

Jackson Smith solicitors

Bank successfully sued after paying out large cheque.

A Queensland farmer gave his accountant a cheque for investment into "STFT". The accountant executed a trust deed under that name with himself as the sole beneficiary and the sole trustee. He then opened a bank account on behalf of the trust with himself as the sole signatory and banked the cheque. He drew the money out of that account and deposited it into his own account and the account of his wife.

The farmer sued the bank.

The bank argued that the farmer could not deny that authority had been given to the bank to pay the cheque and also that the bank was protected by the Cheques Act.

The first judge who heard the matter agreed with the bank and said that the bank had done what it was authorised to do on the face of the cheque.

Before the Court of Appeal the farmer won. The judges said that the farmer had not misled the bank in any way into believing that the cheque was authorised and therefore the bank could not rely on this defence.

As to the Cheques Act defence, the judges said that because the bank acted with negligence it could not rely on the Cheques Act for protection. The point was that the transaction was so out of the ordinary that it should have caused the banker to enquire about it. In particular, it was an unusually large sum of money and the opening of the trust account was rare with the accountant as the sole trustee, beneficiary and account holder.

This case demonstrates that banks can be held responsible for what occurs and advice should be sought if your clients consider that they have been wronged by any conduct of the bank.

I hope that this information is of some interest and benefit to you, and to your clients.

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