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ARIZONA SUPERIOR COURT
PIMA COUNTY

BY: R. ST. GERMAINE, DEPUTY

JUDGE TED B. BOREK

CASE NUMBER: C-20085344

COURT REPORTER: None

DATE: September 9, 2009

**DANIEL ZIMMERMAN, an unmarried
Man, and UNIVERSAL LIFE CHURCH/
ULC MONASTERY, INC., an Arizona
not-for-profit charitable corporation,
Plaintiffs,**

v.

**GEORGE FREEMAN, ET AL.,
Defendants.**

RULING

IN CHAMBERS:

Before the Court is defendant JP MORGAN CHASE BANK, N.A.'s Motion for Summary Judgment. The parties stipulated to submit the motion without oral argument. The Court has considered the motion, response, reply, and relevant statement of facts.

Plaintiff's complaint alleged 17 counts against numerous defendants arising out of actions relative to plaintiff's position in the Universal Life Church/ULC Monastery, Inc. (ULC). Plaintiff complains, *inter alia*, that other members of the ULC improperly took control of financial assets of ULC depriving plaintiff of his beneficial interests therein. By plaintiff's response to defendant Chase Bank's motion for summary judgment, there is no dispute that only counts 6, 12, 13, and 16 pertain to the Bank. These counts allege breach of fiduciary duty, negligence, aiding and abetting tortious conduct, and punitive damages.

Relevant material facts are undisputed and include that in December 2004, plaintiff, Daniel Zimmerman, opened a business checking account with Chase Bank identifying plaintiff as founder of ULC and the person authorized to transact business. On about August 4, 2006, Chase received minutes from the Board of Directors of ULC indicating that plaintiff had been removed as president, board member, and all other capacities as an officer. The minutes directed

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Chase to freeze the funds, and Chase placed a hold on the funds.

Subsequently, Chase received a letter from the purported president of ULC complaining Chase improperly refused to return normal access of the funds to ULC. Also, plaintiff advised Chase that he contested the assertion that he was not authorized to control the account. After consultation between attorneys for Chase and ULC, Chase stated it would interplead the funds absent prompt instruction. On August 24, 2006, Chase received a letter through ULC's attorney from the accountant from ULC directing the funds be made payable to ULC. Pursuant to the letter, Chase delivered two checks, one for \$114,692.70 and the other for \$14,837.37 to ULC's attorney.

As to the four counts against them, Chase argues the plaintiff can prevail on none.

Chase claims it had only a creditor-debtor relationship with plaintiff, not a fiduciary one as alleged in Count 6. *McAlister v. Citibank*, 171 Ariz. 207, 212 (App. 1992). Chase claims there is no viable negligence claim (Count 12) and that the economic loss rule bars recovery in tort that arises out of contract. *Carsters v. City of Phoenix*, 206 Ariz. 123, 125 (App. 2003). Chase claims that no allegations support aiding and abetting (Count 13) and that there is no evidence Chase knew of, substantially assisted, or encouraged breach of duty. *Wells Fargo Bank v. Arizona Laborers*, 201 Ariz. 474, 485 (2002). Finally, there is no allegation suggesting Chase acted with evil hand or evil mind to support punitive damages (Count 16). *Walter v. Simmons*, 169 Ariz. 229, 240 (App. 1991).

Plaintiff disputes that he was properly removed from his position with ULC and he claims persons purportedly acting for ULC that the Bank relied upon did not have authority to speak for ULC. Plaintiff's complaint against other now dismissed parties included allegations of fraud, conversion, unjust enrichment, breach of contract, and constructive trust. Plaintiff's argument opposing the Bank's motion for summary judgment claims that the Bank relied on faulty corporate documents (e.g., the minutes) and the Bank failed in its duty to confirm the propriety of the documents it relied upon through the Arizona Corporation Commission.

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In reply, the Bank reasserts that there is no evidence that the Bank knew of any tort alleged by plaintiff or that Chase acted with evil mind. Further, there is no evidence of a fiduciary relationship and no evidence Chase had a professional duty to research whether persons acting on behalf of ULC had authority to obtain a release of ULC funds.

As stated in *McAlister*, it is well settled in Arizona "that the relationship between a bank and an ordinary depositor, absent any special agreement, is that of debtor and creditor." 171 Ariz. at 212. Thus, this Court agrees that there are neither allegations nor facts to support a breach of a fiduciary duty against Chase. Moreover, this Court finds no factual support for the negligence, aiding or abetting, or punitive damages claims. As the relationship between the Bank and plaintiff arose out of contract, the economic loss doctrine precludes recovery by way of the negligence claim. *Carstens, supra*, 206 Ariz. at 125. There is no evidence to support that defendant knew documents presented to it were unauthorized, if indeed they were, and so aiding and abetting fails. *Dawson v. Withycombe*, 216 Ariz. 84, 103-104 (App. 2007). No evidence supports an evil mind. Therefore,

IT IS ORDERED defendant Chase's Motion for Summary Judgment is **GRANTED** as to all counts.

DATED this 9 day of September, 2009.


Hon. Ted B. Borek

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