Court of Appeals, State of Michigan

ORDER

Carson Fischer PLC v Standard Federal Bank
Carson Fischer PLC v Michigan National Bank

Docket No. 248125; 248167

LC No. 2001-030736-CZ; 2001-029814-CZ

Jane E. Markey
Presiding Judge

E. Thomas Fitzgerald

Donald S. Owens
Judges

On the Court's own motion, the unpublished per curiam opinion issued in this case on February 8, 2005, is AMENDED to correct a trial court number that was stated in the opinion caption.

2001-030746-CZ, associated with our No. 248125, *Carson Fischer PLC v Standard Federal Bank*, should be 2001-030736-CZ.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

APR 1 2 2005
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

CARSON FISCHER, PLC,

Plaintiff/Counter-Defendant-Appellant,

v

STANDARD FEDERAL BANK and STANDARD FEDERAL BANCORPORATION,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
February 8, 2005

No. 248125
Oakland Circuit Court
LC No. 2001-030746-CZ

CARSON FISCHER, PLC,

Plaintiff/Counter-Defendant-Appellant,

V

MICHIGAN NATIONAL BANK and MICHIGAN NATIONAL CORPORATION,

Defendants/Counter-Plaintiffs-Appellees.

No. 248167
Oakland Circuit Court
LC No. 2001-029814-CZ

Before: Markey, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

In Docket No. 248167, plaintiff/counter-defendant Carson Fischer, PLC, appeals as of right the orders granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants/counter-plaintiffs Michigan National Bank and Michigan National Corporation (collectively referred to as "Michigan National"). This case concerns the proper allocation between a bank and its customer, Carson Fischer, of the loss brought about through a check fraud scheme perpetrated by Carson Fischer's office manager, Chip Rasor. In Docket No. 248125, plaintiff/counter-defendant Carson Fischer, PLC, appeals as of right the order granting summary

disposition pursuant to MCR 2.116(C)(8) in favor of defendants Standard Federal Bank and Standard Federal Bancorporation, Inc (Standard Federal).

Carson Fischer employed Rasor as its officer manager from approximately 1990 to October 30, 2000. Rasor was given broad responsibility for Carson Fischer's financial transactions. Shortly after he was hired, Rasor began embezzling money from Carson Fischer in a relatively simple scheme. Rasor would prepare checks drawn on Carson Fischer's Michigan National Checking accounts, payable to Michigan National and ostensibly to pay Carson Fischer's withholding tax liability. An account signatory apparently signed the checks. Rasor inserted his personal loan number on the face of the check[1] and used the check to pay his personal loans without endorsing the check. This embezzlement scheme continued for nearly ten years, during which Rasor embezzled approximately $5,000,000. The embezzlement scheme was discovered when a Michigan Secretary of State investigator informed Michigan National that Rasor had tried to use several different driver's license numbers while purchasing a Bentley automobile. Carson Fischer then commenced an action against Rasor and obtained a final judgment against Rasor for $20,000,000.[2]

On February 23, 2001, Carson Fischer filed a complaint against Michigan National seeking over $5,000,000 from Michigan National Bank for the embezzled funds. The gist of Carson Fischer's claims of aiding and abetting conversion and breach of fiduciary duty was that Michigan National knew or should have known that Rasor used false documents to procure personal loans from Michigan National. Carson Fischer alleged that because Rasor used the embezzled funds to pay these personal loans, Michigan National allegedly aided and abetted Rasor's conversion and breach of fiduciary duty to Carson Fischer. With regard to the claim to recredit Carson Fischer's account, Carson Fischer alleged in part that the checks were not properly payable because the persons signing those checks as or on behalf of Michigan National did not intend payment to Rasor, and because Michigan National made payment on the checks without requiring the checks to be endorsed.

Michigan National moved for summary disposition under MCR 2.116(C)(10) on the ground that all of Carson Fischer's claims were limited to damages sustained after September 1, 2000, pursuant to MCL 440.4406(6), the parties Account Agreement, MCL 440.4103(1), and *Siecinski v First State Bank of Detroit*, 209 Mich App 459, 464; 531 NW2d 768 (1995). Michigan National argued that under the requirements of MCL 440.4406(6) of Michigan's Uniform Commercial Code, Carson Fischer's failure to notify Michigan National of unauthorized signatures or alterations precluded it from asserting claims against the bank. Carson Fischer contended that Michigan National breached its duty of care to Carson Fischer by allowing Rasor to deposit Carson Fischer's checks payable to Michigan National into Rasor's own accounts and by failing to notify Carson Fischer that Rasor was depositing Carson Fischer's checks to Rasor's own account despite a clear duty to do so.

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[1] It is unknown whether the loan number was on the check before it was signed.

[2] Rasor was later convicted in federal court of bank fraud and is imprisoned.

The trial court granted Michigan National's motion for partial summary disposition in an order dated November 27, 2002. The court held that damages on all of Carson Fischer's claims were limited to those checks listed in Carson Fischer's post-notification bank statements after September 1, 2000. In an order dated March 5, 2003, the trial court, relying on *In re Goldman's Estate*, 236 Mich App 517, 521-522; 601 NW2d 126 (1999), and finding that Carson Fischer failed to present evidence to dispute Michigan's National's evidence that it did not know of or actively participate in Rasor's embezzlement, granted partial summary disposition in favor of Michigan National Bank and dismissed Carson Fischer's aiding and abetting claims.

On March 30, 2001, Carson Fischer filed a complaint against Standard Federal. The complaint alleged that Rasor used false information to obtain personal loans from Standard Federal and subsequently repaid the loans with funds that he embezzled from Carson Fischer. Carson Fischer alleged that Standard Federal was negligent and that it aided and abetted Rasor's embezzlement scheme.

Standard Federal moved for summary disposition under MCR 2.116(C)(8), asserting that Carson Fischer failed to state a cause of action for negligence or aiding and abetting. In an opinion and order dated January 29, 2003, the trial court granted Standard Federal's motion for summary disposition pursuant to MCR 2.116(C)(8).

Docket No. 248167 (Michigan National)

I.

Carson Fischer first argues that the trial court erred in holding that MCL 440.4406(6) preempted and limited all of Carson Fischer's common law claims. Statutory interpretation constitutes a question of law that this Court reviews de novo. *MacKenzie v Wales Twp*, 247 Mich App 124, 127; 635 NW2d 335 (2001).

There is a universal rule of common law that "where a check is drawn to the order of a bank to which the drawer is not indebted, the bank is authorized to pay the proceeds only to persons specified by the drawer; it takes the risk in treating such a check as payable to bearer and is placed on inquiry as to the authority of the drawer's agent to receive payment." *Allis Chalmers Leasing Services Corp v Byron Center State Bank*, 129 Mich App 602, 606; 341 NW2d 837 (1983). See also *Terre Haute Industries, Inc v Pawlik*, 765 F Supp 925, 930 (ND Ill. 1991); 9 CJS, Banks and Banking, § 340, p 683. Thus, the drawer (Carson Fischer) may have a remedy against the drawee (Michigan National) for the unauthorized payment of the check. Under MCL 440.4401(3), a bank may charge against the account of its customer a check or item that is "properly payable." "Implicit in this rule is the notion that a bank may not charge against the account of its customer a check or item that is *not* properly payable." *Pamar Enterprises v Huntington Banks*, 228 Mich App 727, 735; 580 NW2d 11 (1998). "Accordingly, the drawer of a check has a remedy against the drawee bank for recredit of the drawer's account for the unauthorized payment of the check in the amount of the improper payment." *Id.* at 736. See MCL 440.4401(1). Carson Fischer's claim for recredit of its account under subsection 4401(1) is one of strict liability. *Pamar Enterprises, supra* at 736 & n 6. The undisputed facts establish that Michigan National applied checks drawn on Carson Fischer's accounts and made payable to the bank to Rasor's personal loans without inquiring of Carson Fischer regarding Rasor's authority to receive payment and without requiring Rasor to endorse the checks. By treating the

checks made payable to Michigan National as payable to bearer and failing to inquire as to Rasor's authority to receive payment, Michigan National is liable to Carson Fischer for the unauthorized payment of the checks in the amount of the improper payment.

Michigan National, however, cites MCL 440.4406, as modified by the parties' Account Agreement, to avoid liability. MCL 440.4406, which is part of Article 4 of the UCC governing bank deposits and collections, pertains to a bank's duty to provide its customer a statement of account. MCL 4406 provides in pertinent part:

> (3) If a bank sends or makes available a statement of account or items pursuant to subsection (1), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.
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> (4) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (3), the customer is precluded from asserting against the bank the following:
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> (a) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure.
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> (b) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.
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> (5) If subsection (4) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (4) does not apply.
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> (6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within 1 year after the statement or items are made available to the customer (subsection (1)) discover and report his or her unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under section 4208 with respect to the unauthorized signature or alteration to which the preclusion applies.

Section 4406 creates a duty on the part of the customer in situations involving forgery and alteration, both of which should be readily apparent to the customer upon comparison of the bank statement with the customer's own records. The present case, however, does not involve forgery or alteration of checks.

MCL 440.4103 permits modifications to the provisions of Article 4 of the UCC:

> The effect of the provisions of this article may be varied by agreement but the parties to the agreement cannot disclaim a bank's responsibility by the lack of good faith or failure to exercise ordinary care or limit the measure of damages for lack or failure.

The account agreement between the parties shortened the notification period to thirty days and required Carson Fischer to provide notification not just of unauthorized signatures, alterations, and forgeries, but also improper charges, and discrepancies. Michigan National contends that the language requiring the customer to notify the bank of "improper charges and discrepancies" encompasses the conduct involved in this case.[3] However, neither § 4406 nor the account agreement creates a duty for the customer to discover the type of scam involved here. Carson Fischer's comparison of bank statements with its own records would not enable Carson Fischer to readily discover the fraud because Carson Fischer's own records would reveal that the checks were in fact written to Michigan National Bank. Nothing in the information contained in the bank statement would reveal the account to which the proceeds of the check were applied. Under these circumstances, neither § 4406 nor the parties' account agreement limit Michigan National's liability to the time period following notification of the embezzlement scheme to Michigan National. The trial court therefore erred by concluding that Michigan National's liability was limited by § 4406(6) to those checks listed in Carson Fischer's post-notification bank statements after September 1, 2000.[4]

II.

Carson Fischer also argues that the trial court erred by dismissing Carson Fischer's aiding and abetting claims. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561, 664 NW2d 151 (2003).

MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362, 547 NW2d 314 (1996). In addition, all

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[3] Michigan National contends that it is liable, at most, for those checks paid after Michigan National was notified that Rasor was not authorized to receive payment.

[4] Other defenses available to Michigan National, if any, can be raised on remand.

affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties are viewed in a light most favorable to the party opposing the motion. *Id*. Where the burden of proof on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Id*. Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id*. at 363, 547 NW2d 314. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003) (citations omitted).

In the complaint, Carson Fischer alleged that Michigan National "knowingly or recklessly aided and abetted Rasor's fraudulent scheme to convert and embezzle Firm assets" and that Michigan National "knowingly or recklessly aided and abetted Rasor's breach of his fiduciary duties to the Firm." The trial court granted Michigan National's second motion for partial summary disposition on Carson Fischer's aiding and abetting claims pursuant to MCR 2.116(C)(10) based on its finding that it was undisputed that Michigan National did not know of or participate in Rasor's embezzlement. In support of its finding, the trial court referred to the uncontroverted affidavits of three Michigan National employees, Ernst, Costello, and Bunn, that they had no knowledge of Rasor's embezzlement scheme.

A. Aiding and Abetting Conversion

Carson Fischer claims that the trial court erred in granting Michigan National's motion for summary disposition because a genuine issue of material fact existed concerning its claim that Michigan National aided and abetted Rasor's conversion of Carson Fischer's property.

Michigan's UCC provisions explicitly state that, "[u]nless displaced by the particular provisions of this act," common law principles supplement the provisions. MCL 440.1103. Thus, the common law cause of action for conversion is displaced by the UCC only in circumstances where MCL 440.3420 applies. MCL 440.3420(1) deals with the conversion of negotiable instruments and provides in pertinent part:

> An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

MCL 440.3105(3) defines issuer as "a maker or drawer of an instrument." A "drawer" is "a person who signs or is identified in a draft as a person ordering payment." MCL 440.3103(c). On the facts alleged, Carson Fischer was the drawer of all the checks at issue, and therefore, is barred from bringing suit under a conversion theory against the depositary bank, Michigan National, as a matter of law.

Notwithstanding the express preclusion of § 3420(1), Carson Fischer would have no "common law conversion" claim, because such a claim lies only where personal property of the plaintiff is converted. *Pamar Enterprises, supra* at 735, citing *Stone & Webster Engineering Corp v First Nat'l Bank & Trust Co of Greenfield*, 345 Mass 1, 7, 184 NE2d 358 (1962) (the

court found that a drawer does not have an action in conversion against a depositary bank that took a forged check because the check represents an obligation of the drawer rather than the property of the drawer).[5] Because the checks do not belong to Carson Fischer, their conversion does not amount to invasion of Carson Fischer's legally protected interests and, therefore, Carson Fischer does not have standing to file a conversion claim. Consequently, Carson Fischer cannot bring suit against Michigan National for aiding and abetting conversion of the checks.

B. Aiding and Abetting Breach of Fiduciary Duty

Carson Fischer argues that there is a question of fact with regard to whether Michigan National aided and abetted Rasor's breach of fiduciary duty to Carson Fischer. Carson Fischer contends that Michigan National aided and abetted Rasor by failing to verify the information[6] Rasor gave to Michigan National in connection with his personal loan applications. The essential elements required for aiding and abetting liability are: (1) that an independent wrong exist; (2) that the aider or abettor know of the wrong's existence; and (3) that substantial assistance be given to effecting that wrong. Restatement Torts, 2d, § 876(b). The alleged abettor is required to have the same degree of scienter as the person committing the actual fraud. *DiLeo v Ernst & Young*, 901 F2d 624, 628 (CA 7, 1990).

Carson Fischer argues that it properly pleaded a claim for aiding and abetting breach of fiduciary duty because it alleged that Michigan National knew or should have known of Rasor's breach of fiduciary duty. However, Michigan National presented the affidavits of three Michigan National employees who denied knowledge of Rasor's embezzlement scheme.[7] Further, under *DiLeo*, *supra* at 901 F2d 628, the alleged abettor is required to have the same degree of scienter as the person committing the actual tort. Carson Fischer failed to demonstrate that Michigan National knew that Rasor was breaching his fiduciary duties.

Moreover, alleging that Michigan National "knew or should have known" of Rasor's scheme is not the equivalent of "substantially assisting" Rasor's embezzlement. Carson Fischer did not demonstrate that Michigan National substantially assisted Rasor's embezzlement. Carson Fischer's allegations with regard to the aiding and abetting breach of fiduciary duty are, in essence, a recharacterization of the same allegations upon which it relies for the claim to recredit its account. These allegations are not sufficient to show that Michigan National

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[5] In *Stone*, the court held that the drawer had an adequate remedy against the payor bank for recredit of the drawer's account for unauthorized payment of the check. *Id.* at 363.

[6] The record reveals that Rasor also supplied Carson Fischer with false information, including false social security numbers, false birth dates, and false employment and educational information.

[7] We fail to see how Rasor's use of fraudulent documents to obtain personal loans establishes that Michigan National had knowledge of Rasor's embezzlement. At most, the allegations would demonstrate only that Rasor committed fraud on the bank in connection with his personal banking activity.

substantially assisted in Rasor's wrongdoing. Therefore, Carson Fischer's claim for aiding and abetting breach of fiduciary duty fails.

Docket No. 248125 (Standard Federal)

I.

Carson Fischer argues that the trial court applied an incorrect evidentiary standard when it concluded that Carson Fischer did not plead sufficient facts to establish its claims. It contends that MCR 2.111(B)(1) only requires that a complaint "contain sufficient allegations that are specific enough to reasonably inform the defendant of the nature of the claim against which he must defend."

MCR 2.111(B)(1) provides that a complaint must contain "A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary reasonably to inform the adverse party of the nature of the claims the adverse party is called on to defend." The facts necessary to constitute a cause of action must be alleged with "reasonable definiteness and certainty." Under our fact-based pleading rules, MCR 2.111(B)(1), factually unsupported conclusions are inadequate to state a claim on which relief can be granted. *Stann v Ford Motor Co*, 361 Mich 225, 232-233, 105 NW2d 20 (1960); *Binder v Consumers Power Co*., 77 Mich App. 343, 346-347, 258 NW2d 221 (1977). The trial court did not err in finding that allegations devoid of specific factual underpinnings are for the most part legal conclusions and are so vague as to be properly ignored for purposes of determining the sufficiency of the complaint. MCR 2.111(B)(1).

Carson Fischer also argues that the trial court erred by finding that Carson Fischer failed to state a cause of action for aiding and abetting breach of fiduciary duty and tortious activity. Motions for summary disposition are reviewed de novo. *Ditmore v Michalik*, 244 Mich App 569, 574; 625 NW2d 462 (2001).

Under MCR 2.116(C)(8), a trial court properly grants a motion for summary disposition where the opposing party has failed to state a claim on which relief can be granted. *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 42; 672 NW2d 884 (2003). Such motions test the legal sufficiency of a claim based solely on the pleadings. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

Carson Fischer alleged that "Standard Federal knowingly or recklessly aided and abetted Rasor's fraudulent scheme to convert and embezzle firm assets" and that "Standard Federal knowingly aided and abetted Rasor's breach of his fiduciary duties to the Firm." However, no facts were alleged to support the conclusory statements. The trial court properly granted summary disposition in favor of Standard Federal on the aiding and abetting claims pursuant to MCR 2.116(C)(8). Additionally, for the reasons stated above with regard to Michigan National

in Docket No. 248167, summary disposition under MCR 2.116(C)(10) would also have been appropriate.[8]

III.

Carson Fischer also asserts that the trial court erred by granting summary disposition of the negligence claim. Carson Fischer's negligence claim is premised on a finding that Standard Federal had a duty to inform Carson Fischer that its employee committed bank fraud in his personal banking relationship with Standard Federal. Even assuming that Standard Federal owed fiduciary duties to Carson Fischer, the duties are not implicated under the facts of this case. Carson Fischer has cited no case law that holds that a bank has a duty to disclose confidential information regarding a customer's personal banking situation to the customer's employer, even if the employer is also a customer of the bank. Standard Federal cannot be held liable to Carson Fischer under any legal theory regardless of the alleged deviation from good banking practices in Standard Federal's handling of Rasor's personal loan accounts. Carson Fischer, whose losses were brought about solely through its relationship with and reliance on the trustworthiness of Rasor, cannot recoup by attempting to shift responsibility to Standard Federal.

In *Globe Motor Car Co v First Fidelity Bank*, 641 A2d 1136 (NJ Super Ct Law Div, 1993), a factually similar case, the court addressed the liability of a bank to its depositor with respect to approximately $1.5 million embezzled by the depositor's employee. Plaintiff Globe entered into an agreement with defendant First Fidelity Bank, whereby First Fidelity made loans to Globe to permit Globe to acquire new and used cars. Globe's office manager, John Gallo, handled Globe's daily finances. Gallo embezzled from Globe from 1987 until 1990. Globe sued First Fidelity alleging that it was negligent in failing to detect or prevent Gallo's criminal spree.

The Court refused to create a duty like the one Carson Fischer seeks to impose in this case. It held that:

> [I]mposing such a duty on a depositor bank would be unreasonable and tenable. Indeed, it would be foolhardy to expect a bank to supervise its depositor's employees, manage its financial planning and oversee its business activities. . . . Thus, imposing a duty on a bank that would obligate it to be responsible for the depositor's financial affairs would be impractical as a matter of public policy. As one California court stated, "[p]ublic policy does not impose upon the Bank absolute liability for the hardships which may befall the business ventures it finances." [*Id.* at 1139.)

Instead,

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[8] Standard Federal presented the uncontroverted affidavits of bank employees Frances Jones, Carol Swoboda, and Peter Hill, all of whom attested that they did not know that Rasor was embezzling funds from Carson Fischer.

> Depositors such as Globe are better suited than their lending bank to manage their own affairs, hire and supervise their own employees, keep their own records, hire their own auditors and detect and deal with corporate theft. . . . In fact, even if the bank was aware of Gallo's defalcation, the bank had no duty "to disclose matters of which the other party has actual or constructive knowledge or as to which the information or means of acquiring information of the two parties is equal." [*Id.*]

The court concluded that "absent a contractual duty, a bank has no duty to manage, supervise, control or monitor the financial activity of its debtor-depositor and is not liable to its depositor in negligence for failing to uncover a major theft." *Id.*

Similarly, Michigan's common law of negligence does not impose a duty on Standard Federal upon which Carson Fischer may hinge its negligence claim. The allegations in the complaint do not support the existence of any agreement, undertaking, or contract between Carson Fischer and Standard Federal that would give rise to a special duty on behalf of Carson Fischer to take measures to protect Carson Fischer from Rasor's wrongdoing. Standard Federal's alleged violation of its own banking policies and procedures in connection with Rasor's personal banking relationship with Standard Federal is not sufficient to give rise to such a duty. Standard Federal had no contractual duty to monitor Carson Fischer's employees or make reports to Carson Fischer regarding its employees. Carson Fischer was better suited than Standard Federal to manage its financial affairs, keep its own records, and detect and deal with corporate theft.

IV.

Carson Fischer argues that the trial court erred by dismissing the original complaint on the ground that the Federal Reserve Act preempted the allegations regarding unauthorized wire transfers from Carson Fischer's account. Carson Fischer concedes that "the Firm is not attempting to recover monies which Rasor wire transferred from one firm account to another Firm account without authority." It also concedes that "there is no nexus between Rasor's misconduct, which gives rise to Standard Federal's actual knowledge of the fraud, and the wire transfers." Rather, Carson Fischer argues that it intended to use evidence regarding the wire transfers to demonstrate the assistance provided to "the Fraudulent Scheme." However, as noted above, the aiding and abetting claims were properly dismissed because Carson Fischer did not demonstrate that Standard Federal actively participated and knowingly assisted in Rasor's embezzlement. Even assuming that Standard Federal improperly allowed Rasor to use wire transfers to transfer funds from the Standard Federal account to the Michigan National account, this evidence does not demonstrate that Standard Federal actively participated and knowingly assisted in Rasor's embezzlement. Thus, any error in the trial court's dismissal of the original complaint is harmless.

In Docket No. 248125, we affirm. In Docket No. 248167, we affirm in part and reverse in part the order granting summary disposition in favor of Michigan National and remand for proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens