

CAUSE NUMBER ATTORNEYS TYPE OF ACCIDENT ALLEGED INJURIES EXPERT WITNESSES VERDICT OR DISPOSITION

Harris County District Court
80th - Judge Scott Link
96-31940
Mary Heafner

P/CD - John S. Fason
Houston

Breach of Contract/Fraud/Constructive Fraud/Breach of the Duty of Good Faith & Fair Dealing/DTPA - Plaintiff, a 51-year-old attorney, sued Defendant bank, where she had a money market savings account, for paying \$10,000 on two forged checks (in the amount of \$5,000 each) on which her name had been signed by Duane A. Lavelly. These events happened in June and July of 1994. Ms. Heafner testified that Lavelly did have limited authority to sign checks on a different account, but contended he exceeded that authority by writing checks on the second bank account to himself, his company, and for his personal bills.

P - Paul K. Nesbitt, attorney, Houston, testified reasonable and necessary attorney's fees would be \$95,000

Week of 7-6-98.

Court refused to submit jury issues on breach of the duty of good faith & fair dealing and constructive fraud. The Court granted Plaintiff's motion for directed verdict on the breach of contract counterclaim.

vs.

Frost National Bank (f/k/a National Commerce Bank

D/CP - Brennan T. Holland of Jenkins & Gilchrist, San Antonio

In the lawsuit, Defendant claimed Ms. Heafner had failed to timely report the forgeries (the contract required forgeries to be reported within 30 days of when the statement was mailed and the date on the affidavit appeared to put it outside the 30-day period). Per Plaintiff counsel, Defendant eventually admitted that Plaintiff had timely reported the forgeries. The bank's vice president admitted having two affidavits notarized with a false date (two weeks later than when Plaintiff signed the affidavits). Frost Bank called the forger as its only live fact witness. He was impeached repeatedly with his prior sworn testimony from other proceedings.

D - George A. Kurisky, Jr., attorney, Houston, testified as to \$150,000 being reasonable and necessary attorney's fees

Jury found Frost Bank breached the contract, committed fraud, and violated the DTPA. Found no fraud on the counterclaim. Awarded Plaintiff:
\$ 13,500 actual damages.
\$400,000 punitive damages.
\$ 95,000 attorney's fees.
\$508,500 Total Award.
11 - 1 (6 day trial)

Defenses were ratification, waiver, authority, and accord and satisfaction. The bank claimed the forger was in fact authorized to sign on the money market savings account with Defendant's bank although Defendant admitted this was not a basis for its decisions in 1994 to refuse the claim. Defendant counterclaimed for fraud based on Plaintiff's statements in her forgery affidavits.

Pre-trial demand: \$ 21,500, withdrawn
Asked of jury: \$508,500
Pre-trial offer: \$ 20,000
Sidelights:

- The dissenting juror wanted to award more money.
- Ms. Heafner said she did not sue Bank United because, after a meeting with the bank's investigator and a reasonable analysis of the facts, she did not believe it would be appropriate. She still has an account with Bank United.
- Judge Link excluded from evidence the fact that Lavelly had been charged with theft by check in an unrelated criminal matter and, as part of a plea bargain, had pled guilty to a lesser included offense.
- Defendant intends to appeal any adverse ruling based on lack of evidence of Plaintiff's damages, unconstitutionally excessive punitive damages verdict, and other grounds.

Tina Veserra, senior vice president of National Commerce Bank in 1994, now an officer with Heritage Bank, testified she denied Heafner's claims on the two checks in question after it was confirmed by Jimmy Allison, security officer with Bank United, that the checks had been deposited directly into an account with Bank United on which she was the sole signer. Although she claimed approximately \$50,000 in forgeries at Bank United, Allison testified he denied her claim because he discovered that Mr. Lavelly was authorized to write checks on the account. She never sued Bank United, although it was undisputed that it was the only account from which Lavelly wrote checks to himself.

Plaintiff admitted on cross examination that she had instructed Lavelly to forge her signature to checks on her Bank United account and refused to reverse transactions in which Lavelly forged her signature on her attorney's trust account with Liberty Bank. She also admitted she received the benefit of most of the checks written on her account. The bank established she retained the benefits of the transfer after allegedly learning of the transfer by opening a separate account with Bank United.

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