



## Alerts

### Bank Entitled to Recover Counterfeit Check Amount From Attorney's Client Trust Account

August 21, 2013

*Lawyers for the Profession® Alert*

*Dixon, Laukitis, & Downing, P.C. v. Busey Bank*, 2013 IL App (3d) 120832 (3<sup>rd</sup> Dist., July 31, 2013)

#### Brief Summary

A lawyer scammed by a fake check scheme attempted unsuccessfully to sue his client trust account bank for negligence. The court dismissed the case, holding that although the bank accepted a counterfeit check for deposit into the trust account, the bank had no liability and was entitled to charge back the trust account upon receiving notice that the check was counterfeit.

#### Summary

The plaintiff law firm (Plaintiff) maintained its client trust account at defendant bank (Bank). Plaintiff fell prey to a common check scam, depositing a \$350,000 (counterfeit) check from a foreign bank into the firm's client trust account, and then writing \$270,000 worth of checks back to the client before the foreign check cleared. When the foreign check didn't clear, Bank removed the \$350,000 from Plaintiff's account.

Plaintiff sued Bank for negligence alleging that the bank should have "inquire[d] as to the circumstances of how Plaintiff acquired the check; recognize[d] the check as counterfeit and inform[ed] Plaintiff; advise[d] Plaintiff that funds should not be withdrawn until final payment given the nature of the check and the account; and notif[ied] Plaintiff at the 'earliest time it knew or should have known that the check would not be paid by the drawee bank.'"

The court disagreed, dismissing Plaintiff's complaint on summary judgment, relying mainly upon Plaintiff's account agreement and various provisions of Article 4 of the UCC. Because the Bank complied with the UCC, and UCC compliance is "non-negligent" as a matter of law, the court concluded that the Bank was not liable to Plaintiff. Moreover, any Bank duties to Plaintiff were spelled out in the account agreement, and Illinois' version of the economic loss doctrine prohibited tort claims in that regard.

#### Significance of Opinion

This decision is significant because it teaches that lawyers tricked by this or similar international check scams have little recourse, absent E&O insurance.

#### Attorneys

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