

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 07-80921-CIV-MIDDLEBROOKS/JOHNSON

RICHARD JASON BELANGER, as
Personal Representative of the Estate of
RICHARD JOSE BELANGER, deceased,

Plaintiff,

vs.

THE SALVATION ARMY,

Defendant.

**CLOSED
CIVIL
CASE**

ORDER

This Cause comes before the Court on Defendant's Motion to Dismiss (DE 3). The Court has reviewed the motion and is otherwise fully advised of the premises.

Background

Plaintiff Richard Jason Belanger, as Personal Representative of the Estate of Richard Jose Belanger, deceased ("Belanger") filed his Complaint against Defendant, The Salvation Army ("TSA") on October 5, 2007, alleging two claims: one for unjust enrichment and the other for conversion.

The action involves two bank accounts. The first is an individual account in the name of the decedent (hereinafter "309-account" or "individual account"). The second is a pay-on-death account in the name of "Richard J. Belanger, In Trust for the Salvation Army" (hereinafter "379-account" or "P.O.D. account"). The latter account involves a case of first impression in Florida requiring the interpretation of a Florida banking statute. Specifically, the issue is whether a non-natural person may be the beneficiary of "in trust for" accounts, also known as "pay-on-death"

accounts (P.O.D.), or whether only natural persons may be named beneficiaries of such accounts.

With regard to the P.O.D. account issue, in the absence of Florida cases interpreting and construing the banking statute, the Court is left with no choice but to make a reasoned guess at how this statute should be interpreted. The Court does so cautiously, mindful that when federal courts interpret a state law, they are merely guessing at how the Florida state courts would interpret it and are often wrong. As the Eleventh Circuit has noted, “[w]hen we write to a state law issue, we write in faint and disappearing ink.” *Sultenfuss v. Snow*, 35 F.3d 1494, 1504 (11th Cir. 1994)(en banc) (Carnes, J., dissenting) (quoted in *D. Bruce McMahan v. Toto*, 311 F.3d 1077, 1079 (11th Cir. 2002)).

Facts

The following facts are alleged in the Complaint. Richard Jose Belanger died intestate in June 2007. His only heirs-at-law are his two sons, Richard Jason Belanger, who was appointed personal representative of the estate of Richard Jose Belanger, and Nathan Garrett Belanger. At the time of his death, Richard Jose Belanger maintained two bank accounts at Washington Mutual Bank: Account No. 309-XXXXXX-X in the name of the decedent only, and Account No. 379-XXXXXX-X in the name of Richard J. Belanger, In Trust For Salvation Army.

The Estate notified the Salvation Army in writing on July 12, 2007 of its intent to seek a judgment declaring invalid the designation of “The Salvation Army” as the beneficiary of the “in trust for” account on the basis that only a natural person may be the beneficiary of P.O.D. accounts. The Estate proposed a pre-suit resolution to TSA in that correspondence. The Legacy Department Director for TSA, Sharron Cosby, confirmed receipt of the July 12th correspondence, and replied that the proposal would be presented to the Board of Trustees for TSA at their next

meeting and that the Estate would be notified of the decision.

The Complaint further alleges that TSA, while the Estate awaited the resolution of the dispute of the legality of the P.O.D. account designation, secretly obtained a certified death certificate of the decedent and located the financial institution at which the decedent maintained his accounts. The alleged purpose was to grab all monies in the accounts, including the individually held account for which there was no "in trust for" designation.

TSA passed a Resolution at its Board of Trustees meeting on August 14, 2007, authorizing "Captain Thomas McWilliams to act as its agent for the limited purpose of signing all withdrawal document and collecting the entire balance of the Washington Mutual Payable on Death of Richard J. Belanger Account on behalf of the Salvation Army." The "in trust for" designation dispute was still outstanding. On August 28, 2007, Captain McWilliams presented at the West Palm Beach branch of Washington Mutual Bank and took both the sums held in the individual 309-account and the P.O.D. 379-account. On September 27, 2007, the Estate learned that both accounts had been depleted and disbursed to TSA.

Motion to Dismiss

Defendant argues that the first cause of action for unjust enrichment should be dismissed pursuant to Rule 12(b)(6), because Defendant qualifies as a "person" for purposes of the pay-on-death account statute and because Defendant does not retain any benefit of the funds paid in error from the individual 309-account. Defendant also argues that the Court should dismiss the second cause of action for conversion pursuant to 12(b)(6), because the funds from the 309-account, which were paid in error by Washington Mutual Bank, have been returned and because plaintiff has no immediate right to possess the funds from the 379-account. Finally, Defendant argues that

the Court should dismiss the action pursuant to Rule 12(b)(7) for failure to join a party under Rule 19, to wit: Washington Mutual Bank.

A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint against the legal standard set forth in Rule 8: " a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007) (citation omitted). Factual allegations in a complaint need not be detailed but "must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact). *Id.* at 1964-65 (citations omitted). For the purpose of the motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and all facts alleged by the plaintiff are accepted as true. *Hishon v King & Spaulding*, 467 U.S. 69, 73 (1984). Regardless of the alleged facts, however, a court may dismiss a complaint on a dispositive issue of law. *Marshall County Bd. of Educ. v. Marshall County Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

The P.O.D. Account

The parties argue whether TSA is a "person" for purposes of the Florida pay-on-death statute, § 655.82. Plaintiff argues that only natural persons alive on the date of the account holder's death may be designated as beneficiaries to a bank account. Since there was no surviving natural person designated as a beneficiary to the 379-account on the date of decedent's death, the account proceeds belong to the depositor's Estate. Plaintiff states that the statute changed the pre-1995 common law in Florida and that statutes in derogation of the common law must be strictly construed. Under strict construction, Plaintiff argues, only natural persons who survive

the account holder may be the beneficiary of an “in trust for” account.

Defendant counters this interpretation of the banking statute, arguing that chapter 655 of the Florida Statutes includes a specific section of definitions for terms used in section 655. That section does not include a special definition of the term “person”; therefore, Defendant argues, the definition of the term “person” in section 1.01(3) of the Florida Statutes governs. That statute provides that the word “person” includes corporations. TSA is a corporation and, therefore, is a proper beneficiary.

Section 655.82, the pay-on-death account statute, provides that on the death of the party who deposited the sums, “sums on deposit belong to the surviving beneficiary or beneficiaries.” Fla. Stat. § 655.82(3)(b). The term “beneficiary” means “a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.” § 655.82(1)(b). There is no definition of “person” within this section. However, section 1.01(3) provides that “[i]n construing these statutes and each and every word, phrase, or part hereof, where the context will permit: [t]he word ‘person’ includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.” § 1.01(3).

Plaintiff argues that the context does not permit a corporation to be a “person” in the pay-on-death account statute. Plaintiff argues that section 711.501(4), the transfer-on-death security registration act expressly includes a definition of “person” wherein the Florida Legislature included corporations in the definition. Plaintiff states that the same bill that authorizes the pay-on-death designations on bank accounts also created the transfer-on-death security registration act. Therefore, Plaintiff argues, if the Legislature intended the “beneficiary” of the pay-on-death

account statute to include corporations, it could have expressly provided a definition of “person”, as it did in the transfer-on-death security registration act.

The Court does not agree. The Florida Legislature “is cognizant of its own definition of ‘person’ as including corporations. Therefore, had the legislature intended to limit the exception to natural persons it should be expected to use more explicit wording than simply ‘person.’” *Alfred Karram, III, Inc. v. Cantor*, 634 So. 2d 210, 212 (Fla. 4th DCA 1994) (internal citation omitted). Plaintiff’s argument ignores the fact that the definition of “person” in section 711.501(4) is more limited than that of section 1.01(3). It defines “person” as “an individual, a corporation, an organization, or other legal entity.” § 711.501(4). Therefore, it seems likely that, in including a specific definition of “person” in section 711.501(4), the Legislature intended to alter the general definition of “person” found in section 1.01(3). It does not automatically follow that the section 711.501 inclusion of a definition of “person” to include corporations excludes corporations from the definition of “person” in section 655.82, in direct contradiction of the general definition provision, section 1.01(3).

Plaintiff argues that statutes in derogation of the common law must be strictly construed. The statute authorizing pay-on-death accounts was intended to codify the well-known common law doctrine first enunciated in the New York case, *Matter of Totten*, 179 N.Y. 112 (1904), which was adopted by the Florida Supreme Court in 1956 in *Seymour v. Seymour*, 85 So.2d 726 (Fla. 1956). Plaintiff argues that the Totten trust was cognizable in Florida prior to the enactment of section 655.82 as a product of the common law. At the time Florida adopted Totten trusts as part of its common law, it was the policy of the state to treat charitable organizations less favorably than individuals on bequests through Florida’s mortmain statute, section 732.803.

Because section 655.82 codifies the common law of Totten trusts, Plaintiff argues, this Court must find that corporations are not proper beneficiaries under the current pay-on-death statute.

However, as Defendant points out, Florida's mortmain statute was repealed by the Florida Legislature in 1991. The pay-on-death statute was enacted in 1995, after the Legislature had repealed the mortmain statute. Furthermore, Florida adopted the Uniform Nonprobate Transfers on Death Act as its pay-on-death statute, section 655.82. The Uniform Act includes corporations in its definition of "person." Unif. Nonprobate Transfers on Death Act § 201(10). Thus, it appears as though a corporation can be a beneficiary of a pay-on-death account. Accordingly, to the extent Plaintiff's Complaint alleges a claims pertaining to the 379-account, they must be dismissed.

The Individual 309-Account

Having determined that the Defendant is a proper beneficiary of the P.O.D. account, such that Plaintiff's claims against TSA fail as to that account, the Court turns to Plaintiff's allegations regarding the 309-account. Plaintiff's Complaint alleges two causes of action: unjust enrichment and conversion. Plaintiff's basis of federal court jurisdiction is 28 U.S.C. § 1332, which requires both diversity of citizenship between the parties and an amount in controversy in excess of \$75,000.00, exclusive of interest and costs. Because a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must raise the question *sua sponte* whenever its jurisdiction is in doubt. *See Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001) (*citing Fitzgerald v. Seaboard Sys. R.R., Inc.*, 760 F. 2d 1249, 1251 (11th Cir. 1985)).

Under 28 U.S.C. § 1332(a), a district court has federal diversity subject matter jurisdiction over any civil case if (1) the parties are citizens of different states and (2) the amount in

controversy exceeds \$75,000. See *Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1261 (11th Cir. 2000). The amount in controversy requirement must be strictly construed, and it is within the district court's discretion to determine whether the jurisdictional requirement has been met. See *Dassinger v. S. Cent. Bell Tel. Co.*, 505 F.2d 6172 (5th Cir. 1974). In order to justify dismissal of a case based on failure to meet the amount in controversy requirement, it must appear to a "legal certainty" that the claim is really for less than \$75,000. See *Federated Mut. Ins. Co. V. McKinnon Motors, LLC*, 329 F.3d 805, 807 (11th Cir. 2003) (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)). Moreover, "[a plaintiff's] conclusory allegation...that the jurisdictional amount is [met], without setting forth the underlying facts supporting such an assertion" does not satisfy the amount in controversy requirement. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319-20 (11th Cir. 2001) (finding that the amount in controversy was not met in the removal context)(cited in *Leonard v. Enterprise Rent a Car*, 279 F.3d 967, 972 (11th Cir. 2002) and *Bradley v. Kelly Services, Inc.*, 224 Fed Appx. 893, 894 (11th Cir. 2007)); *Federated Mut. Ins. Co. V. McKinnon Motors, LLC*, 329 F.3d 805, 807 n. 1 (11th Cir. 2003) (noting that the removal context is analogous to other amount in controversy contexts). Where a plaintiff can recover both actual and punitive damages, the Court must consider both when determining jurisdiction. *Bell v. Preferred Life Assurance Soc'y*, 320 U.S. 238, 240 (1943). In Florida, punitive damages are available in a conversion claim where the "the circumstances surrounding the conversion are such to show fraud, actual malice, deliberate violence, or oppression, or such gross negligence as to indicate a wanton disregard of the rights of others." *Doral Country Club, Inc. v. Lindgren Plumbing Co.*, 175 So. 2d 570, 571 (Fla. 3d DCA 1965).

Plaintiff alleges conversion and unjust enrichment, states Plaintiff has been damaged in excess of \$120,000, and requests punitive and exemplary damages against Defendant.¹ In Florida, the proper measure of compensatory damages for a conversion action is the value of the property at the time the conversion took place, plus prejudgment interest. *Mercury Motor Express v. Crockett*, 422 So. 2d 358, 359 (Fla. 1st DCA 1982). Here, the only bank account left in dispute is the individual 309-account, which held approximately \$14,986.45 at the time of the decedent's death. This is far less than the requisite jurisdictional amount, even when considering Plaintiff's request for punitive damages. Based on this Court's experience, it can be said that Plaintiff's claims, to a legal certainty, are for less than \$75,000. Given the early stage of this case and considering other appropriate factors, the Court declines to exercise supplemental jurisdiction over the claim. *See* 28 U.S.C. § 1397; *Shanaghan v. Cahill*, 58 F.3d 106 (4th Cir. 1995); *Arendall Chapel Church v. Christian Methodist Episcopal Church*, 1999 U.S. Dist. LEXIS 22730 (M.D. Ga. Aug. 16, 1999). Therefore, this case is dismissed.

Motion for Hearing

Plaintiff requested a hearing on the issue of whether a charitable organization is a beneficiary for purposes of applying Florida's banking statute, which authorizes "pay-on-death" accounts, Fla. Stat. § 655.82. Because the Court finds the filings in this case sufficient to decide this issue, the motion (DE 8) is DENIED.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss (DE 3) is

¹Plaintiff alleges one count of conversion and one count of unjust enrichment, both of which combine both bank accounts.

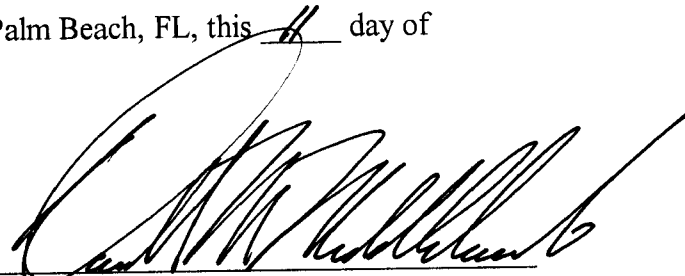
GRANTED IN PART as provided herein.

FURTHER ORDERED AND ADJUDGED that Plaintiff's Request for Hearing (DE 8) is DENIED.

FURTHER ORDERED AND ADJUDGED that the remaining portion of this case is DISMISSED for lack of subject matter jurisdiction. The Clerk of Court shall CLOSE this case.

All pending motions are DENIED AS MOOT.

DONE AND ORDERED in Chambers at West Palm Beach, FL, this 11 day of December, 2007.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

copies to counsel of record