Affirmed and Opinion filed January 10, 2002.

In The

Fourteenth Court of Appeals

NO. 14-00-01078-CV

SAM TEXAS, Appellant

V.

CHASE SECURITIES OF TEXAS, INC., Appellee

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Cause No. 99-21622

O P I N I O N

Appellant appeals a take nothing judgment in his suit for conversion of funds by appellee. In a single point of error, appellant claims the trial court erred in directing a verdict on appellant's claim of conversion. We affirm.

In January, 1998, appellant and his brother, Fayad M. Fayad, opened a mutual fund account at Chase Bank. The account was in Fayad's name, but appellant executed a power of attorney giving him authority to deposit and withdraw funds from the account. The account was a mutual fund account authorizing appellee to purchase shares in mutual funds and credit the revenues to the account. On March 4, 1999, appellant attempted to withdraw money from the account. The events of that day are disputed by the parties. As a result of

those events, appellant was not allowed to withdraw money from the account. After submitting a written request through his attorneys, appellee deposited $2,000 from the mutual fund account into appellant's checking account. Based on the events of March 4, 1999, appellant sued appellee alleging his money was converted, he was discriminated against, assaulted, falsely imprisoned, and suffered intentional infliction of emotional distress.

After appellant presented his evidence, appellee moved for a directed verdict. The trial court granted a directed verdict on all causes of action and dismissed the lawsuit. Appellant appeals the trial court's dismissal of his conversion cause of action.

A directed verdict is proper if (1) a specifically- indicated defect in the non-movant's pleading makes the pleading insufficient to support a judgment; (2) the evidence proves conclusively the truth of fact propositions that, under the substantive law, establish the right of the movant or negate the right of the non-movant to judgment; or (3) the evidence is insufficient to raise a fact issue as to one or more propositions that must be established for the non-movant to be entitled to judgment. *Gonzales v. Hearst Corp.*, 930 S.W.2d 275, 278 (Tex. App.—Houston [14th Dist.] 1996, no writ). We review challenges to a directed verdict in the light most favorable to the party suffering an adverse judgment. *S.V. v. R.V.*, 933 S.W.2d 1, 8 (Tex.1996). Disregarding all contrary evidence and inferences, we must determine whether there is any evidence to raise a fact issue. *Szczepanik v. First Southern Trust Co.*, 883 S.W.2d 648, 649 (Tex.1994). If the record contains any probative and conflicting evidence on a material issue, the jury must determine it. *White v. Southwestern Bell Telephone Co.*, 651 S.W.2d 260, 262 (Tex.1983).

This appeal turns on the issue of whether money can be the subject of a conversion cause of action. An action will lie for conversion of money when its identification is possible and there is an obligation to deliver the specific money in question or otherwise particularly treat specific money. *Autry v. Dearman*, 933 S.W.2d 182, 188 (Tex. App.—Houston [14th Dist.] 1996, writ denied). A suit for conversion will not lie where a

debtor-creditor relationship is created by deposit of a check to the depositor's account, because deposited money becomes the property of the bank. *See Mauriceville Nat. Bank v. Zernial,* 892 S.W.2d 858, 860 (Tex. 1995). The making and acceptance of an ordinary deposit creates, as between the bank and the depositor, the relation of debtor and creditor, the title to the money passing to the bank. *Newsome v. Charter Bank Colonial*, 940 S.W.2d 157, 161 (Tex. App.—Houston [14th Dist.] 1996, writ denied).

An action for conversion of money will lie if it is delivered for safe-keeping, the keeper claims no title, and the money is required and intended to be kept segregated and substantially in the form in which it was received or as an intact fund. *Estate of Townes v. Townes,* 867 S.W.2d 414, 419-20 (Tex. App.—Houston [14th Dist.] 1993, writ denied). Money that is deposited in a bank under a special deposit agreement having the characteristics of a bailment contract may be the subject of a conversion action, as can money which constitutes a trust when, with knowledge of its character, it is applied by the bank in which it is held in trust to reduce the debt of the depositor to the bank. 44 A.L.R. 927, 941 (1955).

Although the testimony is conflicting as to what actually occurred on the day appellant requested liquidation of the account, it is undisputed that the account established at Chase Bank was for the purchase of mutual funds. The evidence shows the money was not required or intended to be kept segregated, nor was it deposited under a special agreement having the characteristics of a bailment contract or held in trust. Where no agreement requires money to be segregated or kept in a particular form, the requirements for "specific money" giving rise to a cause of action for conversion are not met. *See Phippen v. Deere and Co.,* 965 S.W.2d 713, 724 (Tex. App.—Texarkana 1998, no pet.). Therefore, no claim for conversion lies for the funds in the mutual account.

PER CURIAM

Judgment rendered and Opinion filed January 10, 2002.
Panel consists of Chief Justice Brister and Justices Fowler and Seymore.
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