

Short Form Order

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: Honorable JAMES J. GOLIA
Justice

IAS TERM, PART 33

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ELECTRONIC SERVICE SOLUTIONS, INC.,
ELECTRONIC SERVICE SOLUTIONS, INC.
NEW YORK, AND ELECTRONIC SERVICE
SOLUTIONS, INC. WESTCHESTER,

Index No: 3334/10
Motion Date: 05/06/13
Cal. No: 36
Sequence No. 6

Plaintiff(s),

-- against --

SUNITA SANICHARRA, MARK SANICHARRA,
KEMAL GADWAH, J.P. MORGAN CHASE, INC.,
AND BANK OF AMERICA, INC.,

Defendant(s).

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The following papers numbered 1 to 14 were read on this motion by defendants J.P. Morgan Chase, Inc. and Bank of America, Inc. For an order dismissing the complaint for failure to state a cause of action.

PAPERS
NUMBERED

Notice of Motion, Affirmation, Affidavits and Exhibits.....	1 - 8
Answering Affirmation, Affidavits and Exhibits.....	9 - 12
Reply Affirmation and Affidavit.....	13 - 14

Upon the foregoing papers it is ordered that this motion is decided as follows:

In this action plaintiffs claims that the moving defendants are liable for conversion of instruments pursuant UCC 3-419, conversion of proceeds, fraud, and negligence. Plaintiff further asserts a claim against defendant Chase for money had and received.

Defendants J.P. Morgan Chase, Inc. and Bank of America, move for an order dismissing the complaint for failure to state a

cause of action (CPLR 3211(a)(7)).

Plaintiff is the former employer of defendant Sunita Sanicharra ("Sunita"). It is undisputed that while employed by plaintiff, defendant Sunita caused plaintiff to issue checks, drawn on a Fleet Bank account to Chinnaya Rangasamy purportedly in payment of vendor invoices. It is also undisputed that defendant Sunita indorsed those checks and deposited a portion of the funds into an account held by defendant J.P. Morgan Chase. Fleet Bank has since been acquired by defendant Bank of America, Inc.

The moving defendants' argue that plaintiff's claims against them are barred by UCC 3-405 and GOL 15-108(a) and therefore, plaintiff fails to state a cause of action.

It is well settled that in determining a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211 (a)(7), the test is whether the plaintiff can succeed upon any reasonable view of the facts stated (see, Campaign for Fiscal Equity v State of New York, 86 NY2d 307; Jiggetts v Grinker, 75 NY2d 411, 414-415; 219 Broadway Corp. v Alexander's, Inc., 46 NY2d 506). Moreover, the plaintiff is entitled to the benefit of all favorable inferences which may be drawn from the liberally construed pleading (see, CPLR 3026; Prudential-Bache Sec. v Citibank, 73 NY2d 263).

Each of plaintiff's causes of action stem from the premise that the moving defendants wrongfully honored checks issued by plaintiff and presented by defendant Sunita with forged indorsements.

The Uniform Commercial Code, in its rules governing check fraud, assigns losses by the relative responsibility of the parties for the loss. Losses arising out of forged indorsements are allocated to the party best able to take precautions to prevent them (see generally, McDonnell, Bank Liability for Fraudulent Checks: The Clash of the Utilitarian and Paternalist Creeds Under the Uniform Commercial Code, 73 Geo LJ 1399 [1985]; Comment, Allocation of Losses from Check Forgeries Under the Law of Negotiable Instruments and the Uniform Commercial Code, 62 Yale LJ 417 [1953]).

UCC 3-405 is entitled "Imposters; Signature in Name of Payee", and also known as the "fictitious payee" or "padded payroll" rule. UCC 3-405 (1)(c) creates an exception to the general principle that a drawer is not liable on an unauthorized indorsement. It provides that an "indorsement by any person in

the name of a named payee is effective if * * * an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest." In the particular factual circumstances described by UCC 3-405 (1) (c), an indorsement is treated as effective even though it is technically unauthorized, and the loss is allocated to the drawer-employer. (See Prudential-Bache Secur., Inc. v. Citibank, N.A., 73 N.Y.2d 263, 270-271 (N.Y. 1989))

The facts of this case fit squarely within UCC 3-405 (1) (c). Defendant Sunita (employee) provided the plaintiff (drawer) with the name Chinnaya Rangasamy (payee) who was intended to have no interest in the instrument issued. Under UCC 3-405(1)(c) the loss occasioned by Sunita's wrongdoing falls to the plaintiff and not to the moving defendants (See UCC 3-405 (1)(c); Prudential-Bache Secur., Inc. v. Citibank, N.A., 73 N.Y.2d 263, 270-271 (N.Y. 1989))

UCC 3-405 (1)(c) cannot be circumvented by claims for conversion and money had and received (Prudential-Bache Secur., Inc. v. Citibank, N.A., 73 N.Y.2d 263, 270-271 (N.Y. 1989) and a drawee bank's failure to use ordinary care in the handling of a forged check within the embrace of section 3-405 (1)(c) will not subject it to liability (Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Chemical Bank, 57 N.Y.2d 439, 447 (N.Y. 1982)).

Accordingly, the court finds that pursuant to UCC 3-405 (1)(c) plaintiff has failed to state a cause of action against the moving defendants and the motion to dismiss the complaint against the moving defendants is granted.

This constitutes the Order of the Court.

Dated: July 24, 2013

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JAMES J. GOLIA, J.S.C.