

SUPERIOR COURT OF PENNSYLVANIA

David H. Marion, Receiver for Bentley Financial Services, Inc. and Entrust Group v. Bryn Mawr Trust Company

David H. Marion, Receiver for Bentley Financial Services, Inc. and Entrust Group v. Bryn Mawr Trust Co., 2021
PA Super 18 · No. No. 2470 EDA 2018 · Decided February 16, 2021

SUMMARY

The Pennsylvania Superior Court vacated a judgment in favor of Bryn Mawr Trust Company and remanded for a new trial in an action brought by a receiver for entities involved in Robert Bentley's Ponzi scheme. The court held that Pennsylvania recognizes a claim for aiding and abetting tortious conduct under Section 876(b) of the Restatement (Second) of Torts and found a triable issue concerning the bank's alleged intentional ignorance and substantial assistance. The court also addressed the admission of evidence concerning the receiver's legal expenses and early redemption of certificates of deposit.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	Stabile, J.; Panella, P.J.; Colins, J.
JURISDICTION	Pennsylvania
DECIDED	February 16, 2021
DOCKET	No. 2470 EDA 2018
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from a judgment entered on a jury defense verdict and denial of post-trial motions; the appeal also challenged summary judgment dismissing the aiding-and-abetting-fraud claim.
STANDARD OF REVIEW	Summary judgment is reviewed de novo with plenary scope, viewing the record in the light most favorable to the nonmoving party and resolving doubts against the moving party. A ruling on a motion for a new trial is reviewed for abuse of discretion, with the appellate court first determining whether an error occurred and whether it caused prejudice.
PRECEDENTIAL VALUE	precedential

PARTIES

David H. Marion, Receiver for Bentley Financial Services, Inc. and
Entrust Group v. Bryn Mawr Trust Company

TOPICS

torts commercial litigation appellate procedure evidence remedies

PRACTICE AREAS

torts commercial litigation appellate procedure evidence remedies

QUESTIONS PRESENTED

1. Whether Pennsylvania recognizes a cause of action for aiding and abetting fraud under Restatement (Second) of Torts section 876(b), even when the claim is titled aiding and abetting fraud rather than concerted tortious conduct.
2. Whether the evidence, viewed in the receiver's favor, created a genuine issue of material fact concerning BMT's knowledge or intentional ignorance of Bentley's tortious conduct and BMT's substantial assistance or encouragement.
3. Whether the trial court improperly admitted evidence concerning the receiver's attorneys' fees and litigation strategy as mitigation-of-damages evidence.
4. Whether the trial court improperly allowed BMT to argue that the receiver failed to mitigate damages by redeeming certificates of deposit before maturity.

HOLDINGS

1. Pennsylvania recognizes a cause of action under section 876(b), and a claim alleging that a defendant aided and abetted fraud is not legally deficient merely because it is labeled aiding and abetting fraud rather than concerted tortious conduct.
2. Actual knowledge of the underlying tort is not necessary to satisfy the knowledge element of section 876(b); the element may be satisfied when the defendant knew or should have known of the underlying actor's misconduct but intentionally ignored it.
3. The evidence presented a triable issue as to whether BMT substantially assisted or encouraged Bentley's fraud by attracting and accommodating him as a customer, facilitating his unusual account activity, and failing to investigate foreseeable red flags.
4. The trial court erred and abused its discretion by admitting evidence of the receiver's attorneys' fees and litigation strategy as mitigation-of-damages evidence where the receiver did not claim those fees as damages and the evidence was irrelevant to liability or the damages claimed.
5. Under the facts of this case, BMT's proposed mitigation theory based on the receiver's early liquidation and redemption of CDs did not establish that the receiver acted unreasonably, and the trial court erred by allowing the theory to go to the jury.

KEY QUOTATIONS

“The evidence before us, construed in a light most favorable to Appellant, establishes a triable issue of fact as to Appellant’s § 876 cause of action, as that action has been construed by Pennsylvania jurisprudence.” (18)

“mitigation evidence has no relevance to issues of liability.” (23)

“BMT presented a tainted mitigation defense by advocating some of the same wrongful strategies engaged in by Bentley during the perpetuation of his Ponzi scheme.” (47)

FACTUAL BACKGROUND

Robert Bentley operated a Ponzi scheme involving fictitious certificates of deposit and private notes falsely represented as FDIC-insured CDs. After Bentley began banking with Bryn Mawr Trust Company, he used BMT deposit and wire-transfer accounts to receive and transfer investor funds, while operating BFS and Entrust in a manner that allowed him to control both brokerage and custodial functions. The receiver alleged that BMT ignored red flags, failed to follow its own Know Your Customer policy, accommodated Bentley as a profitable customer, and thereby assisted the fraudulent scheme. The receiver later recovered approximately 92 percent of allowed investor claims, while BMT argued that litigation expenses and early redemption of CDs reduced the funds available for distribution.

PROCEDURAL HISTORY

The receiver sued Bryn Mawr Trust Company for breach of the Uniform Fiduciaries Act, aiding and abetting fraud, and negligence. The trial court granted summary judgment on the aiding-and-abetting-fraud claim but allowed the remaining claims to proceed. After the receiver withdrew the common-law fiduciary-duty claim, the jury returned a defense verdict on the Uniform Fiduciaries Act and negligence claims. The trial court denied post-trial motions and entered judgment for BMT. The Superior Court vacated the judgment and remanded for a new trial, including the receiver's section 876(b) claim.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Vacate the judgment and remand for a new trial, including the receiver's section 876(b) aiding-and-abetting-fraud cause of action.

CASES CITED

- Eclipse Liquidity, Inc. v. Geden Holding, Ltd., 200 A.3d 507 (Pa. Super. 2018)
- Donegal Mutual Insurance Co. v. Fackler, 835 A.2d 712 (Pa. Super. 2003)
- Skipworth v. Lead Industries Association, Inc., 690 A.2d 169 (Pa. 1997)
- Burnside v. Abbott Laboratories, Inc., 505 A.2d 973 (Pa. Super. 1985)
- Kline v. Ball, 452 A.2d 727 (Pa. Super. 1982)
- Cummins v. Firestone Tire & Rubber Co., 495 A.2d 963 (Pa. Super. 1985)

- Sovereign Bank v. Valentino and Ganter, 914 A.2d 415 (Pa. Super. 2005)
- Seneca Resources Corp. v. S & T Bank, 122 A.3d 374 (Pa. Super. 2015)
- Grimm v. Grimm, 149 A.3d 77 (Pa. Super. 2016)
- HRANEC Sheet Metal v. Metalico Pittsburgh, Inc., 107 A.3d 114 (Pa. Super. 2014)
- Resolution Trust Corp. v. Farmer, 823 F. Supp. 302 (E.D. Pa. 1993)
- Bair v. Purcell, 500 F. Supp. 2d 468 (M.D. Pa. 2007)
- Jefferis v. Commonwealth, 537 A.2d 355 (Pa. Super. 1988)
- Harman ex rel. Harman v. Borah, 756 A.2d 1116 (Pa. 2000)
- ACE American Insurance Co. v. Underwriters at Lloyds and Co., 939 A.2d 935 (Pa. Super. 2007), *aff'd*, 971 A.2d 1121 (Pa. 2009)
- Salsitz v. Allentown Hospital, 814 A.2d 766 (Pa. Super. 2002)
- Ecksel v. Orleans Construction Co., 519 A.2d 1021 (Pa. Super. 1987)
- Forest City Grant Liberty Associates v. Genro II, Inc., 652 A.2d 948 (Pa. Super. 1995)
- Collincini v. Honeywell, Inc., 601 A.2d 292 (Pa. Super. 1991)
- Walnut Street Associates, Inc. v. Brokerage Concepts, Inc., 20 A.3d 468 (Pa. 2011)
- Prusky v. Reliastar Life Insurance Co., 532 F.3d 252 (3d Cir. 2008)
- *In re Kellett Aircraft Corp.*, 186 F.2d 197 (3d Cir. 1950)
- Hart v. W.H. Stewart, Inc., 564 A.2d 1250 (Pa. 1989)
- Valentine v. ACME Markets, 687 A.2d 1157 (Pa. Super. 1997)
- Deeds v. University of Pennsylvania Medical Center, 110 A.3d 1009 (Pa. Super. 2015)
- Greisser v. National Railroad Passenger Corp., 761 A.2d 606 (Pa. Super. 2000)
- O'Melveny & Myers v. Federal Deposit Insurance Corp., 512 U.S. 79 (1994)
- Resolution Trust Corp. v. Farmer, 823 F. Supp. 302 (E.D. Pa. 1993)
- Federal Deposit Insurance Corp. v. White, 828 F. Supp. 304 (D.N.J. 1993)
- Bochetto v. Piper Aircraft Co., 94 A.3d 1044 (Pa. Super. 2014)