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CLERK SUPREME COURT

105

IN THE COURT OF APPEALS OF IOWA

SAUNDERS OIL CO., INC.,
Appellee,
v.
COMMERCIAL STATE BANK,
Appellant.

Filed May 20, 1977

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2-58767

Appeal from Pocahontas District Court - E. J. Flattery, Judge.

Discretionary review of small claims appeal concerning claims of ownership of deposit account. Reversed.

H. Dale Huffman, of Pocahontas, for appellant.

Jeffrey A. Sar, of Sioux City, for appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant, Commercial State Bank, appeals district court judgment which reversed magistrate's ruling in favor of it in plaintiff's small claims action. The case is here on discretionary review.

In 1974, one Everett Winterboer, a leasee of Saunders Oil Co., deposited $1000 with defendant Bank. In return, he obtained a certificate of deposit which he immediately assigned to the Department of Revenue to secure payment of sales tax during the operation of the gas station. It is undisputed that the $1000 came from plaintiff, in the form of a check payable to Winterboer and the Commercial State Bank. In December, 1974, the Bank made a personal loan to Winterboer. As collateral, Winterboer offered the certificate of deposit although the actual certificate was still in the hands of the Department of Revenue. Winterboer became insolvent. Saunders notified the Bank of its claim of ownership of the disputed funds in April, 1975. After release by the Department of Revenue of the certificate of deposit on May 2, 1975, Winterboer endorsed the certificate of deposit to defendant Bank. Both parties conceded during oral argument that had either one of them complied with the Uniform Commercial Code to gain a security interest in the account, this entire controversy would have been averted.

Turning to the merits, we find the Bank has a superior claim to the funds. At the outset, we have considerable doubt whether Saunders "owns" the funds as it has claimed. Saunders issued an unrestricted negotiable instrument to Winterboer, depending upon him to apply the funds to the agreed upon purpose. A certificate of deposit was issued, not in Saunders name, but in Winterboer's. The entire arrangement has the characteristics of a loan transaction for a particular purpose rather than a bailor-bailee or some other type of ownership arrangement.

However, even if Saunders somehow "owned" the deposit account it still would not mandate an affirmance. Saunders' claim of ownership was orally made to the Bank. After the Bank's rejection of its claim, Saunders took no steps to comply with section 524.808, The Code. *See* Domain Industries v. First Sec. Bank & Trust, 230 N.W.2d 165, 168-169 (Iowa 1975). Having failed to do so, the Bank was legally obligated to release the funds to Winterboer, the named owner of the deposit account upon his demand. *See* section 524.808, The Code; Domain Industries v. First Sec. Bank & Trust, supra. Unlike the bank in *Domain*, defendant Bank did not set off the account to satisfy the loan, but rather, discharged its duty to the named account holder. *Compare*, Domain Industries v. First Sec. Bank & Trust, supra. It follows when Winterboer returned the funds to the Bank in payment of the loan, he was electing between creditors.

The Bank committed no unlawful or inequitable conduct. The fact that the Bank knew of Saunders' claim at the time it accepted the endorsed certificate of deposit is of little consequence. It is undisputed that the Bank had changed its position, that is, loaned money to Winterboer on the basis that he was the named owner of the account before it had knowledge of Saunders' claim. *See* Olsen v. Harlan National Bank, 162 N.W.2d 755, 759 (Iowa 1968).

Trial court's judgment is reversed.