

IN THE SUPREME COURT OF OHIO

FIRST FEDERAL BANK OF OHIO :
Plaintiff/Appellant : Supreme Court Case No. 08-0019
v. : On Appeal from the
Crawford County Court of Appeals
JOHN ANGELINI, JR., et al., JEFFREY : Third Appellate District
ANGELINI, AND GALION BUILDING &
LOAN BANK, : Court of Appeals
Case No. 3-07-04
Defendants/Appellees :

MEMORANDUM OF APPELLEE
GALION BUILDING & LOAN BANK
IN RESPONSE TO APPELLANT
FIRST FEDERAL BANK OF OHIO'S
MEMORANDUM IN SUPPORT OF JURISDICTION

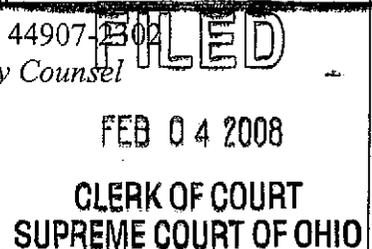
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Statement of Defendant/Appellee Galion Building & Loan's Position:

THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This is fact-specific case with genuine issues of material fact to be decided by a jury.

The circumstances surrounding the issues are fact-specific as to whether First Federal Bank of Ohio acted fraudulently when it purposefully applied funds contrary to its agreement with the Defendant Angelinis, thus harming the priority of other creditors of which it had actual notice. This is a case to be heard upon its merits, as genuine issues of material fact do exist. This is not a question of whether a creditor is owed a duty by other creditors, nor has the Third District Court of Appeals imposed or implied as such.

Whether one creditor by its actions and conduct is found to have defrauded another creditor does not render a case one of Public or Great General Interest, nor does it involve any novel legal issue. The Third District Court of Appeals has by no means imposed any duty on First Federal to complete strangers when conducting its transactions with its customers.

On November 10, 2004, the Third District Court of Appeals found that there were genuine issues of material fact concerning the application of funds from the refinancing of the Angelinis' Sanibel Island, Florida property , i.e. whether the parties had intended or whether First Federal was required to apply those funds to the secured debt (**Charge Back Loan**) or whether the funds could be applied to the unsecured debt (**Floor Plan Loan**) as claimed by First Federal.

On January 9, 2007, the trial court once again granted summary judgment to First Federal on all claims previously before the Appellate Court. For the second time on Appeal, the Third District Court of Appeals held that the same question of material fact still exists, i.e. the issue of the appropriation of the funds. Further, the Court held Galion Building & Loan's claim for fraud is viable since reasonable jurors could conclude that First Federal knew or should have known Galion Building & Loan's interests would be harmed by the alleged fraud. No new evidence had been presented, which would lead to the conclusion that First Federal is entitled to judgment as a matter of law.

Defendant/Appellee Galion Building & Loan Bank will not address Plaintiff/Appellant First Federal's Proposition of Law No.1 of its Jurisdictional Memorandum, as it is only applicable to the Defendant/Appellee Jeffrey Angelini.

Argument

The decision of the Court of Appeals of the Third District did not impose a duty on a bank to protect the interest of parties that are strangers to the transaction as the Plaintiff/Appellant First Federal alleges in its proposition of law Number 2. The Court of Appeals however properly ruled there was sufficient evidence in the record in this case that a trier of fact could find First Federal's actions/conduct was fraudulent and that it was foreseeable that its fraudulent conduct could cause harm/damages to Galion Building & Loan Bank. Thus, the granting of summary judgment against Galion Building & Loan Bank as to its counterclaim of fraud against First Federal was err. Stated differently, there were sufficient facts in the record to maintain a viable cause of action that one creditor (First Federal) defrauded

another creditor (Galion Building & Loan Bank) in order to wrongfully obtain financial gain.

In early January 2001, Joyce Angelini wrote several bad checks totaling \$842,579.17. The returned checks plus interest fees and expenses brought the total to \$849,802.78

At that time, John and Joyce Angelini owed First Federal approximately \$2,100,000.00 on various other loans. Included in that debt was a separate Floor Plan Loan which First Federal knew was under-collateralized.

Also at that time, First Federal knew John and Joyce Angelini were insolvent and it was crucial for them to attempt to secure their unsecured loan arising from bad checks.

In effort to do so, First Federal, through its President Thomas Moore, Vice President Rodney Vose, and its Attorney Dick Hottenroth threatened John, Joyce, and their son Jeff Angelini that if Jeff Angelini did not pledge his real estate properties to First Federal, John Angelini (Jeff's father) would go to jail/prison. (First Federal's threat was subsequently corroborated by Don Stone, President of United Bank and David Lauthers, Vice President of United Bank.) To that end, Dick Hottenroth, counsel for First Federal, prepared several documents which included a Pledge Agreement with Collateral Security (hereinafter referred to as "Pledge Agreement"), Promissory Note with Personal Guarantors and Collateral Pledgors, several mortgages, and a deed to John and Joyce Angelini for the Sanibel Island, Florida property. Galion Building & Loan refers to the Promissory Note as the "**Charge Back Loan,**" while First Federal refers to the Promissory Note as the "Blanket

Loan.” These documents were not typical boiler plate loan documents, but were customized specifically for the Angelinis’ situation.

Prior to the Pledge Agreement, Jeff Angelini had no legal or financial obligation to First Federal. First Federal’s threat to send his father to jail was the deciding factor in Jeff Angelini’s agreement to pledge his property. Even the Collateral Pledge Agreement prepared by First Federal’s counsel referenced criminal action as follows: First Federal may, in its discretion . . . proceed with criminal action.

Per the terms of the Pledge Agreement, John and Joyce Angelini deeded over their Sanibel Island, Florida property to First Federal as additional security for the Charge Back Loan. The Pledge Agreement specifically states in pertinent part:

Whereas, Angelini has now requested of First Federal its forbearance upon the collection of said checks and has offered certain security in the form of mortgages upon various properties **and the conveyance of a property in Florida to First Federal as additional security, all of which security shall act as a new credit to satisfy said outstanding returned check.**

(Our emphasis added.)

The Sanibel Island, Florida property was not collateral for any other loan but the Charge Back Loan. Prior to the Angelinis signing the Collateral Pledge Agreement, First Federal and Dick Hottenroth agreed once First Federal received the proceeds of the refinance of the Sanibel Island property, Jeff Angelini’s properties would be released.

First Federal, per the Pledge Agreement, was required to prepare a Schedule of Release of Properties which would indicate the properties being released as the

dollar values were being received by First Federal upon the outstanding debts and obligations of the Charge Back Loan.

By their own admission, First Federal, contrary to its own legal documents, unilaterally decided not to prepare the Schedule of Releases.

On or about February 14, 2001, Galion Building & Loan Bank provided First Federal with **actual notice** that John and Joyce Angelini owed them \$513,486.01.

On or about February 23, 2001, First Federal received \$405,203.53 from the refinance of the Sanibel Island, Florida property. Upon receipt of the proceeds, the Plaintiffs/ First Federal, contrary to the terms of its own Pledge Agreement and previous representations to the Angelinis, only applied \$105,470.26 against the Charge Back Loan.

First Federal misapplied the balance of those proceeds, \$299,733.32, against a separate Floor Plan that was under-collateralized. Had First Federal applied all of the refinancing proceeds from the Sanibel Island property to the Charge Back Loan, it would have been paid off and/or overpaid by March 31, 2002.

Rodney Vose testified that First Federal had no intentions of applying all of the Sanibel Florida proceeds against the Charge Back Loan. This is contrary to the Pledge Agreement and First Federal's representations to the Angelinis. The harm caused to other creditors by First Federal's fraudulent actions was foreseeable and by design. First Federal was aware and anticipated that John and Joyce Angelini had other creditors including but not limited to United Bank. First Federal also had actual notice that John and Joyce Angelini had mortgage obligations of \$513,486.01 to Galion Building & Loan. First Federal knew if they applied the Sanibel property

proceeds to the Charge Back Loan and released the properties secured in the Pledge Agreement, (which included Jeff Angelini's properties) their under-collateralized Floor Plan Loan would not get paid because John and Joyce Angelini were insolvent.

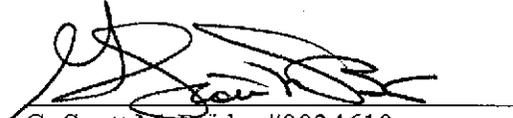
Plaintiff First Federal purposefully and fraudulently applied the proceeds to their under-collateralized Floor Plan Loan the Defendants John and Joyce Angelini had with First Federal (i.e. the Floor Plan Loan) in order to preserve its first and best priority on the secure properties contained in the Pledge Agreement, most noticeably Jeff Angelini's properties. First Federal's knowledge of other creditors' interests, including but not limited to Galion Building & Loan and United Bank, is further evidenced by their response to Joyce Angelini when she contacted First Federal to find out why the Charge Back Loan was not being reduced, as the proceeds from the Sanibel refinancing were to be applied to that loan. **First Federal's response was that they had to "stay their position."** At that time, Joyce Angelini did not know what First Federal was referring to, and later discovered that First Federal did not want another back or lending institution to get ahead of them.

Conclusion:

This is not a case of Public or Great General Interest. This is a case to be decided on its merits based upon the trier of fact weighting the testimony of witnesses and reviewing customized documents and rendering a decision based upon evidence presented whether one creditor's (First Federal) actions and behavior defrauded another creditor (Galion Bank) which resulted in that creditor (Galion Bank) suffering damages. Accordingly, the Defendant Galion Building & Loan Bank requests that

this Court does not accept jurisdiction as this case is not one of Public or Great General Interest.

Respectfully submitted,



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Certificate of Service

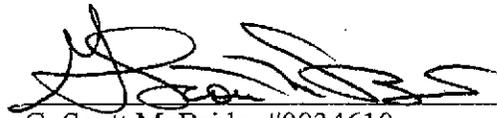
This is to certify that a true and exact copy of the foregoing Memorandum of Defendant/Appellee Galion Building & Loan Bank In Response to Plaintiff/Appellant First Federal Bank of Ohio's Memorandum In Support of Jurisdiction was sent by regular U.S. Mail this February 1, 2008 to the following parties unrepresented by counsel and counsel of record:

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