishable from assets held in deposit accounts because those in deposit accounts, as explained *supra*, unquestionably transfer possession and commingle with other similarly held, unsegregated assets. As such, even the Court's own research does not provide support for plaintiff's position.

Given this independent reason for dismissing plaintiffs' cause of action for conversion, the Court need not address whether plaintiffs, as mere beneficiaries of Osburne's estate, have pled a possessory interest in the accounts or whether dismissal is warranted under CPLR 3211 (a) (1).

Accordingly, for the forgoing reason, it is hereby

ORDERED that defendant JP Morgan Chase Bank N.A.'s motion to dismiss plaintiffs' conversion cause of action is granted; and it is further

ORDERED that defendant and plaintiff shall appear at 60 Centre Street, Courtroom 341, on March 21, 2023, at 10 a.m. for a status conference; and it is further

ORDERED that counsel for defendant shall service a notice of entry along with a copy of this order on all parties within ten (10) days of entry.

This order constitutes the decision of the Court.

2/29/2023
DATE

DAKOTA D. RAMSEUR, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | X | GRANTED | | DENIED | | GRANTED IN PART | | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | | REFERENCE |