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**(1) Bakery has no rights as to the \$3,000 check**

*Bakery v. Suburban Bank*

A check is negotiable instrument involving three parties, and is not properly payable if there are unauthorized or missing signatures, or alterations. An agent can draw checks on behalf of a principal if given authority to do so (either express, implied, or apparent). A fictitious payee is a made up payee, or a payee that is never intended to have rights to enforce the instrument. A check indorsed by anyone in the name of the fictitious payee serves as an authorized indorsement. A party who, in good faith, pays a check made out to a fictitious payee is generally not liable absent negligence in paying the check.

Here, Mary was given authority to sign checks on behalf of Bakery, and therefore is Bakery's agent. Mary made up a fictitious payee, a non-existent company. Therefore, an indorsement by Mary was a 'proper indorsement' and is not a defense to a good faith payor. Furthermore, since she had authority to sign checks drawn on Bakery's account, her signature was not unauthorized as drawer. Since Frosting was a fictitious payee and Mary indorsed it, Suburban Bank is not liable to Bakery.

Bakery can argue that Suburban Bank was negligent in allowing Mary to open an account using a fictitious entity, but the facts indicate "Suburban Bank had no reason to question the authenticity" of the documents. Therefore, this argument will likely fail.

*Bakery v. Central Bank*

The payor bank is generally liable for an instrument when there is a forged drawer's signature based on the presentment warranties. The presentment warranties are given by the presenting bank, and warranty that: there are no unauthorized indorsements, no alterations, and that there is no knowledge of a forged drawer's signature. Since presenting banks rarely have knowledge of any forged drawer signature, liability for such a forgery often falls on the payor bank. However, when an agent has authority to sign as drawer on behalf of its principal, the agent's signature is not thus a forgery. Furthermore, a customer must check Bank statements at least yearly, even every 30 days if a lot of checks are written and notify Bank of any unauthorized payments. The \$3,000 check was paid around two years ago. Central Bank can assert the Bank Statement rule--that a customer needs to inspect statements, and notify a bank of any forgeries within 1 year, otherwise they cannot bring a claim against the bank. Here, the \$3,000 check was written over two years ago, allowing the banks to invoke the bank statement rule.

Here, Bakery gave Mary authority to sign for checks drawn on Bakery's account. As such, the check did not have a forged drawer's signature. Additionally, as mentioned above, when a fictitious payee is involved, as is here, a good faith payor is generally not liable.

Therefore, Central Bank is not liable to Bakery.

*Bank arguments*

Generally, a party who substantially contributes to the loss is not able to recover. Here, both Banks may assert that Bakery was negligent in allowing Mary to sign checks on behalf of Bakery. This argument, however, is not as strong since no facts indicate Bakery acted negligently in giving Mary such authority, or that it had any reason to believe Mary would steal

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checks.

**(2) Central Bank is not obligated to stop payment on the \$500 cashier's checks to Movers**

. A holder in due course is immune from most defenses. A HDC requires: a negotiable instrument, a holder, who takes for value, in good faith, and without notice of discharge or insolvency, overdue or dishonor, or other claims to the instrument. Real defenses that a HDC are subject to are: infancy, fraud, duress, incapacity, or discharge in bankruptcy. Good faith means honesty in fact and observance of commercially reasonable practices.

Here, the cashier's check is a negotiable instrument, and was payable to Movers, (making Movers a holder). Movers took the \$500 cashier's check for value to the extent value was performed. Movers also had no knowledge that Mary got the cashier's check via improper actions, so Movers took the cashier's check in good faith. Therefore, Movers is a HDC and Bank may not stop payment.

Additionally, A cashier's check is a draft where the drawee and the payor are the same bank. Cashier's checks are essentially treated like cash. Mary wrote a check from Bakery's account, and Bank 'finally paid' the check by issuing a \$500 cashier's check

**(3) If Central Bank stops payment on the cashier's check, Central Bank is liable to Movers**

A Bank that wrongfully stops payment on a properly payable instrument is liable for damages incurred.

If Central Bank stops payment on the cashier's check, their stop payment would be actionable by Movers (See above). As such, Movers would be entitled to sue Central Bank to recover the \$500 along with any damages incurred in the wrongful stop payment.

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(1) Mary has been given actual authority to act as agent (as manager) of Bakery. Therefore when Mary drew a check on Bakery's account, she was authorized to sign on behalf of the drawer (Bakery). Since Mary's indorsement is her own, Bakery's check has no forgery or alteration, and is therefore seemingly properly payable. This is a fictitious payee situation, whereby the risk of loss remains with Bakery, since it was in the best position to identify the payee. Bakery's failure to exercise due diligence in reviewing Mary's payments means Bakery will bear the loss. Note that the bank statement rule will probably not help Bakery, because there is no indication that Frostings is not a legitimate customer or supplier. Baker's recourse will be to pursue Mary, who has seemingly absconded for good.

(2) Central Bank is not obligated to stop payment on the cashier's check for two reasons. First, Texas law requires that stop payment orders be issued in writing with sufficient detail to identify the check. Normally this would include a check number, check date, and amount. Central Bank may, but need not obey an oral stop payment order. Second, and more importantly, a cashier's check is an instrument bought by a remitter, here Mary, from a drawee bank. In effect, Central Bank is both the drawer and drawee of the check. Only a valid drawer can make a stop payment order. Since Bakery is not the drawer, it cannot obligate Central Bank to stop payment. To hold otherwise would be to allow a party without contractual rights to control a bank's own funds.

(3) A cashier's check is considered money. Remission of money to an obligee suspends the underlying obligation. Movers, having properly accepted the check from Mary is entitled to payment. If Central Bank stops payment on a check, then as drawer, it will be liable to Movers. Central Bank's recourse will be to pursue the fraudster, Mary (if she can be found).

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