MASSACHUSETTS SUPREME JUDICIAL COURT

Go-Best Assets Ltd. v. Citizens Bank

463 Mass. 50 (2012) · Decided July 30, 2012

SUMMARY

The Supreme Judicial Court of Massachusetts held that Citizens Bank could not be held liable for negligence or aiding and abetting fraud, breach of fiduciary duty, or conversion arising from an attorney's misappropriation of $5 million deposited into his client account. The court concluded that the bank lacked actual knowledge of the intended or apparent misappropriation and that its contractual duty to report dishonored checks to the Board of Bar Overseers did not create a tort duty owed to trust beneficiaries. The court affirmed summary judgment for Citizens Bank.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Gants, J.
JURISDICTION	Massachusetts
DECIDED	July 30, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Further appellate review of the Appeals Court's partial reversal of a Superior Court dismissal. The Supreme Judicial Court treated the dismissal as summary judgment because the motion judge considered affidavits and exhibits.
STANDARD OF REVIEW	De novo review of summary judgment to determine whether, viewing the evidence in the light most favorable to the nonmoving party, the moving party was entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; precedential.
PARTIES	Citizens Bank v. Go-Best Assets Ltd.

TOPICS

negligence · duty of care · trusts · commercial litigation · uniform commercial code

PRACTICE AREAS

torts | commercial litigation | professional responsibility | banking law

QUESTIONS PRESENTED

1. Whether Citizens Bank owed Go-Best a tort duty to investigate or prevent the withdrawal or misappropriation of funds deposited into Goldings's client account.
2. Whether dishonored checks, negative account balances, and an unauthorized transfer from an IOLTA account were sufficient to establish or support an inference that Citizens Bank had actual knowledge of Goldings's intended or apparent misappropriation.
3. Whether Citizens Bank's contractual duty under Mass. R. Prof. C. 1.15 to notify the Board of Bar Overseers of dishonored checks from a qualifying trust account created a tort duty owed to the beneficiaries of funds in the account.
4. Whether Go-Best's aiding-and-abetting claims survived summary judgment without evidence that Citizens Bank knew of or substantially assisted Goldings's fraud, breach of fiduciary duty, or conversion.

HOLDINGS

1. A bank generally owes no duty to investigate or inquire into withdrawals by a person authorized to draw on an account. A duty to take reasonable steps to prevent misappropriation arises only when the bank has actual knowledge of an intended or apparent misappropriation and its failure to act would constitute participation or acquiescence.
2. A bank's contractual duty under Mass. R. Prof. C. 1.15 to notify the Board of Bar Overseers of dishonored checks from a trust account is not a tort duty of care owed to the beneficiaries of funds in that account.
3. The aiding-and-abetting claims failed because Go-Best presented no evidence that Citizens Bank knew of Goldings's tortious conduct or actively participated in or substantially assisted the fraud, breach of fiduciary duty, or conversion.
4. The record presented genuine issues of material fact concerning whether the client account was a trust account and whether Citizens Bank reasonably knew that it was a trust account, but those issues did not preclude judgment for the bank because the notification obligation did not create a tort duty owed to Go-Best.

KEY QUOTATIONS

> *“A bank that is merely the drawee of a check ought not to be made liable to the payee for anything short of participation or assistance in a known or apparent misappropriation of funds”* (55)

> *“But a risk of misappropriation alone is not enough to support an inference that the bank had actual knowledge of an attorney’s intended or apparent misappropriation of client funds.”* (56)

> *“A duty of care must already exist before a plaintiff can use a defendant’s statutory violation to support a claim of tort liability.”* (62)

> *"In short, the facts as alleged in Lemer put the banks on notice of the attorney's misappropriation of trust funds, and the banks substantially assisted in that misappropriation by affirmatively concealing information with the intent of allowing the misappropriation to continue."* (64)

FACTUAL BACKGROUND

Go-Best wired $5 million to an account at Citizens Bank entitled "Morris M. Goldings client account" after attorney Morris Goldings represented that the funds would be held in trust and escrowed with Starwood stock. Goldings admitted that the representations were false, that no stock had been placed in escrow, and that he had used Go-Best's money to repay other debts. Before the transfer, the account had experienced dishonored checks, negative balances, and an unauthorized transfer of $200,000 from a related IOLTA account, but the record contained no evidence that Citizens Bank actually knew of Goldings's scheme to misappropriate Go-Best's funds.

PROCEDURAL HISTORY

Go-Best sued Citizens Bank for misrepresentation, conversion, aiding and abetting fraud, aiding and abetting breach of fiduciary duty, aiding and abetting conversion, and negligence. The Superior Court dismissed the claims against Citizens Bank. The Appeals Court reversed in part as to negligence and aiding-and-abetting claims, and the Supreme Judicial Court granted Citizens Bank's application for further appellate review and affirmed the dismissal of all claims against the bank.

DISPOSITION

affirmed

CASES CITED

- Juliano v. Simpson, 461 Mass. 527, 529-532 (2012)
- Augat Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991)
- Leavitt v. Brockton Hosp., Inc., 454 Mass. 37, 39-40 (2009)
- Boston Note Brokerage Co. v. Pilgrim Trust Co., 318 Mass. 224, 227-228 (1945)
- Kendall v. Fidelity Trust Co., 230 Mass. 238, 242 (1918)
- Lerner v. Fleet Bank, N.A., 459 F.3d 273, 282-295 (2d Cir. 2006)
- Schlichte v. Granite Sav. Bank, 40 Mass. App. Ct. 179, 181 (1996)
- Eastern Mut. Ins. Co. v. Atlantic Nat'l Bank, 260 Mass. 485, 488 (1927)
- Newburyport v. First Nat'l Bank, 216 Mass. 304, 304-305 (1914)
- Anderson v. Fox Hill Village Homeowners Corp., 424 Mass. 365, 366-368 (1997)
- Binns v. Board of Bar Overseers, 369 Mass. 975, 976 (1976)
- Gorbatova v. Semuels, 462 Mass. 1012, 1012 (2012)
- Slotnick v. Pike, 374 Mass. 822, 822 (1977)
- Bennett v. Eagle Brook Country Store, Inc., 408 Mass. 355, 358 (1990)

- Spinner v. Nutt, 417 Mass. 549, 555 (1994)
- Rae v. Air-Speed, Inc., 386 Mass. 187, 195 (1982)
- Miller v. Mooney, 431 Mass. 57, 62 (2000)
- Arcidi v. National Ass'n of Gov't Employees, 447 Mass. 616, 623-624 (2006)
- Gossels v. Fleet Nat'l Bank, 453 Mass. 366, 370 (2009)

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