74 A.D.3d 546
Supreme Court, Appellate Division, First Department, New York.

Jacques **THYS**, Plaintiff–Appellant,
v.
FORTIS SECURITIES LLC, et al., Defendants–Respondents.

June 15, 2010.

Synopsis
Background: Employee brought action against employer defendants for conversion. The Supreme Court, New York County, Ira Gammerman, J.H.O., dismissed the complaint. Employee appealed.

The Supreme Court, Appellate Division, held that employee stated a claim for conversion of money.

Reversed.

Procedural Posture(s): On Appeal; Motion to Dismiss.

Attorneys and Law Firms

****369** Liddle & Robinson, LLP, New York (Ethan A. Brecher of counsel), for appellant.

Kasowitz, Benson, Torres & Friedman LLP, New York (Brian S. Kaplan of counsel), for respondents.
ANDRIAS, J.P., SAXE, McGUIRE, MOSKOWITZ, FREEDMAN, JJ.

Opinion
***546** Judgment, Supreme Court, New York County (Ira Gammerman, J.H.O.), entered January 5, 2010, dismissing the complaint, unanimously reversed, on the law, without costs, and the ***547** complaint reinstated. Appeal from order, same court and Justice, entered December 29, 2009, which granted defendants' motion to dismiss, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

Plaintiff alleges that defendants promised him an employment bonus of 375,000 for 2005; that thereafter they deposited in plaintiff's bank account the sum of $198,230.73—purportedly his bonus after taxes—which plaintiff believed was inadequate; that the parties agreed that plaintiff would return $192,000 of the deposited money and defendants would then deposit in plaintiff's bank account the correct bonus amount in euros; and that, although plaintiff returned the $192,000, as agreed, defendants failed to deposit any funds. Plaintiff seeks damages for conversion.

An action for conversion of money may be made out "where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question" (*Manufacturers Hanover Trust Co. v. Chemical Bank,* 160 A.D.2d 113, 124, 559 N.Y.S.2d 704 [1990], *lv. denied* 77 N.Y.2d 803, 568 N.Y.S.2d 15, 569 N.E.2d 874 [1991]). Although the action must be for recovery of a particular and definite sum of money, the specific bills need not be identified (*Jones v. McHugh,* 37 A.D.2d 878, 325 N.Y.S.2d 102 [1971]).

The allegations that specified funds "were entrusted to [defendants'] custody only for a particular purpose," namely, the purpose of recalculating and repaying the bonus due to plaintiff, and that instead defendants improperly retained the funds without making such recalculation and repayment, state a cause of action for conversion (*see Meese v. Miller,* 79 A.D.2d 237, 436 N.Y.S.2d 496 [1981] [internal quotation marks omitted]). The funds of which defendants took possession were represented by plaintiff's check for $192,000, and that $192,000 is "specifically identifiable and ... subject to an obligation to be returned or to be otherwise treated in a particular manner" (*Republic of Haiti v. Duvalier,* 211 A.D.2d 379, 384, 626 N.Y.S.2d 472 [1995]).

Finally, the motion court was incorrect in suggesting that the voluntary nature of plaintiff's delivery of his check to defendants precludes a conversion claim (*see Soma v. Handrulis,* 277 N.Y. 223, 231, 14 N.E.2d 46 [1938]).

All Citations

74 A.D.3d 546, 903 N.Y.S.2d 368, 2010 N.Y. Slip Op. 05252

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