



**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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WESLEY F. SINE, GUISEPPI TESTORI, and A.C. MERCURIO	:	
	:	November Term, 2001
	:	
Plaintiffs,	:	No. 03221
	:	
v.	:	
	:	Commerce Program
PNC BANK, N.A.	:	
	:	Control No. 081403
Defendant.	:	

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**MEMORANDUM OPINION**

***GENE D. COHEN, J.***

Before the Court is the Motion of Defendant PNC Bank, N.A. (“PNC”) to Determine Preliminary Objections to the Complaint of Plaintiffs Wesley Sine, Giuseppe Testori and A.C. Mercurio (the “Complaint”). For the reasons fully set forth below, PNC’s Preliminary Objections are **OVERRULED**.

**BACKGROUND**

As set forth in Plaintiffs’ Complaint, in July 1997, Testori sought to invest \$1.2 million and entrusted Mercurio to invest the money for him. Compl. ¶¶ 5, 6. Mercurio arranged for the transfer of Testori’s funds to the Wesley Sine Trust Account (the “Sine Account”). *Id.* at ¶ 7. Thereafter, Sine, as Trustee of the Sine Account, was instructed by Mercurio to invest some of the monies into a venture with Edward Mezvinsky. *Id.* at ¶ 8.

On or about January 16, 1998, Sine and Mezvinsky entered into an Escrow Agreement in which Sine agreed to transfer \$1 million of Testori’s money to a trust account held by Mezvinsky

with PNC (the “Mezvinsky Account”). Id. at ¶¶ 9, 10. The Escrow Agreement provided that the escrow funds should not be released from the Mezvinsky Account unless authorized by Sine, who was a co-signatory to the Mezvinsky Account. Id. at Exh. A, ¶ 2. At the same time the Escrow Agreement was executed, Mezvinsky and Sine also executed Joint Signature Cards for the Mezvinsky Account which established that no funds could be released unless expressly authorized by Sine with his signature. Id. at ¶ 13. At this time, Sine also provided PNC with a letter from Mezvinsky providing for “full authority to transfer up to \$1 million under the single signature of [Sine].” Id. at ¶ 15, Exh. B.

Immediately thereafter, Sine arranged for the transfer of \$1 million to the Mezvinsky Account, \$500,000 of which belonged to Testori. Id. at ¶ 17. Thereafter, on February 16, 1998, Sine and Mezvinsky arranged for the transfer of \$500,000 from the Mezvinsky Account to the Sine Account; the \$500,000 remaining in the Mezvinsky Account belonged to Testori. Id. at ¶ 19. In January 2000, Plaintiffs learned that the remaining \$500,000 was missing from the Mezvinsky Account. Id. at ¶ 20. Plaintiffs contend that they never consented to nor authorized the withdrawal of the remaining funds. Id. at ¶ 21.

On or about June 18, 2002, Plaintiffs filed this action against PNC, presenting counts for breach of contract (Count I) and negligence (Count II) arising from the unauthorized withdrawal of \$500,000 from the Mezvinsky Account.

### **DISCUSSION**

PNC has filed Preliminary Objections pursuant to Pa.R.C.P. 1028 (a)(4) with respect to both counts of the Complaint, arguing that Plaintiffs’ claims are defective under the Uniform Fiduciaries Act, 7 P.S. §6351, *et. seq.* (“UFA”). Specifically, PNC argues that Plaintiffs’ breach

of contract claim (Count I) fails under the UFA because Plaintiffs have failed to allege facts that would establish that PNC acted in “bad faith.” PNC also argues that Count II must fail because the UFA bars negligence actions. However, both arguments must necessarily fail.

**A. Plaintiff Has Stated A Valid Claim For Breach of Contract (Count I) Sufficient To Withstand Preliminary Objections**

Count I of Plaintiffs’ Complaint purports to state a claim for breach of contract against PNC, alleging, *inter alia*, that PNC permitted Mezvinsky to withdraw the funds at issue without the required authorization/endorsements mandated by the Joint Signature Cards. Compl. ¶ 26. PNC argues that Plaintiffs’ claim is barred by the UFA.

While it is true that the UFA shields depositary banks from liability in certain instances, the UFA does not relieve a bank from liability unless *the fiduciary actually has authority* to endorse the instrument at issue, and the bank has no actual knowledge that the fiduciary is breaching his duty. 7 P.S. § 6361<sup>1</sup>(emphasis added); Jones v. Van Norman, 513 Pa. 572, 581 n.6, 522 A.2d 503, 508 n.6 (1987); Robinson Protective Alarm Co. v. Bolger & Picker, 512 Pa. 116, 123, 516 A.2d 299, 303 (1986); Lehigh Presbytery v. Merchants Bancorp Inc., 410 Pa. Super. 557, 562, 600 A.2d 593, 596 (1991). Even if the fiduciary possesses the requisite authority, "the UFA does not permit a bank to ignore an irregularity where it is of a nature to place one on notice of improper conduct by the fiduciary." Robinson, 512 Pa. at 123, 516 A.2d at 303.

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<sup>1</sup> Section 6361 provides:

A person who, in good faith, pays or transfers to a fiduciary any money or other property, *which the fiduciary as such is authorized to receive*, is not responsible for the proper application thereof by the fiduciary, and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

7 P.S. § 6361 (emphasis added).

For the purposes of reviewing preliminary objections asserting legal insufficiency, “all well-pleaded material, factual averments and all inferences fairly deducible therefrom” are presumed to be true. Tucker v. Philadelphia Daily News, 2000 Pa. Super. 183, 757 A.2d 938, 941-42 (2000). For preliminary objections to be sustained, it is essential that the face of the complaint indicate that the law will not permit recovery; if there is any doubt, it should be resolved by the overruling of the demurrer. Bailey v. Storlazzi, 1999 Pa. Super. 97, 729 A.2d 1206, 1211 (1999). Reviewing the Complaint in this light, the UFA is inapplicable to the case at bar. Plaintiffs clearly have pled facts sufficient to support their contention that Mezvinsky was not a “fiduciary...authorized to receive” money from the trust account with PNC absent the authorization of Sine, whom Plaintiffs allege was a co-signatory to the account. Compl. ¶¶ 11 -14.

Therefore, based on the averments of the Complaint and giving the non-moving party all reasonable inferences deducible from the well-pleaded material facts of the Complaint, this Court finds that Plaintiffs have sufficiently alleged a cause of action for breach of contract. Accordingly, PNC’s Preliminary Objection to Count I is **OVERRULED**.

**B. Plaintiff Has Stated A Valid Claim For Negligence (Count II) Sufficient To Withstand Preliminary Objections**

Defendant’s Preliminary Objection to Count II of the Complaint (Negligence) is **OVERRULED**. Count II of Plaintiffs’ Complaint presents a cause of action for negligence against PNC. PNC is correct in its assertion that the UFA bars claims based upon negligence. 7 Pa.C.S.A. § 6351 (“[a] thing is done ‘in good faith,’ within the meaning of this Act, when it is in fact done honestly, whether it be done negligently or not.”); Robinson, 512 Pa. at 124, 516 A.2d at

303 (1986)(UFA provides immunity from liability to suits based on negligence); Davis v. Pennsylvania Co., 337 Pa. 456, 12 A.2d 66 (1940)(negligence will not negate ‘good faith’ under UFA). However, for the reasons fully set forth above, PNC’s Preliminary Objection to Count II is **OVERRULED**.

**CONCLUSION**

For the above-stated reasons, this Court hereby overrules Defendants’ Preliminary Objections. Defendant is directed to file an Answer to Plaintiffs’ Complaint within twenty (20) days from the date of entry of this Order. This Court will enter a contemporaneous Order consistent with this Opinion.

**BY THE COURT:**

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***GENE D. COHEN, J.***

Dated: November 15, 2002