UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Powers v. American Express Financial Advisors, Inc.

82 F. Supp. 2d 448 (D. Md. 2000) · No. CIV. S 99-385 · Decided January 24, 2000

SUMMARY

The court held that American Express Financial Advisors was liable for transferring funds from a joint securities account based on an entitlement order bearing a forged signature, where the account agreement required authorization from both account holders for redemptions exceeding $50,000. The court granted the plaintiff's motion for summary judgment on the transfer claim and denied the defendant's motion, concluding that the order was ineffective under Maryland's revised Uniform Commercial Code Article 8. The court ordered an award of $86,836.79, prejudgment interest, postjudgment interest, and costs, subject to disposition of the third-party claim.

CASE DETAILS

COURT	United States District Court for the District of Maryland
WRITING FOR THE COURT	Smalkin, District Judge
JURISDICTION	Maryland
DECIDED	January 24, 2000
DOCKET	CIV. S 99-385
DISPOSITION	other
PROCEDURAL POSTURE	Diversity action removed from Maryland state court; the parties filed cross-motions for summary judgment concerning American Express's liability for transferring assets from a joint-and-survivor securities account based on a forged authorization.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. The court applied the directed-verdict standard to determine whether a reasonable factfinder could find for the nonmoving party.
PRECEDENTIAL VALUE	Published federal district court memorandum opinion; persuasive authority within the District of Maryland and not binding precedent beyond the court's jurisdiction.

TOPICS

summary judgment · uniform commercial code · commercial litigation · damages · civil procedure

PRACTICE AREAS

commercial litigation · uniform commercial code · secured transactions · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether American Express was liable under Maryland Uniform Commercial Code Article 8 for honoring an entitlement order on a joint securities account when the account agreement required both holders' authorization and Powers's signature was forged.
2. Whether American Express could avoid liability by showing that it exercised due care and complied with reasonable commercial standards in verifying the forged authorization.
3. Whether the account should be reestablished or Powers should instead receive damages, including prejudgment interest.
4. Whether American Express had standing to assert a constructive-trust claim on behalf of Signal, the alleged source of the funds.
5. Whether Powers could obtain summary judgment on a claim based on American Express's alleged noncompliance with a transfer order that she simultaneously alleged she had not signed.
6. Whether the account application contained an enforceable general release for wire-transfer liability.

HOLDINGS

1. When a securities intermediary's account agreement requires authorization by both joint entitlement holders for a redemption exceeding the specified amount, an order bearing one holder's forged signature is ineffective absent agency or ratification, and the intermediary is liable to the nonauthorizing holder for honoring it.
2. An intermediary's exercise of due care and compliance with reasonable commercial standards do not eliminate liability for honoring an ineffective entitlement order when the order was unauthorized under the account agreement.
3. Powers was entitled to recovery of the amount transferred, with prejudgment interest, rather than speculative damages for lost gains or income distributions.
4. American Express lacked standing to assert a constructive-trust claim on behalf of Signal, and the record independently failed to establish a basis for imposing a constructive trust.
5. Powers was not entitled to summary judgment on a claim based on American Express's alleged noncompliance with the transfer order because that position was inconsistent with her assertion that she never signed the order and was barred by judicial estoppel.
6. The account application's ambiguous, unsigned wire-transfer language did not release American Express from liability under Maryland U.C.C. Title 8 and could not override the statutory standards of care and liability.

KEY QUOTATIONS

> *“The Court is of the opinion, as a matter of law, that, even if American Express exercised due care in accordance with reasonable commercial standards by verifying the signature against a known Amy Powers' exemplar and by noting the presence of a notary's signature and seal on the document (but note that the document bearing the signature authorized transfer to Prudential, not to a bank), it is still liable to Powers, because the order, for which she never gave any form of authorization or ratified, was "ineffective."”* (82 F. Supp. 2d at 451)

> *“In short, the drawee and the taker, respectively, are in better positions to protect themselves from the loss occasioned by the forgery than is the person whose signature has been forged while she was unaware she was being victimized, even though they exercised due care and followed reasonable commercial standards.”* (82 F. Supp. 2d at 453)

> *“That the defendant's motion for summary judgment BE, and it hereby IS, DENIED;”* (82 F. Supp. 2d at 458)

FACTUAL BACKGROUND

Powers and D'Ambrosia held mutual-fund investments with American Express in joint-and-survivor form. The account application required both signatures for redemption requests exceeding $50,000, and the relevant redemption exceeded $86,000. After D'Ambrosia requested that American Express freeze the investments, he submitted a transfer request supported by a document bearing Powers's forged signature; American Express verified the signature against an exemplar and transferred the funds. D'Ambrosia then emptied the receiving joint bank account and fled, leaving Powers without the transferred funds.

PROCEDURAL HISTORY

Amy Lynn Powers sued American Express Financial Advisors, Inc. in Maryland state court, and the action was removed to the United States District Court for the District of Maryland. American Express brought Michael D'Ambrosia into the case as a third-party defendant. The district court previously denied American Express's Rule 12(b)(6) motion and then considered cross-motions for summary judgment. The court denied American Express's motion, granted Powers's motion as to the October 16, 1997 transfer but otherwise denied it, and directed further proceedings on the third-party claim before entry of final judgment.

DISPOSITION

other

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)
- Price v. Neal, 3 Burr. 1354 (1762)
- Aliano, Aliano & Aliano v. Aliano, 251 A.D.2d 436, 674 N.Y.S.2d 404 (1998)
- Miller v. Mauzey, 960 S.W.2d 564, 569 (Mo. App. 1998)
- Brown v. Coleman, 318 Md. 56, 566 A.2d 1091 (1989)
- Precon Corp. v. G & B Environmental, Inc., 103 F.3d 119, 1996 WL 694440 (4th Cir. 1996) (table)

- United Cable Television v. Burch, 354 Md. 658, 732 A.2d 887 (1999)