

STATE OF MICHIGAN
COURT OF APPEALS

FRANK D. RICHARDSON, d/b/a RYKE TRAVEL
AGENCY,

UNPUBLISHED
October 31, 1997

Plaintiff-Appellee,

v

No. 199017
Oakland Circuit Court
LC No. 90-390937 CK

MICHAEL NOSANCHUK,

Defendant,

and

ELECTRONIC CARD ACCEPTANCE
CORPORATION,

Intervening Defendant-Appellant.

Before: Holbrook, Jr., P.J., and Michael J. Kelly and Gribbs, JJ.

MEMORANDUM.

Appellant appeals by right from an order granting summary disposition to plaintiff in this dispute over certain funds in a bank account held in the name of the principal defendant, Michael Nosanchuk.

Summary disposition for plaintiff was improperly granted. Where Nosanchuk had no right to the funds in question, which were paid by appellant to Nosanchuk, appellant was entitled to have the money refunded, and where plaintiff was on notice of appellant's claim to the funds prior to receiving them, appellant's claim has priority. *Bearce v Fahrnow*, 109 Mich 315, 317; 67 NW 318 (1896). Alternatively, the doctrine of equitable lien would also appear to entitle appellant to first priority against those funds. *Cheff v Haan*, 269 Mich 593, 598; 257 NW 894 (1934).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs