UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Thomas Calvey v. Stifel, Nicolaus & Company, Inc.

No. 20-3423, United States Court of Appeals for the Sixth Circuit (March 9, 2021)

SUMMARY

Under Ohio's Uniform Power of Attorney Act, a financial institution may rely on a facially valid, notarized power of attorney without investigating the agent's actions, even if the agent misappropriates funds. The Sixth Circuit affirmed summary judgment for Stifel, holding that Stifel had no duty to verify the POA beyond its standard review process or to seek the principal's approval before each withdrawal. Thomas Calvey's claims for negligence, breach of fiduciary duty, and conversion failed because Stifel's reliance on the signed, witnessed, and notarized POA was reasonable as a matter of law, and his objections—a non-expert's signature concern, a missing witness certificate page, and alleged procedural lapses—did not create a genuine issue of material fact.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	McKeague; Griffin; Nalbandian
JURISDICTION	Federal
DECIDED	March 9, 2021
DOCKET	20-3423
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of Ohio's grant of summary judgment dismissing all claims.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Unpublished
PARTIES	Thomas Calvey v. Stifel, Nicolaus & Company, Inc.

TOPICS

summary judgment · negligence · breach of fiduciary duty · conversion · civil procedure

PRACTICE AREAS

Torts · Contracts · Civil Procedure

QUESTIONS PRESENTED

1. Whether the district court erred in granting summary judgment on the negligence and breach of fiduciary duty claims.
2. Whether the district court erred in granting summary judgment on the conversion claim.
3. Whether the district court erred in dismissing the punitive damages claim.

HOLDINGS

1. Under Ohio law, a financial institution is entitled to rely on a facially valid POA that is signed, witnessed, and notarized, and has no duty to investigate the actions of the POA holder. Thomas failed to create a genuine issue of material fact that Stifel breached its duty.
2. Because Stifel lawfully transferred funds pursuant to a valid POA, there was no wrongful act, so the conversion claim fails.
3. Punitive damages are not an independent cause of action in Ohio, so dismissal was proper.

KEY QUOTATIONS

> *"Any third party who receives a valid copy of this Power of Attorney can rely on and act under it. A third party who relies on the reasonable representations of my Attorney-in-fact as to a matter relating to a power granted by this Power of Attorney will not incur any liability to the Principal or to the Principal's heirs, assigns, or estate as a result of permitting the Attorney-in-fact to exercise the authority granted by this Power of Attorney up to the point of revocation of this Power of Attorney."* (at 2)

> *"Financial institutions that possess valid POAs have 'no duty to investigate every action that the holder of that power of attorney takes to ensure that each action is proper.'"* (at 6)

> *"requiring financial institutions to investigate the actions of POA holders before permitting withdrawal of funds would be 'an onerous requirement' that 'would not only be impracticable, but would essentially eliminate the power of attorney as a useful tool in the transaction of business of any elderly, disabled, absent, or otherwise incapacitated individual.'"* (at 7)

> *"Stifel lawfully transferred the funds pursuant to a valid POA, and so the conversion claim was properly dismissed by the district court."* (at 10)

FACTUAL BACKGROUND

Thomas Calvey opened investment accounts with Stifel. In 2017, he signed a power of attorney (POA) naming his brother James as attorney-in-fact. The POA was notarized and witnessed. Stifel received the POA, reviewed it, and approved it. James then withdrew over $300,000 from Thomas's accounts to purchase a home and for living expenses. Thomas later claimed he was duped into signing the POA and that James misused the funds. Thomas sued Stifel for failing to properly verify the POA.

PROCEDURAL HISTORY

Thomas Calvey sued Stifel in Ohio state court for negligence, breach of fiduciary duty, conversion, and punitive damages. Stifel removed to federal court. The district court granted summary judgment for Stifel. Calvey appeals.

DISPOSITION

affirmed

CASES CITED

- King v. United States, 917 F.3d 409 (6th Cir. 2019)
- Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)
- Copeland v. Machulis, 57 F.3d 476 (6th Cir. 1995)
- Chambers v. St. Mary's Sch., 697 N.E.2d 198 (Ohio 1998)
- Garvais v. Reliant Inventory Sols., Inc., No. 2:09–cv–389, 2012 WL 4057411 (S.D. Ohio Sep. 14, 2012)
- All Star Land Title Agency, Inc. v. Surewin Inv., Inc., No. 87569, 2006 WL 3095701 (Ohio Ct. App. Nov. 2, 2006)
- Mathias v. Rosser, Nos. 01AP–768, 01AP–770, 2002 WL 1066937 (Ohio Ct. App. May 30, 2002)
- Javitch v. First Montauk Fin. Corp., 279 F. Supp. 2d 931 (N.D. Ohio 2003)
- J.C. Bradford Futures, Inc. v. Dahlonega Mint, Inc., 907 F.2d 150 (6th Cir. 1990) (table)
- A.G. Financial, Inc. v. LaSalla, No. 84880, 2005 WL 730092 (Ohio Ct. App. Mar. 31, 2005)
- Townsend v. Williger, No. 5:05-CV-02540, 2006 WL 721394 (N.D. Ohio Mar. 16, 2006)
- Thrower v. Bolden, No. 97813, 2012 WL 3765035 (Ohio Ct. App. Aug. 30, 2012)
- Gupta v. Lincoln Nat'l Life Ins. Co., No. 05AP-378, 2005 WL 3304019 (Ohio Ct. App. Dec. 6, 2005)
- First Star Logistics, LLC v. Bernard, No. 1:16-cv-1070, 2020 WL 7698130 (S.D. Ohio Dec. 28, 2020)
- Kuvedina, LLC v. Cognizant Tech. Sols., 946 F. Supp. 2d 749 (S.D. Ohio 2013)
- Hitachi Med. Sys. Am., Inc. v. Branch, No. 5:09-cv-01575, 2010 WL 816344 (N.D. Ohio Mar. 4, 2010)
- Niskanen v. Giant Eagle, Inc., 912 N.E.2d 595 (Ohio 2009)
- Bishop v. Grdina, 485 N.E.2d 704 (Ohio 1985)
- Williams v. Union Carbide Corp., 790 F.2d 552 (6th Cir. 1986)