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Ambiguous Wire Instructions: Royal Bank of Canada v. Stangl

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AMBIGUOUS WIRE INSTRUCTIONS: *ROYAL BANK OF CANADA V. STANGL*

In carrying out wire instructions to credit an account of its customer (the "beneficiary") the beneficiary's bank[1] is bound by the beneficiary's description contained in the wire instructions. Payment must strictly be made to this beneficiary alone.[2] A beneficiary may be identified in the wire instructions by name, account number or both. The position of a beneficiary's bank receiving wire instructions containing an ambiguous description of the beneficiary was recently dealt with by Ferrier J. in *Royal Bank of Canada v. Stangl*.[3]

The Facts

The pertinent facts of the case were as follows. On December 16, 1987, at 5:45 p.m., after the close of business, the Royal Bank of Canada (Royal Bank) received telex instructions from the National Bank of Industry and Commerce Ltd., Guyana (National Bank) to "pay the Toronto-Dominion Bank U.S. $47,228.62, address 5100 Dixie Road, Mississauga, Ontario, Canada, account number 916327 N/O Lynwil International Trading Incorporated". The remitter was Guyana Mining Enterprises Ltd., Guyana (Guyana Mining).[4] The following day, through the usual international banking facilities, the Royal Bank instructed the Toronto Dominion Bank (TD Bank) accordingly.

In fact, account number 916327 at the Toronto Dominion Bank, 5100 Dixie Road, Mississauga (TD Mississauga) belonged to Unitec Welding Alloys Limited (Unitec) and not to *Lynwil* International Trading Inc. (Lynwil). However, another account of Unitec at TD Mississauga was in the name of *Linwell* International. Unitec and Lynwil, together with two sister companies of Lynwil, were suppliers of Guyana Mines. Dealings and payment arrangements between Guyana Mining and these suppliers were not kept strictly separate or distinct.

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[1] In general, the beneficiary's bank is the bank identified in the wire instructions in which payment into an account is to be made. The beneficiary is the holder of that account.

[2] This underlies *Clansmen Resources Ltd. v. Toronto-Dominion Bank*, [1990] 4 W.W.R. 73, 43 B.C.L.R. (2d) 273 (C.A.).

[3] (1992), 32 A.C.W.S. (3d) 17 (Ont. Ct. (Gen. Div.)) [092/066/089-19]. While on appeal, the case was recently settled.

[4] The judgment refers to this party either as "Guyana Mines" or "Guyana Mining".

Lynwil did not have an account at TD Mississauga. Rather, it had an account with the TD Bank in Pickering (TD Pickering).[5] For its part, Unitec had three accounts at TD Mississauga as follows:

(1) Account No. 7300254 — a U.S. dollar account in the name of Unitec;

(2) Account No. 916327 — a Canadian dollar account in the name of Unitec; and,

(3) Account No. 627902 — in the name of Linwell International, which purported to be the trading style of Unitec. The report does not specify the currency of that account and nothing turns on it in the judgment.

On two previous occasions, wire transfers were made to TD Mississauga according to instructions containing the same account number in Lynwil's name, and no difficulties arose. In the case at bar, on receipt of the wire transfer, an employee of TD Mississauga telephoned Unitec to advise receipt of the funds and inquired to which account the funds should be deposited. Unitec advised the employee to deposit the funds to the U.S. dollar account (and not into account no. 916327 as in the Royal Bank's instructions). This was done and Unitec's dollar account (no. 7300254) showed the deposit on December 17th on the bank statement for the month ending December 31, 1987. As was indicated by the court, "nothing turns on the fact that the funds were deposited to the U.S. account as opposed to account #9126327, the Canadian dollar account. If the funds were deposited to the credit of the correct beneficiary, that beneficiary could direct to which account they were deposited".[6]

That day (December 17th), the Royal Bank received a further telex from the National Bank cancelling the instructions received on December 16th and requesting payment into Lynwil's account with TD Pickering. The instructions explicitly cautioned the Royal Bank to avoid all possible duplication. However, this telex came

[5] In fact, there were two Lynwil companies. One was Lynwil International Trading Incorporated. The other was Lynwil International Inc. Both were controlled by one person (Lyndon Thomas). The former company was the beneficiary of the telex instructions received by the Royal Bank on December 16th. The latter was the account holder in TD Pickering. Nothing in the judgment turned on the existence of two separate Lynwil entities. Both companies are thus considered here as one Lynwil entity.

[6] *Supra*, footnote 3, at p. 6 of the judgment.

too late to reverse the payment to Unitec. Due to the internal investigation at the Royal Bank and the Christmas recess, the telex instructing payment to Lynwil at TD Pickering was only acted on on December 29, 1987. In effect, the Royal Bank acted on the second telex, not realizing that the first payment had actually taken place. The fact that two payments had been made came to light only in February, 1988. The TD Bank declined to reverse the transfer and to debit Unitec's account. The Royal Bank sued both the TD Bank and Unitec.[7] The TD Bank counterclaimed against Unitec for indemnity in the event that it was found liable to the Royal Bank.

Judgment

The Royal Bank won against both defendants and the TD Bank won against Unitec. The claim and counterclaim against Unitec were on the basis of unjust enrichment. Unitec's defence, based on *Barclays Bank Ltd. v. W.J. Simms Son and Cooke (Southern) Ltd.*,[8] was that the payment by Guyana Mining was made "for good consideration, and in particular to discharge a debt owed to Unitec by Guyana Mines".[9] Accepting the validity in principle of such a defence,[10] Ferrier J. rejected its application in the case at bar, since Unitec "has failed to meet the onus of establishing on the balance of probabilities that [such] a debt was owing. . .".[11] He thus held against Unitec and in favour of each of the two banks.[12] In rejecting the discharge defence so as to allocate the loss ultimately on Unitec, this aspect of the judgment is well founded.[13]

The Royal Bank's action against the TD Bank was in negligence.

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[7] The Royal Bank also sued Joseph Stangl, president and major shareholder of Unitec and Lynwil. Both actions were dismissed and are of no concern to us.

[8] [1980] 1 Q.B. 677, 695.

[9] *Supra* footnote 3, at p. 13 of the judgment. For the interchangeability between "Guyana Mining" and "Guyana Mines", see footnote 4, *supra*.

[10] For a recent recognition of this defence in the U.S., see *e.g. Banque Worms v. Bank of America International* 77 N.Y. 2d 362 (1991). It is possible, however, that a valid defence requires a change of position, and not mere discharge of a debt. See *e.g. Morgan Guaranty Trust Co. v. Outerbridge* (1990), 66 D.L.R. (4th) 517, 72 O.R. 161 (H.C.J.). This aspect is outside the scope of this note.

[11] *Supra*, footnote 3, at p. 16 of the judgment.

[12] Had both banks failed against Unitec, recourse by the losing bank would have been against the overseas originator of the funds transfer, Guyana Mining.

[13] However, Unitec appealed against the trial judge's judgment.

In holding for the Royal Bank, Ferrier J. concluded that "the initial depositing of the funds and the continuing actions of the TD in refusing or failing to reverse the transaction caused the loss to the Royal Bank".[14] More specifically,[15]

> the depositing of the funds by the T.D. Mississauga to an account which was not in the name of the beneficiary described in the wire transfer was negligence. The fact that company names are often shortened or misspelled does not lower the standard of care required of a bank — if anything, such a fact should put a bank on guard to ensure that funds are being correctly deposited in accordance with instructions received. *The T.D. Mississauga ought to have sought [from its sender] clarification in the instructions before acting.*
>
> In addition, when the error was brought to its attention by the Royal Bank, the TD Mississauga could have, and should have, reversed the transaction by debiting the account of its customer. Its failure to do so was negligence. . .

It would follow therefore that the TD Bank was held liable on two counts of negligence. First, it paid the wrong beneficiary. Second, it failed to reverse the transfer once the error had been brought to its attention. Due to this negligence, the Royal Bank suffered a loss. This aspect of the judgment merits further analysis.

Discussion

At first blush, in requiring the TD Bank to ensure that the beneficiary's name and account number matched, the court appears to follow American pre-UCC Article 4A cases.[16] UCC §4A-207(b)(1) reversed these cases.[17] However, *Stangl* may appear to be consistent also with the UCC. This is because UCC §4A-207(b) only permits a beneficiary's bank to act solely on the account number, without matching it with the beneficiary's name, where the beneficiary's bank is unaware of any discrepancy between the name and number. Under UCC §4A-207(b)(2), where the beneficiary's name and account number identify different persons, and the beneficiary's bank pays either to the named

[14] *Supra*, footnote 3, at p. 11 of the judgment.
[15] *Ibid.* at p. 9, emphasis added.
[16] See *Securities Fund Service v. American National Bank*, 542 F. Supp. 323 (N.D. I11, 1982), and *Bradford Trust Co. v. Texas American Bank*, 790 F. 2d 407 (5th Cir., 1986).
[17] See B. Geva, *The Law of Electronic Funds Transfers*, (New York, Matthew Bender, 1992: updated annually), §2.07[3].

beneficiary, or into the account specified in the instructions with knowledge of the discrepancy, the beneficiary's bank is not protected, unless payment was actually made to the person entitled to receive payment from the originator of the funds transfer (in our case, Guyana Mining). Nonetheless, unlike *Stangl*, under UCC §4A-207(b), the beneficiary's bank need not determine whether the beneficiary's name and account number refer to the same person. Nor is it required to seek further instructions from the sender. In case of a discrepancy, it may either reject the payment order embodied in the wire instructions and containing the ambiguous instructions[18] or it may simply decline to act on it, in which case the instructions will expire automatically within five days.[19] But under both UCC §4A-207(b) and *Stangl*, payment to the account identified in the instructions with knowledge of the discrepancy between the name and the number is wrongful.

Further reflection leads me to conclude however, that *Stangl* was wrongly decided on the basis of negligence and that it would also have been decided differently under UCC Article 4A. First, the application of negligence principles in *Stangl* is not free from doubt. This was not a case of a beneficiary's bank automatically processing payment into an account on the basis of account number only.[20] Rather, the TD Bank exercised some discretion and judgment in deciding to make payment to Unitec. Not only that: on two previous occasions similar performance of identical instructions caused no difficulty, but one of Unitec's accounts was in the name of "*Linwell* International", which is not all that different from "*Lynwil* International"! Indeed, the similarity between the two names, together with the existence of an account numbered as instructed by the sender and belonging to the apparent beneficiary, should have afforded the TD Bank adequate protection.[21]

Second, it is quite likely that an American court applying UCC

[18] For rejection under UCC §4A-210 see Geva, *ibid.*, §2.03[4].

[19] For cancellation by operation of law (five days after the payment date) under UCC §4A-211(d) see Geva, *ibid.*, §§2.03[4] and 2.08[3]. Note that where the beneficiary is "unidentifiable", the sender's payment (under s. 4A-209(b)(2) and (3)) will not lead to acceptance by beneficiary's bank (s. 4A-207).

[20] As were the cases cited, *supra*, footnote 16.

[21] Similar to the protection accorded to a bank of deposit receiving a cheque where the endorser's name is misspelled. *Cf.* Bills of Exchange Act, R.S.C. 1985, c. B-4, s. 165(3).

§4A-207(b) would find the situation as not being a case where the beneficiary's bank *knows* of an inconsistency between a name and account number, or as not being a case where the name and number identify different persons. Indeed, inasmuch as payment was made to the holder of account No. 916327, and in the absence of knowledge of the discrepancy between name and number, the better view seems to be that the beneficiary's bank should be protected under UCC §4A-207(b)(1). In this context, it should be recalled that Lynwil did not even have an account at TD Mississauga so as to alert the branch to a possible conflict.

In effect, so far as TD Mississauga was concerned, the ambiguity in the wire instructions was not that the numbered account did not belong to the named payee. The ambiguity was rather in the misspelling of the payee's name ("Lynwil" instead of "Linwell"), as well as in the fact that the numbered account was under a different name from what TD Mississauga erroneously assumed to be the same beneficiary. From this perspective, this was an issue to be settled with the beneficiary and not with the sender. Indeed, the error was made by the originator of the funds transfer, Guyana Mining. To require a beneficiary's bank to query to the overseas originator about a mere misspelling of a beneficiary's name, a known customer of the beneficiary's bank, is quite inconsistent with the speed and efficiency expected from the wire transfer payment.

Fastening on a beneficiary's bank a duty to match name and number may not be consistent with the real world of automated processing of wire instructions. This policy underlies UCC §4A-207's[22] dispensing with such an obligation.[23] But regardless of whether or not such duty exists under Canadian law, the TD Bank should not have been liable for payment to the wrong beneficiary. It either acted with care, or without knowledge of the inconsistency, assuming such an inconsistency existed at all.

This leaves us with the second count of negligence, that is, the TD Bank's failure to reverse the transfer upon learning of the mistake, at least six weeks after the transfer. However, by reversing the transfer at that point, the TD Bank might have become exposed to Unitec's claim, if Unitec had been successful in raising the plea of discharge of a debt owed to it by Guyana Mining.[24] Cognizant of such a result, UCC §4A-211(c)(2) does not

[22] Official Comment 2 to UCC §4A-207.
[23] See text around footnotes 17 to 19, *supra*.
[24] For this defence and its disposition by the court, see text around footnotes 8 to 13, *supra*.

require the beneficiary's bank to concur with a post-completion cancellation on the basis of mistaken payment instructions. Usually, for post completion cancellation, the agreement of the beneficiary's bank is specifically required. Depending on how far it is prepared to rely on its sender's liability for any loss or expenses under UCC §4A-211(f), the beneficiary's bank is free, at its own discretion, to provide or withhold its consent to the post completion reversal.[25]

In appearing to restrict the post-completion power of the TD Bank, as a beneficiary's bank, to reverse only a mistaken (or possibly also unauthorized) payment,[26] *Stangl* need not be taken to undermine finality of payment[27] altogether. Even accepting the existence of such a restriction on the post completion reversing power of the beneficiary's bank, in purporting to bypass the agreement of the beneficiary's bank, the final decision unnecessarily exposed the TD Bank to an unwarranted risk.

Finally, in my view, the court was too lenient with the Royal Bank. Once the Royal Bank had carried out the original wire instructions (received on December 16th), it was not bound to act on the second telex (received on December 17th), without ensuring the reversal of the earlier funds transfer to TD Mississauga.[28] However, it initiated the transfer to TD Pickering only on December 29th. While the delay might be acceptable by itself,[29] overlooking the possibility of a double payment at that point may not. In fact, the occurrence of such a double payment was only discovered by the Royal Bank in February. The evidence showed that a second payment would only have been directed if the first one had not been made. From a comparative point of view, the Royal Bank's negligence, and its contribution to the loss, appears to have been greater than that of the TD Bank. Had the Royal Bank declined payment the second time around it would not have incurred the loss. Arguably, then, the erring originator (Guyana Mining), whose fault triggered the entire unfortunate chain of events, would not be well positioned to recover from the TD Bank.[30] Of course, this does not undermine the Royal Bank's

[25] See in general, Geva, *supra*, footnote 17, at §2.08[5].
[26] As at UCC §4A-211(c)(2).
[27] That is the irreversibility of credit once posted to the beneficiary's account. See in general, Geva, *supra*, footnote 17, at §2.12[4].
[28] See in general, *Royal Products Ltd. v. Midland Bank Ltd.*, [1981] 2 Lloyd's Rep. 194 (Q.B.).
[29] See text preceding footnote 7, *supra*.
[30] *Cf. Bradford*, *supra*, footnote 16, exonerating the beneficiary's bank that did not match

action, or that of the originator, against Unitec in unjust enrichment; it nevertheless undermines the basis of the Royal Bank's action against the TD Bank.

Practically speaking, the safest course for a beneficiary's bank which receives ambiguous instructions is to reject them altogether. However, on occasion, this may be against its best business judgment. Having exercised discretion and acted diligently to resolve the ambiguity, the beneficiary's bank ought to be protected even where it resolved the ambiguity incorrectly. This ought to be so at least where the ambiguity does not amount to irreconcilable inconsistency. This was the case here, where it was plausible to believe that the beneficiary's name was misspelled and not that it referred to someone other than the account holder.[31] Accordingly, the TD Bank should have been protected in *Stangl* as against the action of the erring originator as well as against that of the negligent intermediary bank. Unfortunately, Ferrier J. reached the opposite result.

On the facts of the case, fastening liability on the TD Bank can be rationalized only because it was in a better position than the Royal Bank to recover the erroneous payment from Unitec. However, the theory of such recovery would be in restitution, and is unrelated to the negligence of the beneficiary's bank.[32] This rationale also presupposes the absence of defences in restitution[33] and would lead to injustice where recovery from the beneficiary is not feasible.[34] In any event, no such line of reasoning appears in Ferrier J.'s judgment.

Conclusion

Overall, the judgment is well reasoned. In dismissing Unitec's

beneficiary's name and account number, from liability to the negligent originator's bank that dealt with the imposter initiating the transfer.

[31] Conversely, an irreconcilable inconsistency would occur when the name and account number identify two different beneficiaries and there is no similarity whatsoever between the name of the beneficiary identified at the payment order and the account holder.

[32] The correct plaintiff in such an action would be the originator or a sending bank subrogated to it.

[33] *Cf. A.N.Z. v. Westpac* (1988), 78 A.L.R. 157 (H.C. Aust.) dealing with the liability of the beneficiary's banks for overpayment resulting from carrying out an erroneous payment order.

[34] This may be why Article 4A disfavours recovery by an erring executing bank from the beneficiary's bank and requires the former to pursue its remedies against the beneficiary. See UCC §4A-303.

defence, it is correct on the unjust enrichment point. Without the benefit of extensive jurisprudence, it is facially persuasive, though ultimately, in my view, incorrect, on the first count of negligence against the TD Bank. With respect to both counts of negligence, as well as causation, the judgment fails to appreciate fully the reality of funds transfer practice.

Stangl demonstrates the inadequacy of the common law methodology in failing to provide a comprehensive set of rules governing funds transfers and the urgent need for a legislative solution.[35] One may speculate that the TD Bank resisted the Royal Bank's claim in order to accommodate Unitec, the TD Bank's customer. However, once Unitec lost and as long as Unitec returns the funds, the TD Bank ends up without any out of pocket loss. The entire discussion of the TD Bank's liability thus becomes irrelevant for the allocation of the ultimate loss, at least where recovery from Unitec is feasible. Nonetheless, Ferrier J.'s observations as to the duties of the beneficiary's bank unfortunately remain the final word on the topic, at least for the time being.

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[35] Such as UCC Article 4A or UNCITRAL Model Law on International Credit Transfers.

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