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2014 IL App (3d) 130044-U

Order filed August 28, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

PROFESSIONAL BUSINESS	)	Appeal from the Circuit Court
AUTOMATION TECHNOLOGY, LLC,	)	of the 12th Judicial Circuit,
an Illinois limited liability company,	)	Will County, Illinois
	)	
Plaintiff-Appellant,	)	Appeal No. 3-13-0044
	)	Circuit No. 08-AR-1399
v.	)	
	)	Honorable
OLD PLANK TRAIL COMMUNITY	)	James E. Garrison
BANK, N.A., a national banking association,	)	Edward F. Petka
	)	Susan T. O’Leary
Defendant-Appellee.	)	Rick Mason
	)	Raymond E. Rossi
	)	Judges, Presiding

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JUSTICE O’BRIEN delivered the judgment of the court.  
Justices Holdridge and Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court properly granted summary judgment in favor of defendant where Fiduciary Obligations Act (760 ILCS 65/7 (West 2012)) barred plaintiff’s claims.
- ¶ 2 Plaintiff Professional Business Automation Technology, LLC (hereinafter LLC), filed an action against defendant Old Plank Trail Community Bank (hereinafter Bank), asserting conversion and negligence claims. The complaint alleged that the Bank improperly allowed a

business named Professional Business Automation Technology, Inc. (hereinafter Inc.) to open a corporate checking account and deposit into the account checks belonging to LLC. The trial court granted summary judgment in favor of the Bank. LLC appealed. We affirm.

¶ 3

#### FACTS

¶ 4

On October 17, 2007, Methodius (Mick) Pavnica and his wife, Aleta Pavnica, opened a corporate checking accounting in the name of PBA Technology, Inc., at defendant Old Plank Trail Community Bank. In applying to open the checking account, the Pavnicas met with an account representative to whom they provided a federal employer identification number (FEIN) for Professional Business Automation Technology, Inc., and a corporate resolution authorizing the Bank to accept deposits and pay checks on the account. Mick told the banker that he had been in a partnership but it split up. Mick had been a member of plaintiff Professional Business Automation Technology, LLC, but purportedly resigned on October 6, 2007, after a disagreement with the LLC's manager-member, Kevin Reger.

¶ 5

In December 2007, Reger filed a complaint against Mick for breach of fiduciary duty and sought injunctive relief and an accounting. (Will Co. No. 07-CH-4081). Prior to the parties reaching a settlement in No. 07-CH-4081, the trial court issued a preliminary injunction in LLC's favor and found, in part, that Mick deposited LLC funds into personal accounts, including the Inc. account. In October 2008, LLC brought the instant complaint sounding in conversion and negligence against the Bank. The first amended complaint alleged that the Bank improperly allowed Mick and Aleta to open a corporate checking account for a business named Professional Business Automation Technology, Inc., and to deposit checks for services provided by LLC into the Inc. account. The complaint sought damages of \$43,117.39 for the amount of the deposited

checks and consequential damages in the amount of \$2,625.48 for loan payments LLC could not pay because Inc. allegedly converted funds properly owed to LLC.

¶ 6 The Bank moved to dismiss and attached the affidavit of Anne O’Neill, its senior vice president. The affidavit established that the Pavnicas opened the account in the name of PBA Technology, Inc. In setting up the account, the Pavnicas provided a FEIN number and executed a corporate resolution. A corporate resolution was the only corporate document “customarily required to open a business account.” The Bank subsequently checked the Illinois Secretary of State website and printed a report showing the Pavnicas also had an ownership interest in LLC, which was registered and in good standing. There were no notes in the file to indicate whether the distinction between LLC and Inc. was noticed on the state registration by the banker who pulled the record.

¶ 7 O’Neill attested that “[t]here was nothing unusual or alarming in a small business owner having an interest in more than one entity;” that “small business owners frequently choose to name their businesses with similar names;” and that “[s]uch occurrences are not uncommon and do not trigger any special internal procedures or non-customary reporting requirements.” O’Neill further attested that the checks deposited into Inc.’s account between October 2007 and February 2008 were payable to PBA Technology in “varying forms” but none were payable to LLC.

¶ 8 The Bank moved for summary judgment, which the trial court granted. The trial court found that the Fiduciary Obligations Act (Act) (760 ILCS 65/7 (West 2012)) barred LLC’s claims. It also found that LLC’s claims would be barred under sections 3-404, and “perhaps 3-420” of the Uniform Commercial Code (UCC). 810 ILCS 5/3-404, 3-420 (West 2012). The trial

court determined that “in order to cross the line, you need active – some active wrongdoing” and that LLC did not present any evidence of wrongdoing. LLC appealed.

¶ 9

#### ANALYSIS

¶ 10

The issue on appeal is whether the trial court erred when it granted summary judgment in favor of the Bank. LLC argues that there are genuine issues of material fact precluding summary judgment and presents three bases on which the trial court erred in granting summary judgment. LLC submits that its claims for conversion and negligence are not defeated by the Fiduciary Obligations Act, or sections 3-404 and 3-420 of the UCC.

¶ 11

Summary judgment is proper when the pleadings, depositions, admissions, affidavit and other relevant matters on file demonstrate there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012); *Illinois Farmers Insurance Co. v. Hall*, 363 Ill. App. 3d 989, 993 (2006). In reviewing a grant of summary judgment, we construe all evidence liberally in favor of the non-moving party and against the movant. *First National Bank of Chicago v. MidAmerica Federal Savings Bank*, 303 Ill. App. 3d 176, 181 (1999). This court reviews a trial court’s grant of summary judgment *de novo*. *Hall*, 363 Ill. App. 3d at 993.

¶ 12

We first address LLC’s argument regarding the Fiduciary Obligations Act (Act) (760 ILCS 65/7 (West 2012)). LLC maintains that the trial court’s reliance on the Act as a bar to his claims was in error and that the Act does not save the Bank from liability. LLC asserts that the Bank’s conduct amounted to bad faith, or at the least, raised a genuine issue of material fact about whether the Bank acted in good faith. According to LLC, it was commercially unreasonable for the Bank to disregard available facts regarding Inc.’s corporate status, open the Inc. account, and allow deposits. It argues that the Bank converted its checks when it allowed

Inc. to deposit them and was negligent in opening the account and allowing Inc. to deposit the checks.

¶ 13 The Fiduciary Obligations Act provides that a bank is not liable to a principal for a fiduciary's breach of his duty unless the bank acts in bad faith or has actual knowledge that the fiduciary is breaching obligations owed to the principal. 760 ILCS 65/7 (West 2012); *Mikrut v. First Bank of Oak Park*, 359 Ill. App. 3d 37, 49 (2005). “ ‘Actual knowledge’ ” is “ ‘the awareness at the moment of the transaction that the fiduciary is defrauding the principal’ ” or “ ‘having express factual information that funds are used for private purposes in violation of the fiduciary relationship.’ ” *Continental Casualty Co. v. American National Bank & Trust Co.*, 329 Ill. App. 3d 686, 702 (2002) (citing *Master Chemical Corp. v. Inkrott*, 55 Ohio St. 3d 23, 28 (1990)). To determine “bad faith,” a court looks at whether it was “commercially unjustifiable for the payee to disregard and refuse to learn readily available facts such that it was bad faith to remain passive.” *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 768 (2007).

¶ 14 LLC did not present any evidence or raise any genuine issues of material fact that the Bank had actual knowledge that Mick was breaching a fiduciary duty or acted in bad faith in not investigating whether he was breaching any duties owed to LLC. LLC offers no facts demonstrating that Mick misrepresented his status as a fiduciary of LLC. To the contrary, Mick expressly distanced himself from LLC, explaining that he had been in a partnership that was breaking up. Mick told the banker who opened the account that he had severed a business partnership and was starting a new business. Reger, the other member of the LLC, was not named on the Inc. account and was not a signatory. LLC did not maintain accounts at the Bank, and other than the information from the Secretary of State registration, the Bank had no knowledge of or facts about LLC.

¶ 15           The Pavnicas provided a FEIN for Inc. and Mick told the banker that he had not yet registered Inc. with the State but planned to do so. According to the Bank’s vice president, the only document customarily required by the Bank to open an account was a corporate resolution, which the Pavnicas also provided. The Bank’s O’Neill attested that small business owners commonly have multiple entities with similar names and there was “nothing unusual or alarming” about the Pavnicas opening a checking account for Inc. She further stated that the printout from the Secretary of State regarding LLC did not trigger special procedures or reporting requirements. LLC did not offer any facts that the Bank had actual knowledge Mick was defrauding LLC or that it had factual information that Mick was using LLC funds for private purposes in violation of his fiduciary duties to LLC. Moreover, Mick resigned the LLC prior to opening the Inc. account with Aleta.

¶ 16           We find the Fiduciary Obligations Act affords the Bank protections and acts as a defense to LLC’s conversion and negligence claims. The trial court properly granted summary judgment to the Bank on this basis. Based on our above conclusion, we do not address LLC’s arguments regarding sections 404 and 420 of the UCC (810 ILCS 5/404, 420 (West 2012)).

¶ 17           For the foregoing reasons, the judgment of the Circuit Court of Will County is affirmed.

¶ 18           Affirmed.