

Answer

1. In the regular course of business, Frost Bank loaned Defendant Alpha Partners, Ltd. (“Alpha”) \$10,000,000 on or about December 31, 2010. Alpha Partners subsequently loaned, in exchange for a surplus debenture, \$10,000,000 to Santa Fe Auto Insurance Company, Inc. (“Santa Fe”). The regularly scheduled debt payments by Alpha to Frost Bank were scheduled to be due the first day of each calendar quarter. A regularly scheduled payment from Alpha to Frost Bank was made in the beginning of January 2012, in the amount of \$465,667.17.

2. Immediately prior to this regularly scheduled payment, Santa Fe made a debenture payment in the amount of \$465,667.17 to Alpha pursuant to its loan agreement with Alpha. In order to make a surplus debenture payment Santa Fe must determine that it has and will continue to have, subsequent to the payment, a surplus level equal to or greater than an amount set forth in the debenture instrument as the surplus floor. The benchmark for this determination was the last filed financial statement.

3. Santa Fe, similar to all regulated insurance companies, was required to and did file quarterly and annual statutory financial statements with the Texas Department of Insurance. Quarterly statements are due within 45 days after the end of the first three calendar quarters, and the annual statement is due within 60 days after the end of each calendar year. The Alpha credit agreement required the filing of those statutory statements with Frost Bank on or shortly after the regulatory filing date.

4. The last regulatory statement filed, and the last statement filed with Frost Bank from Santa Fe, was the September 30, 2011 statement, which showed sufficient surplus over and above that required in the loan documents to make the payment from Santa Fe to Alpha in

January 2012. Frost Bank had no knowledge prior to the January 2012 payment that Santa Fe's ability to make the surplus debenture payment was in any way impaired.

5. The analysis which produced an adjustment to the Santa Fe surplus that reduced it to a level below the floor required by the loan documents was not completed nor furnished to Frost Bank until after the Alpha payment to Frost Bank in January 2012.

6. The Receiver argues that pursuant to TEX. INS. CODE ANN. § Section 443.207(a) it may recover the \$465,667.17 that was transferred from Alpha to Frost Bank because that amount of money was originally transferred from Santa Fe to Alpha. However, Section 443.207(b) provides the Receiver may not recover under § 443.207(a)(2) from: an immediate and/or mediate good-faith transferee of the transferee. In other words, if Frost Bank received the \$465,667.17 in satisfaction of a debt, in good faith, and without knowledge of the voidability of the transfer from Santa Fe to Alpha, the Receiver may not recover the money paid from Alpha to Frost Bank.

7. As Frost Bank received the money in the regular course of business for the payment of a debt, in good faith, and without knowledge that Santa Fe was not financially able to pay Alpha, the Receiver may not recover any money from Frost Bank.

Affirmative Defenses

1. Defendant Frost Bank asserts the applicable statute of limitations.
2. Frost Bank asserts the defense of waiver, estoppel and ratification, to the extent that all actions complained of were known to and approved by the Texas Department of Insurance.
3. Frost Bank asserts the defense of business justification.

PRAYER

WHEREFORE, premises considered, Defendant, Frost Bank, prays for judgment of the Court as follows:

1. That Plaintiff take nothing by its suit; and
2. That Frost Bank be awarded such other and further relief to which it may be entitled.

Respectfully submitted,

WINSTEAD PC

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ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2015, a true and correct copy of the foregoing Original Answer was served electronically on all counsel of record:

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