



**Thys v. Fortis Sec. LLC, 74 A.D.3d 546, 903 N.Y.S.2d 368 (App Div, 1st Dept 2010), Court Opinion**

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**Pagination**

\* A.D.3d

\*\* N.Y.S.2d

Appellate Division of the Supreme Court of New York, First Department.

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JACQUES THYS, Appellant, v. FORTIS SECURITIES LLC et al., Respondents.

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Nos. 2868, 2868A.

June 15, 2010.

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 Judicial Hearing Officer, entered December 29, 2009, which granted defendants' motion to dismiss, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

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.

Before: Andrias, J.P., Saxe, McGuire, Moskowitz and Freedman, JJ.

Plaintiff alleges that defendants promised him an employment bonus of € 375,000 for 2005; that thereafter they deposited in plaintiffs 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 plaintiffs 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 AD2d 113, 124 [1990], *lv denied* 11 NY2d 803 [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 AD2d 878 [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 AD2d 237, 244 [1981] [internal quotation marks omitted]). The funds of which defendants took possession were represented by plaintiffs 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 AD2d 379, 384 [1995]).

Finally, the motion court was incorrect in suggesting that the voluntary nature of plaintiffs delivery of his check to defendants precludes a conversion claim (*see Soma v Handrulis*, 277 NY 223, 231 [1938]).

## General Information

<b>Result(s)</b>	Judgment Reversed, Appeal Dismissed, Case Reinstated
<b>Topic</b>	Civil Procedure Personal Property