

STATE OF MICHIGAN
COURT OF APPEALS

ROSALYN MEYER and HARVEY MEYER,

UNPUBLISHED

July 9, 1996

Plaintiff–Appellees,

v

No. 183645

LC No. 93-307492-CK

COMERICA BANK,

Defendant–Appellant.

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Defendant appeals as of right from the orders denying its motion for summary disposition, granting summary disposition in favor of plaintiffs, and denying defendant's motion for reconsideration in this wrongful payment of check proceeds action. We reverse.

Plaintiffs filed an action claiming that defendant wrongfully paid out proceeds on a check which was not endorsed by the listed payee, Berlington Development Company. Plaintiffs brought a motion for summary disposition arguing that defendant admitted that it breached its duty to plaintiffs by paying out proceeds on a check which was not properly payable. Defendant also brought a motion for summary disposition arguing that plaintiffs suffered no damages because the intended payee ultimately received the funds. The trial judge denied defendant's motion and granted plaintiffs' motion finding that defendant did not comply with its duty to pay according to the terms of the check and that, as a result, the proceeds were not used for their intended purpose.

On appeal, defendant contends that the trial court improperly determined that the intended payee defense did not apply. We agree. The intended payee defense protects a bank which honored a check with no endorsement or an improper endorsement if the proceeds ultimately reached the payor's intended payee. *Comerica Bank v Michigan National Bank*, 211 Mich App 534; 536 NW2d 298 (1995). Herein, the check was not endorsed at all but the proceeds were received and recorded in the listed payee's ledger.

* Circuit judge, sitting on the Court of Appeals by assignment.

Moreover, the check was made payable to Berlington Development Company. Steven Silk was doing business as Berlington Development Company. A request for admission which was deemed admitted by plaintiffs' failure to answer under MCR 2.312, indicated that Steven Silk received the proceeds from the check. Evidence that the proceeds were not ultimately used for their intended purpose is irrelevant because the evidence illustrated that the moneys were received by the intended payee. Plaintiffs did not suffer damage as a result of defendant's conduct as the intended payee received the funds. *Comerica Bank, supra*, 211 Mich App 534. Summary disposition was improperly granted to plaintiff and improperly denied to defendant.

Defendant also contends that the trial court improperly denied its motion for reconsideration on the same basis. However, in light of our decision regarding summary disposition, this issue becomes moot.

In addition, our disposition of the merits of this case renders moot defendant's motion for peremptory reversal before this Court.

Reversed and remanded. We do not retain jurisdiction.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin