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July 21, 2022

COZEN O'CONNOR

Wells Fargo Owed No Duty To Law Firm Customer To Discover Fake Check After Customer Sent Funds To Scammer Client

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On July 19, 2022, the U.S. District Court, Eastern District of Pennsylvania, granted summary judgment in favor of Wells Fargo Bank, N.A. (Wells Fargo), holding that Wells Fargo did not owe its customer any contractual duty to discover a fake/forged check.

The Scam

In what the District Court referred to as an “unusual check fraud scheme,” plaintiff Perlberger Law Associates, P.C. (PLA) took on a new "client" (an alleged tool company) seeking to collect a roughly $200,000 debt owed to it by another company. PLA made a telephone call to the debtor company, resulting in prompt “payment” of the debt in full. PLA took the $200,000 check received from the debtor to Wells Fargo for deposit and, due to COVID-19 restrictions on teller interactions, was advised to deposit the check in the ATM. PLA did so and, one day later, wired the roughly $200,000 to its client. Four days after the wire transfer to the client, it was discovered that the check from the supposed debtor was forged. Further, it was discovered that the bank to which the funds were wired was Guaranty Bank in Nigeria – establishing that the entire sequence of events starting with the fake client and the fake debt was a scam.

PLA’s Claims

PLA filed suit against Wells Fargo, asserting causes of action for

1. breach of fiduciary duty,
2. breach of contract,
3. violations of the Pennsylvania Commercial Code (modeled after the Uniform Commercial Code),
4. common law claims.

On a motion to dismiss, the District Court dismissed all of the claims except the breach of contract claims.

Summary Judgment

Wells Fargo filed a summary judgment motion arguing that PLA was bound by its written contracts and that the contracts contained no guaranty and imposed no duty upon Wells Fargo to discover forged checks.

The District Court held, “[b]ecause the banking relationship is governed by the terms of express contracts which Wells Fargo did not breach, and there is no legal or factual basis on which [PLA] can prevail under a theory of implied contract, [the Court] is compelled to grant [Wells Fargo’s] motion.”

As is typical in this type of case, PLA attempted to argue that it was not provided with copies of the applicable account agreements and, therefore, was not bound by them. However, the legal relationship between a bank and its customers is based in contract, which is memorialized by a signature card and a deposit agreement. Banks incorporate the terms of the deposit agreement into the signature card by reference, stating that by signing the signature card and/or using the account, the customer agrees to be bound by the terms of the account agreement. Here, it was undisputed that PLA both signed the signature card and utilized the account; hence, it was bound by the terms of the Wells Fargo account agreement.

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The District Court further held that Wells Fargo's duty of good faith and fair dealing did not alter that outcome, nor did its direction to PLA to deposit the check in the ATM. On the latter issue, the District Court noted the industry standard bulk processing rules (i.e., that checks deposited through an ATM are not physically examined) and noted that the wire transfer to the "client" was processed exactly as instructed.

The District Court stated that "[t]he situation in which [PLA] finds [itself] is "deeply regrettable" and that the "sad irony" is that PLA's "admirable efficiency" with which it attempted to release "client funds" directly led to its victimization. Nonetheless, the District Court was compelled to grant summary judgment in favor of Wells Fargo.