

Carter Ledyard Wins Dismissal of Complaint Alleging Receipt of Converted Funds

April 24, 2020

In an April 15, 2020 decision, New York Commercial Division Justice O. Peter Sherwood granted CLM's motion to dismiss all claims against two CLM clients for, among other things, conversion, fraudulent conveyance and unjust enrichment.

CLM's clients had received a refund of a deposit advanced for a piece of commercial real estate from the seller's attorney's attorney trust (IOLA) account after the transaction failed to close. Unbeknownst to CLM's clients, the seller's attorney stole attorney IOLA funds that had been paid by another buyer who contracted to buy the same property. When the seller's attorney was unable to pay back the new buyer's deposit, the buyer commenced an action that alleged that all recipients of payments from the attorney's IOLA account after the new buyer deposited funds in the IOLA account, including the repayment to CLM's clients, should be liable to the buyer.

In dismissing the complaint, the court found that it failed to state conversion or fraudulent conveyance claims against the defendants because the plaintiff could not dispute that the defendants were due money from the seller's attorney. The court also found that the complaint's allegations that the defendants participated with the attorney in a fraudulent scheme were vague and unsupported by any credible factual support. Since there was no relationship between the buyer and the defendants, the court also concluded that there could be no equitable claim for unjust enrichment.

The clients were represented by CLM attorneys Jacob H. Nemon and Leonardo Trivigno.

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