APPENDIX A

United States Court of Appeals
for the Federal Circuit

DOUBLE LION UCHET EPRESS TRUST, DELMA ANDREWS-POWLEY, RA NU RA KHUTI AMEN BEY,

Plaintiffs-Appellants

v.

UNITED STATES,

Defendant-Appellee

2021-1921

Appeal from the United States Court of Federal Claims in No. 1:20-cv-01074-MMS, Senior Judge Margaret M. Sweeney.

MANDATE

In accordance with the judgment of this Court, entered July 15, 2021, and pursuant to rule 41 of the Federal Rules of Appellate Procedure, the formal mandate is hereby issued.

FOR THE COURT

September 7, 2021

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

APPENDIX B

Note: This order is nonprecedential.

United States Court of Appeals

for the Federal Circuit

DOUBLE LION UCHET EPRESS TRUST, DELMA ANDREWS-POWLEY, RA NU RA KHUTI AMEN BEY,

Plaintiffs-Appellants

v.

UNITED STATES,

Defendant-Appellee

2021-1921

Appeal from the United States Court of Federal Claims in No. 1:20-cv-01074-MMS, Senior Judge Margaret M. Sweeney.

ON MOTION

PER CURIAM.

ORDER

Ra Nu Ra Khuti Amen Bey moves for leave to proceed in forma pauperis. We dismiss this appeal.

Mr. Amen Bey, Delma Andrews-Powley, and Double Lion Uchet Express Trust filed a complaint at the United States Court of Federal Claims seeking $419,000,000: $15,000,000; and 419,000,000; respectively. The complaint stated that it was regarding a tax issue and invoked the court's jurisdiction under 28 U.S.C. 1346(a)(1). The complaint further asserted that "stipulation has been reached on private banking contracts between the co-plaintiffs and the agent(s) representing the UNITED STATES INCORPORATED"; that co-plaintiffs were "here for settlement and closure." Plaintiffs separately filed a motion for leave to proceed in forma pauperis.

The Court of the Federal Claims granted the government's motion to dismiss the complaint. Reading the complaint liberally, the court discerned that plaintiffs were perhaps attempting to file a tax claim, that court explained that plaintiffs did not "assert that they have paid taxes to the United States in the amount that they request in this suit." The Court of Federal Claims likewise found that plaintiffs failed to raise a "single nonfrivolous factual allegation in the complaint... that implicates a specific express or implied contract with the United States."

Having concluded that the complaint only raised claims that were outside of the Court of Federal Claims limited jurisdiction, the court then turned to the motion for leave to proceed in forma pauperis. The Court of Federal Claims concluded that "their application to proceed in forma pauperis is just as frivolous as their complaint" and denied the application. The court then further certified, under 28 U.S.C. 1915(a)(3), that any appeal by plaintiffs would not be taken in good faith. This appeal followed.

Because Delma Andrews-Powley and Double Lion Uchet Express Trust failed to both pay the fee (or move for leave to waive the fee) and submit an opening brief within the applicable deadlines, we are only left with Mr. Amen Bey's motion and informal opening brief.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 1915(a)(3). We construe that motion for leave to proceed in forma pauperis as seeking to challenge the Court of Federal Claims' certification decision. We reject that challenge. Mr. Amen Bey's informal brief fails to make a reasoned, nonfrivolous argument on the law and facts in support of the Court of Federal Claims having jurisdiction over the complaint. Indeed , nowhere in the brief does he challenge the Court of Federal Claims' conclusions regarding the tax claim or the contract claim. We therefore deny the motion and dismiss his appeal as frivolous.

Accordingly,

It is ORDERED THAT:

(1) The appeal is dismissed.

(2) The motion for leave to proceed in forma pauperis is denied.

(3) Each side shall bear its own cost.

FOR THE COURT

July 15, 2021

Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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APPENDIX C

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 20-1074

(Filed: April 16, 2021)

Double Lion Uchet Express Trust

Et al.,

Plaintiff,

v.

THE UNITED STATES,

Defendant,

Pro Se Plaintiffs:
Motion to Dismiss;
Subject Matter Jurisdiction;
RCFC 12(b)(1);
Sovereign Citizen Allegations;
Frivolous Claim;
In Forma Pauperis

ra nu ra khuti amen bey and delma andrews-powley, Tampa, FL, pro se.

STEVEN M. CHASIN, United States Department of Justice, Washington, DC, for defendant.

OPINION AND ORDER

SWEENEY, Senior Judge

Plaintiffs Double Lion Uchet Express Trust ("Double Lion"), 1 ra nu ra khuti amen bey, 2 delma andrews-powley, proceeding as pro se in this matter,

allege that "the United States Incorporated" owes them hundreds of millions of dollars. Plaintiffs also seek to proceed in forma pauperis. Currently before the court is defendant's motion to dismiss the complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted, filed pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims ("RCFC"). As explained below, the court grants defendant's motion, denies plaintiffs' application to proceed in forma pauperis, and enjoins the filing of any additional complaints by plaintiffs in this court absent prior authorization of the chief judge.

I. BACKGROUND

Plaintiffs filed a largely incomprehensible form complaint accompanied by a large appendix of documents. In the civil cover sheet attached to the complaint, which uses the

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1 The legal status, if any, of Double Lion is unclear. The documents attached to the complaint imply a connection between Double Lion and Mr. Bey, who is described as the "Settlor" of Double Lion. Compl. App. 11.

2 Mr. Bey is also known as Bertram Andrews-Powley, III.

105. See Murakush Caliphate of Amexem Inc., 790 F. 2d at 242-73 (providing a history of the litigation tactics and examples of the specialized vocabulary of Moorish sovereign citizen plaintiffs who assert that they are endowed with special citizenship rights). Also typical of Moorish sovereign citizen litigants is the practice of creating documents purporting to establish various legal rights. See, e.g., El-Bey, 2009 WL1019999, at *1 (noting that the Moorish sovereign citizen plaintiff in that case had filed several bogus documents"). The appendix here includes an abundance of meaningless documents created by plaintiffs with legal terminology in the titles: "Notice of Public Records Correction International Document, Compl. App. 78; "Court Bond / Security," id at 106; "Note" (promissory note tendered in lieu of $400 federal district court filing fee), id at 116; "Statement of Account," id at 252; "Trust Indenture," id. at 272; "Notice of Dishonor," id at 288; "Notice of Waiver of Tort," id. at 294; "Notice – Letter Rogatory," id. at 319; "Quit-Claim-Al-Sesin-In-Deed," id. at 663; and "Certificate of Acknowledgement," id. at 667.

The appendix also includes hundreds of pages of court orders, court judgments, and court docket reports that have been annotated with hand-written gibberish – each of these documents is described by plaintiffs in their appendix index as a "private bankers acceptance" or private banker's contract"; the compendium of these annotated documents appears to be an attempt by plaintiffs to justify their monetary claim by identifying a series of adverse events they have encountered in the federal court system and the Florida state court system. Id. at 2-6, 473-618, 627-42, 673-749, 752-96. As in many Moorish sovereign

citizen suits, the mass of paper filed by plaintiffs is vexatious and wastes the resources of defendant and the court. See, e.g. El-Bey v. City of Greensboro, No. 1:10CV572, 2011 WL 4499168, at *3 (M.D.N.C. Sept. 27, 2011) (decrying the "drain on scarce judicial resources imposed by [that Moorish sovereign citizen plaintiff's] voluminous and repetitive filings" and noting the need to protect potential defendants "from having to respond to baseless and harassing litigation in the future"), report and recommendation adopted as modified, No. 1:10cv572, 2012 WL 13064405 (M.D.N.C. Mar. 21, 2012), aff'd, 539 F. App' x 312 (4th Cir. 2013) (mem.).

Because plaintiffs here have crafted a complaint that fully embraces Moorish sovereign citizen concepts and vocabulary, and have expounded on such concepts ad nauseam, the court restricts its analysis to what can be understood of their request for relief.

B. Two Legal Bases That Might Be Discerned in the Complaint

Having examined plaintiffs' complaint and accompanying appendix thoroughly, the court concludes that plaintiffs' claim might be predicted on tax law or contract law. Nevertheless, as noted above, plaintiffs' claim is most accurately described as a frivolous Moorish sovereign citizen claim with no legal basis whatsoever.

1. Tax Claim

As might be relevant to an estate tax refund claim, plaintiffs reference 28 U.S.C. 1346(a)(1), the statutory provision that provides federal district courts with concurrent jurisdiction with this court to

entertain tax refund claims. Compl. 1. Plaintiffs also include in their favor. Compl. App. 23-29 ("Notice of Request for Entering Judgment"), 30-34 ("Motion for Summary Judgment"), 35-42 ("Notice of Default Judgment"), Subsequently, plaintiffs filed renewed request for judgment in their favor on September 21, 2020, October 13, 2020, and January 25, 2021. The filing of the third motion of this type contravened the court's order of October 15, 2020, which prohibited plaintiffs from filing additional request for judgment in their favor.

On October 30, 2020, plaintiffs filed an appeal of three of the court's procedural rulings in this case. During the pendency of that appeal, defendant filed its motion to dismiss. In its motion, defendant states that the complaint is "nearly devoid of fats and largely unintelligible on its face." Def.'s Mot. 1. It also contends that the sovereign citizen framework of any discernible claim renders the complaint frivolous and without merit.

Subsequently, on January 21, 2021, the United States Court of Appeals for the Federal Circuit granted the government's motion to dismiss plaintiffs' appeal as premature, and issued the mandate for the dismissal of the appeal on the same day. Plaintiffs then filed their response to the government's motion to dismiss and the government filed a reply. 4 This matter is now ripe for a ruling.

II. STANDARD OF REVIEW

A. Pro Se Plaintiffs

Pro se pleadings, like those submitted by plaintiffs, are "held to less stringent standards than formal pleadings drafted by lawyers" and are "to be

liberally construed." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). However, the "leniency afforded to a pro se litigant with respect to mere formalities does not relieve the burden to meet jurisdictional requirements." Minehan v. United States, 75 Fed. Cl. 249, 253 (2007); accord Henke v. United States, 60 F. 3d 795, 799 (Fed. Cir. 1995) ("The fact that [the plaintiff] acted pro se in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures, if such there be."). In other words, a pro se plaintiff is not excused from his burden of proving, by a preponderance of evidence, that the court possesses jurisdiction. See Banks v. United States, 741 F. 3d 1268, 1277 (Fed. Cir. 2014) (citing Reynolds v. Army & Air Force Exch. Serv., 846 F. 2d, 746, 748 (Fed. Cir. 1988)).

B. Motion to Dismiss Under RCFC 12(b)(1)

When considering whether to dismiss a complaint for lack of jurisdiction pursuant to RCFC 12(b)(1), the court assumes that the allegation in the complaint are true and construes those allegations in the plaintiff's favor. Trusted Integration, Inc. v. United States, 659 F. 3d 1159, 1163 (Fed. Cir. 2011). Whether the court has subject matter jurisdiction to decide the

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4 The court stayed, pending the resolution of defendant's motion to dismiss, a number of miscellaneous requests incorporated in plaintiffs' opposition brief, including their request that the

government provide a more robust response to their complaint. Order Mar. 2, 2021.for pleading a tax-refund claim within the jurisdiction of this court as set forth in 26 U.S.C. 7422(a) and RCFC 9(m).

Even if plaintiffs' claim could be described as a tax-refund claim, it is entirely frivolous and does not fall within this court's jurisdiction. See Boeing Co. v. United States, 968 F. 3d. 1371. 1383 (Fed. Cir. 2020) (stating that "[a]llgations of subject matter jurisdiction, to suffice, must satisfy a relatively low standard," but also noting that "essentially fictitious" and "obviously frivolous" claims do ot meet the standard (citing Shapiro v. McManus, 577 U.S. 39, 45-46 (2015)). Plaintiffs' stance on taxes, to the extent that any coherent argument on this topic can be discerned in their fillings, is that they do not need to pay taxes to the United States, but can assess taxes against the United States. See, e.g., Brown v. United States, No. 17-766T, 2017 WL 6336778, AT *6 (Fed. Cl. Dec. 12, 2017) (dismissing, for failure to satisfy the full-payment rule, a frivolous tax-refund claim founded on a fictitious bond valued by the plaintiff at $ 850 billion).

For each of these reasons, any tax-refund claim that could be discerned in plaintiffs' complaint must be dismissed for lack of jurisdiction.

B. No Nonfrivolous Breach-of-Contract Claim

Plaintiffs fare no better under a breach-of-contract analysis. As with their unavailing (or empty, futile) tax-related allegations, plaintiffs string together contract-related legal terms in a nonsensical fashion. In the jurisdictional statement of their complaint, plaintiffs write:

This is a taxable termination event / case: Co-plaintiffs have done an assessment with the Internal Revenue Service and are due an offset / refund on the debt obligation(s) (private banking contracts and certificates of deposit held in Treasury Direct). The government obligations (stipulated contracts / stipulated bills of exchange) were ratified in compliance with 31 USC 9303(a)(3) and do not impede this courts Exclusive Jurisdiction as outlined in 28 USC 1346(a)(1)(c)...Co-plaintiff[]s request 1099 OID A and C and full settlement and closure of this accounting. Comp. 1 That text is supplemented by plaintiffs' statement of their claim:

The co-plaintiffs are here by special appearance on a tax issue. There are no material facts to move forward as stipulation has been reached on private banking contracts between the co-plaintiffs and the agent(s) representing the UNTIED STATES INCORPORATED. The co-plaintiffs have assessed the taxes in this matter. Additionally, the co-plaintiffs have posted bond(s) of which the UNITED STATES INCORPORATED are in possession. These bonds have ended any and all controversy in this matter by discharging the alleged obligations irregardless of the aforementioned IRS assessment. The co-plaintiffs are here for settlement and closure.

To avoid dismissal on jurisdictional grounds, a plaintiff asserting a breach-of-contract claim is only "required to set forth a non-frivolous allegation of breach of a contract with the government." Columbus Reg'l Hosp. v. United States, 990 F. 3d 1330, 1341 (Fed. Cir. 2021) (citing Engage Learning, Inc. v. Salazar,660 F. 3d. 1346, 1353 (Fed. Cir. 2011)). That low standard has not been met here. Plaintiffs rely on

fictitious contract unmoored in law and untethered to reality.

Plaintiffs also allege, it appears, that "stipulated contracts / stipulated bills of exchange" and "private banking contracts and certificates of deposit held in Treasury Direct" underline their contract claim against the United States. Compl. 1. There is not, however, a single nonfrivolous factual allegation in the complaint and its attachments that implicates a specific express of implied contract with the United States. Plaintiffs proffer, instead, an incoherent sovereign citizen broadside which presumes that their rights as Moorish sovereign citizens, along with adverse rulings from various courts, entitle them to a breach-of-contract remedy against the United States. Sovereign citizen theories such as these are frivolous and insufficient to establish jurisdiction for a breach-of-contract claim in this court. See, e.g., Ammon v. United States, 142 Fed. Cl. 210, 219-20 (2019) (noting that a breach-of-contract claim founded on sovereign citizen arguments was frivolous), appeal dismissed, No. 19-1759 (Fed. Cir. June 21, 2019); Gravatt v. United States, 100 Fed. Cl. 279, 285, 288 (2011) (finding a sovereign citizen claim founded on fictitious homemade documents and nonexistent trust fund accounts with the United States Department of the Treasury to be frivolous).

Plaintiffs expanded upon their contract-related allegations in two other filings – a motion for default judgment and their opposition to defendant's motion to dismiss. Although these filings do not amend the complaint, they do illustrate plaintiffs' perspective on the purported contract or contracts with the United Sates upon which their contract claim relies.

In their motion for default judgment, plaintiffs assert that they are collecting on a debt owed to them by the "UNITED STATES INCORPORATED / CABAL / CABAL MEMBERS" because of a "contractual default":

> [T]he coplaintiffs request a lawful and legal Return on these "Government" Debt Obligations including cost and reasonable interest on claim 1 and 2 where prior to any legal cost is valued at :590,723,389.78 Government Obligation (444,943,802.00) four-hundred forty four million nine-hundred forty three thousand eight-hundred two fiat federal reserve note / USD.... [C]o-plaintiff(s) reserve the right to collect in alternative species such as old and silver.

Pls.' Mot. For Default J. 2-3. Plaintiffs also offer another description of a debt instrument that underlies their suit:

> [I]t is request that our Registered – Bond / Court-Bond be Surrendered to us pursuant to CFR 306.75(a)(b). This bond is 3 times the value of the Certificates of Indebtedness being held in the Treasury Direct Account since July 29, 2019....[T]he value of this bond is 758,402,967.00 (seven hundred fifty eight million four hundred two thousand nine hundred sixty seven federal reserve notes / fiat / USD[)].

Id. at 9. The aforementioned "Court Bond," printed on paper bearing the banner of "The Moorish National Republic," is included in the appendix, and is in the amount of $758,402,967. Compl. App. 106, 108. It is signed only by Mr. Bey and a notary. Id. at 114. To the extent that plaintiffs attempt to base their

contract claim on this bond or others of their own devise, their contract claim is frivolous.

Turning to plaintiffs' opposition to defendant's motion to dismiss, the "Court-Bond" is again mentioned as a basis for the monetary relief they request, in the amount of $758,402,967. Pls.' Opp' n 6. Alternatively, Ms. Andrews-Powley seeks $15 million for "damages for U.S. Government debt Obligations owed to" plaintiffs, and Mr. Bey seeks $580 million for "damages to [his] estate for U.S. Government Debt Obligations owed to" plaintiffs. Id. at 5-6. Again, there is no nonfrivolous factual allegation in the complaint or its appendix that suggest the existence of a contract between plaintiffs and the United States as might be evidenced through actual debt instruments or obligations.

Having considered the complaint, the appendix, plaintiffs' last motion for default judgment, and plaintiffs' opposition to defendant's motion to dismiss, any breach-of-contract claim asserted by plaintiffs is frivolous and insufficient to establish jurisdiction in this court for their suit.

IV. APPLICATION TO PROCEED IN FORMA PAUPERIS

As previously noted, plaintiffs filed an application to proceed in forma pauperis. This application was filed under threat, duress and coercion with all rights reserved. Pursuant to 28 U.S.C. 1915, THE Court of Federal Claims may waive filing fees and security under certain circumstances. See 28 U.S.C. 1915(a)(1); see also Hayes v. United States, 71 Fed. Cl. 366, 366-67 (2006) (concluding that 28 U.S.C. 1915(a)(1) applies to both prisoners and nonprisoners alike). Plaintiffs wishing to proceed in

forma pauperis must submit an affidavit that list all of their assets, declared that they are able to pay the fees or give the security, and states the nature of the action and their belief that they are entitled to redress. 28 U.S.C. 1915(a)(1). Plaintiffs have not satisfied these requirements. Indeed, their application to proceed in forma pauperis is just as frivolous as their complaint.

As an initial matter, they claim that they have no income and provide this nonsensical explanation for how they pay their expenses: " The Emergency Banking Act took our gold but gave us an exclusion which is unlimited. Co[-]plaintiffs are secured party creditors and operate as such." Appl. 2. They also claim not to have any money in cash or a bank account because "there is no money according to House Joint Resolution 192 and Public Law 73.10." Id. These laws, taken together, did not eliminate money, but instead invalidated obligations requiring payment in gold as against public policy and provided that United States currency is legal tender for all debts. See generally Agricultural Adjustment Act, tit. III, Pub. L. No. 73-10, 48 Stat. 31, 51-54 (1933) (Financing – and Exercising Power Conferred by Section 8 of Article I of the Constitution: To Coin Money and Regulate the Value Thereof"); H.J.R. Res. 192, 48 Stat. 11 (1933) ("To assure uniform value to the coins and currencies of the United States.").

Because plaintiffs' allegations of poverty are fantastical, the court must deny their application to proceed in forma pauperis.

V. CONSLUSION

In short, amid the voluminous pages of legalese and homemade documentary falsities submitted to the court, plaintiffs have not alleged a nonfrivolous claim. The court therefore lacks jurisdiction to entertain plaintiffs' complaint.

Accordingly, the court **GRANTS** defendant's motion to dismiss. Plaintiffs' complaint is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. The court also **DENIES** plaintiffs' application to proceed in forma pauperis. In consequence, the court's filing fee for this suit remains due and owing. Further, the court certifies, pursuant to 28 U.S.C. 1915(a)(3), that any appeal from this order would not be taken is good faith because, as alleged, plaintiffs' claim is clearly beyond the subject matter jurisdiction of this court.

In addition, due to plaintiff's pattern of frivolous and vexatious filing in this matter and their previous cases filed in this court, Double Lion Uchet Express Trust, ra nu ra khuti amen bey (also known as Bertram Andrews-Powley,III,) and delma andrews-powley are immediately **ENJOINED** from filing any new complaint. If these plaintiffs, or any subset thereof, seek to file a new complaint, they shall first submit a "Motion for Leave to File" that explains how the new complaint involves new matters not previously raised in this court. Any such motion must include as an attachment a full complaint that meets all the requirement of RCFC 8. In the event that the chief judge grants their motion, plaintiffs will be granted their motion, plaintiffs will be required to pay all outstanding filing fees owed for Case Nos. 20-577C

and 20-1074T, as well as the filing fee for the new suit, before they can proceed in this court.

No costs are awarded. The clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

/s/ MARGARET M. SWEENEY
MARGARET M. SWEENEY
Senior Judge

APPENDIX D
Pursuant Rule 14(i)(vi)

Governments Have Descended to the Level Of Mere Private Corporations

63 S.Ct. 573
Supreme Court of the United States

CLEARFIELD TRUST CO. et al.
v.
UNITED STATES.

No. 490.

Argued and Submitted Feb. 5, 1943.

Decided March 1, 1943.

As Amended Mar. 15, 1943.

Synopsis
On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

Action by the United States of America against the Clearfield Trust Company torecover the amount of a check on which payee's name had been forged, wherein the J. C. Penney Company intervened. A judgment dismissing the complaint was reversed by the Circuit Court of Appeals, 130 F.2d 93, and the defendant and intervener bring certiorari.

Affirmed.

West Headnotes (10)

[1] **Federal Courts**
⇐Banks and banking

Where check drawn on Treasurer of the United States was issued for services performed under Federal Emergency Relief Act and check was paid on forged indorsement of payee's name, in action by the United States to recover amount of check from indorsers, the rule of Erie R. Co. v. Tompkins was inapplicable. Jud.Code s 24(1), 28 U.S.C.A. s 41(1); Federal Emergency Relief Appropriation Act of 1935, 49 Stat. 115, 15 U.S.C.A. ss 721—728.

77 Cases that cite this headnote

[2] **Federal Courts**
⇐Government and Political Subdivisions
Federal Courts
⇐Mortgages, liens, bills, notes, security interests, and debt collection

The rights and duties of the United States on commercial paper which it issues are governed by federal law rather than local law.

Cr.Code, s 148, 18 U.S.C.A. s 262.

137 Cases that cite this headnote

[3] **United States**
⇐Bills and Notes

In absence of an applicable act of Congress fixing rights and duties of the United States on commercial paper which it issues, it is for the federal courts to fashion the governing rule of law according to their own standards.

381 Cases that cite this headnote

[4] **Federal Courts**
⇐Commerce

The federal law merchant developed under the regime of Swift v. Tyson represented general commercial law rather than a choice of a federal rule designed to protect a federal right, but it stands as a convenient source of reference for fashioning federal rules applicable to federal questions regarding rights and duties of the United States on commercial paper which it issues.

160 Cases that cite this headnote

[5] **Bills and Notes**

Recovery of payments
United States
Lost, stolen, and forged checks

Where check is paid on forged indorsement of payee's name, drawee's right to recover from indorsers accrues when the payment is made and the drawee, whether it be the United States or another, is not chargeable with knowledge of the signature of the payee.

9 Cases that cite this headnote

[6] **Bills and Notes**
Recovery of payments
United States
Lost, stolen, and forged checks

Where check is paid on forged indorsement of payee's name, prompt notice to indorsers of drawee's discovery of forgery is not a "condition precedent" to drawee's suit to recover, but, if drawee on learning of forgery does not give prompt notice of it and damage results, recovery by drawee is barred and such rule applies where the drawee is the United States.

39 Cases that cite this headnote

[7] **United States**
Lost, stolen, and forged checks

The United States as drawee of commercial paper stands in no different light than any other drawee.

9 Cases that cite this headnote

[8] **Bills and Notes**
⇐Recovery of payments

He who accepts a check with forged indorsement of payee's name should be allowed to shift the loss to the drawee only on a clear showing that the drawee's delay in notifying him of the forgery caused him damage.

9 Cases that cite this headnote

[9] **Bills and Notes**
⇐Recovery of payments

Mere delay on part of drawee in giving notice of forged indorsement of payee's name does not bar recovery by drawee from indorser who accepted the check on the forged indorsement, but to bar recovery damage occasioned must be established and not left to conjecture.

6 Cases that cite this headnote

[10] **United States**
⇐Lost, stolen, and forged checks

Where check drawn on Treasurer of the United States was issued for services performed under Federal Emergency Relief Act, delay of United States in giving notice of forged indorsement of payee's name to indorser who accepted forged indorsement did not bar recovery by the United States where evidence did not establish that delay caused damage to indorsers. Federal Emergency Relief Appropriation Act of 1935, 49 Stat. 115, 15 U.S.C.A. §§ 721–728.

5 Cases that cite this headnote

Attorneys and Law Firms

**574 *364 Mr. Paul A. Freund, of Washington, D.C., for respondent.

Mr. Roswell Dean Pine, Jr., of New York City, for petitioners.

Opinion

Mr. Justice DOUGLAS delivered the opinion of the Court.

On April 28, 1936, a check was drawn on the Treasurer

of the United States through the Federal Reserve Bank of Philadelphia to the order of Clair A. Barner in the amount of $24.20. It was dated at Harrisburg, Pennsylvania and was drawn for services rendered by Barner to the Works Progress Administration. The check was placed in the mail addressed to Barner at his address in Mackeyville, Pa. Barner never received the check. Some unknown person obtained it in a mysterious manner and presented it to the J. C. Penney Co. store in Clearfield, Pa., representing that he was the payee and identifying himself to the satisfaction of the employees of J. C. Penney *365 Co. He endorsed the check in the name of Barner and transferred it to J. C. Penney Co. in exchange for cash and merchandise. Barner never authorized the endorsement nor participated in the proceeds of the check. J. C. Penney Co. endorsed the check over to the Clearfield Trust Co. which accepted it as agent for the purpose of collection and endorsed it as follows: 'Pay to the order of Federal Reserve Bank of Philadelphia, Prior Endorsements Guaranteed.'[1] Clearfield Trust Co. collected the check from the United States through the Federal Reserve Bank of Philadelphia and paid the full amount thereof to J. C. Penney Co. Neither the Clearfield Trust Co. nor J. C. Penney Co. had any knowledge or suspicion of the forgery. Each acted in good faith. On or before May 10, 1936, Barner advised the timekeeper and the foreman of the W.P.A. project on which he was employed that he had not received the check in question. This information was duly communicated to other agents of the United States and on November 30, 1936, Barner executed an affidavit alleging that the endorsement of his name on the check was a forgery. No notice was given the Clearfield Trust Co. or J. C. Penney Co. of the forgery until January 12, 1937, at which time the

Clearfield Trust Co. was notified. The first notice received by Clearfield Trust Co. that the United States was asking reimbursement was on August 31, 1937.

This suit was instituted in 1939 by the United States against the Clearfield Trust Co., the jurisdiction of the federal District Court being invoked pursuant to the provisions of s 24(1) of the Judicial Code, 28 U.S.C. s 41(1), 28 U.S.C.A. s 41(1). The cause of action was based on the express guaranty of prior endorsements made by the Clearfield Trust Co. *366 J. C. Penney Co. intervened as a defendant. The case was heard on complaint, answer and stipulation of facts. The District Court held that the rights of the parties were to be determined by the law of Pennsylvania and that since the United States unreasonably delayed in giving notice of the forgery to the Clearfield Trust Co., it was barred from recovery under the rule of Market Street Title & Trust Co. v. Chelten T. Co., 296 Pa. 230, 145 A. 848. It accordingly dismissed the complaint. On appeal the Circuit Court of Appeals reversed. 3 Cir., 130 F.2d 93. The case is here on a petition for a writ of certiorari which we granted, 317 U.S. 619, 63 S.Ct. 258, 87 L.Ed. 502, because of the importance of the problems raised and the conflict between the decision below and Security-First Nat. Bank v. United States, 103 F.2d 188, from the Ninth Circuit.

[1] [2] [3] We agree with the Circuit Court of Appeals that the rule of **575 Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, 114 A.L.R. 1487, does not apply to this action. The rights and duties of the United States on commercial paper which it issues are governed by federal rather than local law. When the United States disburses its funds or pays its debts, it is exercising a constitutional function or power. This check was issued for services performed under the

Federal Emergency Relief Act of 1935, 49 Stat. 115, 15 U.S.C.A. ss 721—728. The authority to issue the check had its origin in the Constitution and the statutes of the United States and was in no way dependent on the laws of Pennsylvania or of any other state. Cf. Board of Commissioners v. United States, 308 U.S. 343, 60 S.Ct. 285, 84 L.Ed. 313; Royal Indemnity Co. v. United States, 313 U.S. 289, 61 S.Ct. 995, 85 L.Ed. 1361. The duties imposed upon the United States and the rights acquired by it as a result of the issuance find their roots in the same federal sources.[2] Cf. Deitrick v. Greaney, 309 U.S. 190, 60 S.Ct. 480, 84 L.Ed. 694; ***367** D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 315 U.S. 447, 62 S.Ct. 676, 86 L.Ed. 956. In absence of an applicable Act of Congress it is for the federal courts to fashion the governing rule of law according to their own standards. United States v. Guaranty Trust Co., 293 U.S. 340, 55 S.Ct. 221, 79 L.Ed. 415, 95 A.L.R. 651, is not opposed to this result. That case was concerned with a conflict of laws rule as to the title acquired by a transferee in Yugoslavia under a forged endorsement. Since the payee's address was Yugoslavia, the check had 'something of the quality of a foreign bill' and the law of Yugoslavia was applied to determine what title the transferee acquired.

[4] In our choice of the applicable federal rule we have occasionally selected state law. See Royal Indemnity Co. v. United States, supra. But reasons which may make state law at times the appropriate federal rule are singularly inappropriate here. The issuance of commercial paper by the United States is on a vast scale and transactions in that paper from issuance to payment will commonly occur in several states. The application of state law, even without the conflict of laws rules of the forum, would subject the rights and

duties of the United States to exceptional uncertainty. It would lead to great diversity in results by making identical transactions subject to the vagaries of the laws of the several states. The desirability of a uniform rule is plain. And while the federal law merchant developed for about a century under the regime of Swift v. Tyson, 16 Pet. 1, 10 L.Ed. 865, represented general commercial law rather than a choice of a federal rule designed to protect a federal right, it nevertheless stands as a convenient source of reference for fashioning federal rules applicable to these federal questions.

[5] United States v. National Exchange Bank, 214 U.S. 302, 29 S.Ct. 665, 53 L.Ed. 1006, 16 Ann.Cas. 1184, falls in that category. The Court held that the United ***368** States could recover as drawee from one who presented for payment a pension check on which the name of the payee had been forged, in spite of a protracted delay on the part of the United States in giving notice of the forgery. The Court followed Leather Mfrs.' Bank v. Merchants Bank, 128 U.S. 26, 9 S.Ct. 3, 32 L.Ed. 342, which held that the right of the drawee against one who presented a check with a forged endorsement of the payee's name accrued at the date of payment and was not dependent on notice or demand. The theory of the National Exchange Bank case is that the who presents a check for payment warrants that he has title to it and the right to receive payment.[3] If he has acquired ****576** the check through a forged endorsement, the warranty is breached at the time the check is cashed. See Manufacturers' Trust Co. v. Harriman Nat. Bank Trust Co., 146 Misc. 551, 262 N.Y.S. 482; Bergman v. Avenue State Bank, 284 Ill.App. 516, 1 N.E.2d 432. The theory of the warranty has been challenged. Ames, The Doctrine of Price v. Neal, 4 Harv.L.Rev., 297, 301—302. It has been urged

that 'the right to recover is a quasi contractual right, resting upon the doctrine that one who confers a benefit in misreliance upon a right or duty is entitled to restitution.' Woodward, Quasi Contracts (1913) s 80; First Nat. Bank v. City Nat. Bank, 182 Mass. 130, 134, 65 N.E. 24, 94 Am.St.Rep. 637. But whatever theory is taken, we adhere to the conclusion of the National Exchange Bank case that the drawee's right to recover accrues when the payment is *369 made. There is no other barrier to the maintenance of the cause of action. The theory of the drawee's responsibility where the drawer's signature is forged (Price v. Neale, 3 Burr. 1354; United States v. Chase Nat. Bank, 252 U.S. 485, 40 S.Ct. 361, 64 L.Ed. 675, 10 A.L.R. 1401) is inapplicable here. The drawee, whether it be the United States or another, is not chargeable with the knowledge of the signature of the payee. United States v. National Exchange Bank, supra, 214 U.S. at page 317, 29 S.Ct. at page 669, 53 L.Ed. 1006, 16 Ann.Cas. 1184; State v. Broadway Nat. Bank, 153 Tenn. 113, 282 S.W. 194.

[6] [7] [8] [9] [10] The National Exchange Bank case went no further than to hold that prompt notice of the discovery of the forgery was not a condition precedent to suit. It did not reach the question whether lack of prompt notice might be a defense. We think it may. If it is shown that the drawee on learning of the forgery did not give prompt notice of it and that damage resulted, recovery by the drawee is barred. See Ladd & Tilton Bank v. United States, 9 Cir., 30 F.2d 334; United States v. National Rockland Bank, D.C., 35 F.Supp. 912; United States v. National City Bank, D.C., 28 F.Supp. 144. The fact that the drawee is the United States and the laches those of its employees are not material. Cooke v. United States, 91 U.S. 389, 398, 23 L.Ed. 237. The United States as drawee of commercial

paper stands in no different light than any other drawee. As stated in United States v. National Exchange Bank, 270 U.S. 527, 534, 46 S.Ct. 388, 389, 70 L.Ed. 717, 'The United States does business on business terms.' It is not excepted from the general rules governing the rights and duties of drawees 'by the largeness of its dealings and its having to employ agents to do what if done by a principal in person would leave no room for doubt.' Id., 270 U.S. at page 535, 46 S.Ct. at page 389, 70 L.Ed. 717. But the damage occasioned by the delay must be established and not left to conjecture. Cases such as Market St. Title & Trust Co. v. Chelten Trust Co., supra, place the burden on the drawee of giving prompt notice of the forgery—injury to the defendant being presumed by the mere fact of delay. See London & River Plate *370 Bk. v. Bank of Liverpool, (1896) 1 Q.B. 7. But we do not think that he who accepts a forged signature of a payee deserves that preferred treatment. It is his neglect or error in accepting the forger's signature which occasions the loss. See Bank of Commerce v. Union Bank, 3 N.Y. 230, 236. He should be allowed to shift that loss to the drawee only on a clear showing that the drawee's delay in notifying him of the forgery caused him damage. See Woodward, Quasi Contracts (1913) s 25. No such damage has been shown by Clearfield Trust Co. who so far as appears can still recover from J. C. Penney Co. The only showing on the part of the latter is contained in the stipulation to the effect that if a check cashed for a customer is returned unpaid or for reclamation a short time after the date on which it is cashed, the employees can often locate the person who cashed it. It is further stipulated that when J. C. Penney Co. was notified of the forgery in the present case none of **577 its employees was able to remember anything about the transaction or check in question. The inference is that

the more prompt the notice the more likely the detection of the forger. But that falls short of a showing that the delay caused a manifest loss. Third Nat. Bank v. Merchants' Nat. Bank, 76 Hun 475, 27 N.Y.S. 1070. It is but another way of saying that mere delay is enough.

Affirmed.

Mr. Justice MURPHY and Mr. Justice RUTLEDGE did not participate in the consideration or decision of this case.

All Citations

318 U.S. 363, 318 U.S. 744, 63 S.Ct. 573, 87 L.Ed. 838, 43-1 USTC P 10,051