

**SECOND DIVISION
MILLER, P. J.,
ANDREWS and BROWN, JJ.**

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June 11, 2018

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

A18A0377. BUNZL TRUSTS INVESTMENTS, LLC et al. v.
DENTONS US LLP et al.

ANDREWS, Judge.

Gus H. Small, as Administrative Trustee for the Bunzl Trusts; Bunzl Trusts Investments, LLC; and Bunzl Trusts Properties, LLC (collectively referred to as the Bunzl Trusts) sued¹ the former law firm of McKenna Long & Aldridge LLP and the

¹ As alleged in the suit, the “Bunzl Trusts” are: (1) the Trust for Richard Charles Bunzl and his Lineal Descendants; (2) the Trust for Suzanne Irene Bunzl and her Lineal Descendants; and (3) the Trust for the Lineal Descendants of Walter Henry Bunzl. Bunzl Trusts Investments, LLC (formerly known as Coronado Investments, LLC) is a wholly owned subsidiary of the Bunzl Trusts and the successor by merger to Capital Piedmont Investors, LLC; Capital Holding WHB, LLC; Capital Holding RCB, LLC; and Capital Holding SWB, LLC. Bunzl Trusts Properties, LLC (formerly known as Capital Piedmont Partners, LLC) is a wholly owed subsidiary of the Bunzl Trusts and the successor by merger to Capital Piedmont Group, LLC.

law firm of Dentons US LLP (collectively referred to as McKenna/Dentons)² seeking under various legal claims the return of trust money paid by former trustees of the Bunzl Trusts as legal fees to McKenna/Dentons. The trial court granted McKenna/Dentons' motion to dismiss the complaint pursuant to OCGA § 9-11-12 (b) (6) for failure to state a claim. The Bunzl Trusts contend on appeal that the trial court erred by dismissing its claims against McKenna/Dentons for (1) money had and received; (2) conversion; (3) attorney fees and expenses; and (4) punitive damages. For the reasons that follow, we affirm in part and reverse in part.

A motion to dismiss [brought pursuant to OCGA § 9-11-12 (b) (6)] for failure to state a claim upon which relief can be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor.

Stendahl v. Cobb County, 284 Ga. 525, 525 (668 SE2d 723) (2008) (citation and punctuation omitted). Moreover, a complaint is subject to dismissal for failure to state a claim "if clearly without any merit; and this want of merit may consist in an absence

² Appellants brought the suit against the former firm of McKenna Long & Aldridge LLP which merged with Dentons US LLP.

of law to support a claim of the sort made, or of facts sufficient to make a good claim, or in the disclosure of some fact which will necessarily defeat the claim.” *Poole v. City of Atlanta*, 117 Ga. App. 432, 434 (160 SE2d 874) (1968) (citation and punctuation omitted); *Earl v. Mills*, 275 Ga. 503, 504 (570 SE2d 282) (2002).

In support of the Bunzl Trusts’ claim for return of trust money based on a cause of action for money had and received and a cause of action for conversion, the complaint alleged the following:

Bunzl Trusts instruments provided that trustees may employ attorneys in the “administration” of the Bunzl Trusts. On February 8, 2013, trustees of the Bunzl Trusts filed a petition in the Superior Court of Fulton County requesting that the Court approve an interim accounting for the Bunzl Trusts. The Beneficiaries³ of the Bunzl Trusts filed a response, a counterclaim, and a third party complaint alleging that the trustees in their individual capacities, and as trustees, illegally took Bunzl Trusts assets, and requesting that the Court enjoin the trustees from using any Bunzl Trusts funds to pay for trustee legal fees. On March 13, 2013, the Beneficiaries filed a motion to enjoin the trustees from disposing of any Bunzl Trusts assets for their

³ As alleged in the complaint, since 2010 the sole beneficiaries of the Bunzl Trusts are Suzanne Bunzl Wilner and Anna Rachel Wilner.

personal benefit including for legal fees. In March 2013, McKenna/Dentons began representing the trustees in their individual capacities and in their capacities as trustees of the Bunzl Trusts. At that time, McKenna/Dentons knew that the Beneficiaries had alleged wrongdoing against the trustees in their individual capacities and knew that the trustees owed fiduciary duties to the Bunzl Trusts. On March 4, 2013, McKenna/Dentons received and deposited a check in the amount of \$15,000.00 from the account of a Bunzl Trusts entity. On March 28, 2013, McKenna/Dentons received two wire transfers – one in the amount of \$200,000.00 and one in the amount of \$300,000.00 – from a Bunzl Trusts trustee from the account of a Bunzl Trusts entity, Coronado Investments, LLC; that the total of \$500,000.00 transferred represented payment of a retainer charged to the trustee by McKenna/Dentons; and that McKenna/Dentons converted the \$500,000.00 because it did not represent Coronado Investments and did not provide any services to Coronado Investments. On April 29, 2013, McKenna/Dentons received and deposited a check in the amount of \$220,254.63 from the account of a Bunzl Trusts entity, Capital Piedmont Partners, LLC. On May 7, 2013, McKenna/Dentons received a wire transfer in the amount of \$154,336.87 from a Bunzl Trusts trustee from the account of a Bunzl Trusts entity, Capital Piedmont Atlanta, LLC. On May 24, 2013,

McKenna/Dentons accepted a check from a Bunzl Trusts trustee in the amount of \$473,073.82 from the account of a Bunzl Trusts entity, Capital Piedmont Atlanta, LLC. On June 10, 2013, the Court granted the Beneficiaries' prior motion to enjoin the trustees from disposing of Bunzl Trusts assets "to preserve Bunzl Trusts assets until final adjudication." From March 28, 2013 to May 24, 2014, McKenna/Dentons received a total of \$1,347,665.32 as legal fees through a Bunzl Trust trustee from Bunzl Trusts entities which held assets of the Bunzl Trusts, and McKenna/Dentons knew that the Bunzl Trusts did not authorize a trustee to use Bunzl Trusts assets to employ attorneys to defend a trustee personally.

1. Based on these allegations, the complaint by the Bunzl Trusts (as administered by the current trustee) asserted: (1) a claim for money had and received in the amount of \$1,347,665.32 on the basis that a former trustee paid McKenna/Dentons for legal services using money belonging to the Bunzl Trusts, and that McKenna/Dentons has refused a demand for repayment and should not in equity and good conscience be permitted to keep the money; and (2) a claim that McKenna/Dentons wrongfully converted \$500,000.00 it received as a retainer from a Bunzl Trusts trustee from the account of a Bunzl Trusts entity, Coronado Investments, LLC.

An action for money had and received is founded upon the equitable principle that no one ought unjustly to enrich himself at the expense of another, and is maintainable in all cases where one has received money under such circumstances that in equity and good conscience he ought not to retain it, and [in justice and fairness] it belongs to another.

Haugabook v. Crisler, 297 Ga. App. 428, 431 (677 SE2d 355) (2009) (citation and punctuation omitted). Because the complaint alleged that a former trustee used the Bunzl Trusts money to pay McKenna/Denton for legal services, the trial court concluded that McKenna/Denton was not unjustly enriched by accepting the money for payment for its services, and therefore the complaint failed to state a claim for return of money had and received. Even assuming the trial court properly construed the complaint to allege that McKenna/Dentons received the money for the value of legal services it performed, we find the court erred by dismissing the claim for money had and received. The complaint also alleged that McKenna/Dentons: represented the former trustees in their individual capacities; knew that the trust did not authorize use of trust assets to pay for a trustee's personal legal expenses; and knew that the trust beneficiaries had moved to enjoin the former trustees from using trust assets to pay for personal legal expenses. Accepting these allegations as true, the complaint states a claim for money had and received on the basis that McKenna/Dentons was not an

innocent third-party creditor, but that it was unjustly enriched by accepting Bunzl Trusts money to pay the former trustees' personal legal expenses knowing that the trust did not authorize the payment, and that it should not in equity and good conscience be allowed to retain the money. *Time Ins. Co. v. Fulton-DeKalb Hosp. Auth.*, 211 Ga. App. 34, 35-37 (438 SE2d 149) (1993). The trial court erred by dismissing the claim for money had and received.

Conversion consists of an unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to his rights; an act of dominion over the personal property of another inconsistent with his rights; or an unauthorized appropriation . . . In order to be chargeable with conversion, technically it is not necessary that the defendant assert any right of ownership over the property; it is sufficient if the defendant wrongfully assumes dominion over the property inconsistent with the owner's right . . . Whoever meddles with another's property, whether as principal or agent, does so at his peril, and it makes no difference that in doing so he acts in good faith.

Maryland Cas. Ins. Co. v. Welchel, 257 Ga. 259, 261 (356 S.E.2d 877) (1987) (Citation and punctuation omitted). In order to establish a claim for conversion, the complaining party must show (1) title to the property or the right of possession, (2) actual possession in the other party, (3) demand for return of the property, and (4) refusal by the other party to return the property. *Trey Inman & Assoc., P.C. v. Bank of America, N.A.*, 306 Ga. App. 451, 457 (702 SE2d 711) (2010) (Citation and

punctuation omitted). The general rule is that money is fungible and intangible personal property not subject to an action for conversion, but where money wrongfully held “constitutes specific identifiable funds,” whether transferred by check, wire or other electronic means, it is subject to an action for conversion. *Decatur Auto Center v. Wachovia Bank, N.A.*, 276 Ga. 817, 821 (583 SE2d 6) (2003); *Trey Inman & Assoc.*, 306 Ga. App. at 458-459. The complaint alleged that a former trustee, in violation of Bunzl Trusts provisions prohibiting use of trust funds for a trustee’s personal legal expenses, wrongfully wired \$500,000.00 of trust funds to McKenna/Dentons as a retainer to pay for the trustee’s personal legal expenses, and that McKenna/Dentons refused upon demand to return the money to Bunzl Trusts. Accepting these allegations as true, the complaint stated a claim for conversion on the basis that McKenna/Dentons wrongfully held \$500,000.00 of a specifically identifiable retainer that was money belonging to Bunzl Trusts and wrongfully taken by the former trustee to pay for personal legal expenses. The trial court erred by dismissing the claim for conversion.

2. Bunzl Trusts contends that the trial court erred by finding that all claims relating to the March 4, 2013 transfer of funds by check in the amount of \$15,000.00 from a Bunzl Trusts entity to McKenna/Dentons were barred by the statute of

limitations. On appeal, the Bunzl Trusts claimed only that the trial court erred by dismissing its causes of action for money had and received and for conversion. The \$15,000.00 transfer made on March 4, 2013 did not relate to either of those causes of action. We need not address whether or not the trial court erred by excluding the \$15,000.00 transfer from other dismissed causes of action which Bunzl Trusts did not address in its appeal.

3. Finally, Bunzl Trusts contends that the trial court erred by dismissing its claims for attorney fees and expenses and for punitive damages. The trial court dismissed these claims on the basis that they were derivative of dismissed substantive causes of action. We found in division 1, *supra*, that the complaint set forth viable substantive causes of action for money had and received and for conversion. Accordingly, the trial court erred in dismissing the claims for attorney fees and punitive damages to the extent they are derivative of the causes of action for money had and received and for conversion.

4. We affirm the trial court's order to the extent it dismissed additional causes of action or claims.

Judgment affirmed in part and reversed in part. Miller, P. J., and Brown, J., concur.