
Desouza, et al. v. Saco & Biddeford Savings Institution

In a significant decision, the Maine Business and Consumer Court allowed several claims to proceed in *Desouza v. Saco & Biddeford Savings Institution (SBSI)*, a case alleging misconduct by a lender in administering a construction loan.

The plaintiffs, Natasha Desouza and her mother-in-law, accused SBSI of disbursing loan funds based on unauthorized draw requests from their contractor, which they argued facilitated fraud and negligent.



Lucas Fortier



Conor Shankman

While dismissing one claim for intentional misrepresentation, the court upheld claims for unjust enrichment, fraudulent concealment, negligent misrepresentation, and breach of fiduciary duty, signaling a cautious approach to lender liability.

According to court filings and a statement from plaintiffs' counsel, Lucas Fortier and Conor M. Shankman of Bernstein Shur in Portland, "this case is about a bank that breached its contractual and fiduciary obligations to its borrowers by disbursing hundreds of thousands of dollars in funds under a construction loan for defective work without proper authorization from a borrower, where the bank knew or recklessly disregarded the fact that the requests for disbursement were not signed by an authorized borrower."

The dispute stems from a 2021 renovation project financed by a construction loan with SBSI. Under the loan agreement, only Desouza and her mother-in-law, the borrowers, were authorized to approve disbursement requests. Despite this, the contractor allegedly submitted multiple draw requests bearing the forged signature of Desouza's husband, who was not a party to the loan and was not authorized to sign.

Plaintiffs allege that SBSI disbursed over \$140,000 based on these unauthorized requests and "did not notify the borrowers of the draw requests until after at least several of the disbursements were already made," wrote plaintiffs' counsel. The contractor ultimately abandoned the project, leaving plaintiffs with unfinished work and insufficient funds to complete the renovations.

The court's decision on SBSI's motion to dismiss is particularly noteworthy for its analysis of fraudulent concealment and fiduciary duty. On the fraudulent concealment claim, the court emphasized that the bank's contractual obligation to obtain an authorized borrower's signature created a duty to disclose deficiencies in draw requests.

Plaintiffs alleged that the bank's failure to notify them of the forged signatures prevented them from taking corrective action, causing financial harm. As plaintiffs' counsel noted, "the loan agreement's contractual obligation of the bank to obtain an authorized borrower's approval for disbursement of loan funds is sufficient to establish a duty for the bank to disclose to the borrowers that facially deficient draw requests had been submitted."

Regarding the fiduciary duty claim, the court found the disparity in knowledge between SBSI and plaintiffs supported the existence of a fiduciary relationship. Plaintiffs relied on the bank to ensure compliance with the loan agreement, and the bank's knowledge of unauthorized draw requests exacerbated plaintiffs' vulnerability.

While Maine law generally has not recognized fiduciary duties in borrower-lender relationships, the court determined that plaintiffs sufficiently alleged "the requisite disparity in knowledge to give rise to a fiduciary duty between the bank and the borrowers," counsel explained.

Further, attorneys Fortier and Shankman emphasized that “the Court’s decision will help the Plaintiffs and other similarly situated plaintiffs hold banks accountable for unauthorized disbursements of loan funds -- particularly where the requests for disbursement contain facial deficiencies.”

This decision reinforces the expectation that lenders adhere to their contractual and fiduciary obligations when administering construction loans. As the case moves forward, it will likely provide further guidance on lender liability, offering a cautionary tale for financial institutions and emphasizing the importance of verifying documentation before disbursing funds.

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Desouza, et al. v. Saco & Biddeford Savings Institution (McKeon, J.), BCD-CV-2024-0040, 11/15/2024

Conor M. Shankman, Lucas Fortier, and Christopher A. Harmon for Plaintiffs.

Micah A. Smart for Defendant.

Defendants Mark Moran and Jeff Averill, *pro se*.

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