

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL

RUBEN HONIK and  
GOLOMB & HONIK, P.C.,

Plaintiffs,

v.

FULTON FINANCIAL CORP. and FULTON  
BANK, N.A.,

Defendants.

June Term 2021

No. 3080

Commerce Program

Control Number 21083929

DOCKETED

OCT 18 2021

R. POSTELL  
COMMERCE PROGRAM

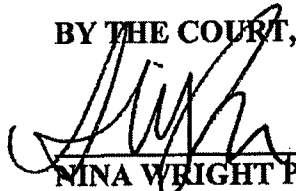
ORDER

AND NOW, this 18<sup>th</sup> day of October, 2021, upon consideration of Defendants'

Preliminary Objections to Plaintiffs' Amended Complaint, Plaintiffs' response in opposition,  
Defendants' Reply and in accord with the attached Opinion, it hereby is **ORDERED** that the

Preliminary Objections are **Sustained** and Amended Complaint is dismissed against all  
Defendants.

BY THE COURT,

  
NINA WRIGHT PADILLA, S.J.

210503080-Honik Vs Fulton Financial Corp. Etal



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RUBEN HONIK and	:	June Term 2021
GOLOMB & HONIK, P.C.,	:	
Plaintiffs,	:	No. 3080
v.	:	
FULTON FINANCIAL CORP. and FULTON	:	Commerce Program
BANK, N.A.,	:	
Defendants.	:	Control Number 21083929

**OPINION**

This action arises from Plaintiff Ruben Honik's inability to access his law firm's commercial banking accounts. Presently pending before this court are defendant Fulton Financial Corp. and Fulton Bank, N.A.'s (collectively referred to as "Defendant Bank") preliminary objections to Plaintiffs Ruben Honik ("Honik") and Golomb & Honik, P.C.'s ("the Firm") amended complaint. For the reasons discussed below, the preliminary objections are sustained and the amended complaint is dismissed against defendant Bank.

**BACKGROUND**

Plaintiff Ruben Honik is an attorney and was a 50% shareholder of Golomb & Honik, P.C. ("the Firm").<sup>1</sup> Defendant Fulton Financial Corporation is a financial services company that owns and controls Fulton Bank, N.A.<sup>2</sup> Defendant Fulton Bank, N.A. is a commercial bank with branches throughout Southeastern Pennsylvania. ("The Bank").<sup>3</sup>

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<sup>1</sup> Amended Complaint ¶¶ 1, 3.

<sup>2</sup> Id. ¶ 4.

<sup>3</sup> Id. ¶ 5.

The Firm is a professional corporation that represents clients in high-value class action, mass tort, and personal injury matters.<sup>4</sup> In addition to Honik owning 50% of the Firm's shares, Honik was also a Director and Officer of the Firm.<sup>5</sup> Richard Golomb ("Golomb") is the other 50% shareholder of the Firm as well as an Officer and Director of the Firm.<sup>6</sup> Golomb is not a party to this action.

The Firm had several accounts with defendant Bank including the Firm's operation accounts and IOLTA accounts.<sup>7</sup> Honik and Golomb were each authorized signers on the Firm's accounts with defendant Bank.<sup>8</sup> In addition to the operating account and the IOLTA account, the Firm also has a line of credit with defendant Bank for which Honik and his partner Golomb were jointly responsible.<sup>9</sup> With respect to the line of credit, Honik and Golomb personally guaranteed defendant Bank's line of credit by pledging their homes as collateral.<sup>10</sup>

On June 8, 2020, Honik was locked out of the Firm's accounts by the Bank and allegedly has been deprived of his right to access any funds in the accounts, including the line of credit. At or about the same time that Honik was denied access to the Firm's accounts, Honik departed the Firm on less than amicable terms.<sup>11</sup> Honik alleges he was denied access to the Firm bank

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<sup>4</sup> Amended Complaint ¶. 3.

<sup>5</sup> Id.

<sup>6</sup> Id. ¶¶ 6, 9.

<sup>7</sup> Id. ¶ 11.

<sup>8</sup> Id. ¶ 14.

<sup>9</sup> Id. ¶ 13.

<sup>10</sup> Id.

<sup>11</sup> Honik and Golomb, respectively, filed lawsuits against each other alleging breaches of fiduciary duty and seeking dissolution of the Firm. Those actions are captioned *Honik et. al. v. Golomb et. al.*, 2007-1918 and *Golomb v. Honik, et. al.*, 2007-2033. On June 9, 2021, the court entered an order

accounts and the Firm line of credit based upon alleged false information provided to the Bank which failed to identify him as a 50% shareholder of the Firm.<sup>12</sup> The alleged false information was provided by Richard Golomb, the other 50% shareholder of the Firm to the Bank. Honik alleges that the Bank knew or should have known that the information provided by Golomb was false and that Honik continued to be an officer and co-equal shareholder of the Firm.<sup>13</sup>

As a result the Bank's alleged conduct, Honik's alleges he could no longer access the Firm's accounts and the Firm's line of credit. Honik alleges that he and the Firm suffered injuries and losses including conversion of funds in the Firm's account, loss of salary and benefits, loss of access to the Firm's line of credit, inability to fund Firm cases that Honik was and continues to work on, credit impairment because Honik's home was retained as collateral on the Firm's line of credit and loans, injury to reputation, loss business opportunity and lost revenue to the Firm.<sup>14</sup>

On June 3, 2021, Honik commenced this action against defendant Bank. On August 2, 2021, after the filing of preliminary objections, Honik filed an amended complaint adding the Firm as a party plaintiff. Honik alleges that as the Director and Officer of the Firm he is authorized to act on behalf of the Firm to bring this action. The amended complaint alleges two

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liquidating the Firm. As part of the liquidation order, the court ordered "All previous Firm bank accounts, including the Fulton Bank Money Market and Operating account shall remain with the new Golomb Firm. Honik shall be removed as an authorized signor on the account. Further, all moneys in the IOLTA accounts shall remain with the cases and if necessary, the funds may be transferred accordingly to the appropriate Golomb or Honik IOLTA accounts." Additionally, the court ordered "All Golomb and Honik loans and debts, including but not limited to lease (equipment and rent), lines of credit, and PPP loans shall remain with the new Golomb firm. Honik shall no longer be liable for any payment responsibility, including any role as a guarantor. Any assets provided by Honik as collateral for any Firm obligation shall be unencumbered as of the date of this order." This order is currently on appeal.

<sup>12</sup> Amended Complaint ¶¶24-34

<sup>13</sup> Id. ¶¶ 18-20, 22.

<sup>14</sup> Id. ¶ 49.

counts for breach of contract, breach of depository agreements (count I) and breach of loan and line of credit agreements (count II), and one count for fraud (count III). Defendant Bank filed preliminary objections to the amended complaint. Honik responded to the amended complaint. The matter is now ripe for decision.

## **DISCUSSION**

### **I. Honik lacks authority to bring claims on behalf of the Firm.**

In the amended complaint Honik purports to state claims for breach of contract and fraud against defendant Bank on behalf of the Firm. Title 15 Pa. S. C. § 1781- Derivative Action states in pertinent part as follows:

(a) General rule.- ... a plaintiff may maintain a derivative action to enforce a right of a business corporation only if :

(1) The plaintiff first makes a demand on the corporation or the board of directors requesting that it cause the corporation to bring an action to enforce the right, and...

(2) Demand is excused under subsection (b)...

Subsection (b) states:

(b) Prior demand excused.-

(1) A demand under subsection (a) (1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the business corporation would otherwise result. ...

Section § 1781(b)(1) is clear, unambiguous and susceptible of only one reading: a derivative plaintiff is required to make a pre-suit demand on the corporation or the board of directors to bring an action to enforce a right of the corporation. Such mandated demand is only excused if the plaintiff demonstrates immediate and irreparable harm to the corporation.

Here, Honik failed to make a demand on the Firm or its board of directors to bring this action against defendant Bank and has failed to allege that demand is excused, that is allege

immediate and irreparable harm to the business of the Firm. While the amended complaint does allege harmful conduct such as fraudulent conduct by Golomb and knowledge of this fraudulent conduct by defendant Bank as well as alleged resultant harm to the Firm, said allegations fail to allege immediate and irreparable harm necessary to excuse the demand requirement.

Honik attempts to circumvent the demand requirement by relying upon his status as an Officer and Board of Director of the Firm for authorization to bring this action on behalf of the Firm.<sup>15</sup> Honik's status as an Officer and Board Member of the Firm do not give him standing to assert derivative claims on behalf of the Firm without making a demand. In fact, the Committee Comment (2016) to 15 Pa. C. S. § 1781 specifically addresses Honik's position by stating that plaintiff directors are subject to the demand requirements. Additionally, § 1781 rejects excusing pre-suit demand based on futility.<sup>16</sup> As such, Honik's status as a Director or Officer does not excuse his making a demand before bringing this action on behalf of the Firm.

Based on the foregoing, since Honik failed to make a demand as required by 15 Pa. S. C. § 1781 and failed to make a showing of immediate and irreparable harm to the Firm, Honik lacks authority to bring this action on behalf of the Firm. As such, defendant Bank's preliminary objections are sustained and the claims alleged on behalf of the Firm against defendant Bank are dismissed.

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<sup>15</sup> Honik relies upon 15 Pa. C. S. A. § 1721 entitled Board of Directors for this position. This provision essentially recognizes that the business and affairs of a corporation may be managed "under the direction of" (i.e., by managers selected by the board), as well as "by" the board of directors (e.g. in closely held, owner-managed businesses). See, Amended Committee Comment (2001) § 1722.

<sup>16</sup> 15 Pa. C. S. § 1781 Committee Comment (2016).

## **II. Honik lacks standing to bring individual claims for breach of contract and fraud.**

In addition to bringing this action on behalf of the Firm, Honik also brings this action on his own behalf alleging claims for breaches of contract and fraud against defendant Bank as an individual. Honik lacks standing to bring claims for breaches of contract and fraud as those claims belong to the Firm and not Honik individually.

Under established Pennsylvania law, a shareholder does not have standing to institute a direct suit for a harm to the corporation that is only indirectly injurious to the shareholder. Rather, such a claim belongs to, and is an asset of, the corporation. To have standing to sue individually, the shareholder must allege a direct, personal injury—that is independent of any injury to the corporation—and the shareholder must be entitled to receive the benefit of any recovery.<sup>17</sup>

In determining the nature of the wrong alleged, courts look to the body of the complaint, not to the plaintiff's designation or stated intention. The action is derivative if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock or property without any severance or distribution among individual holders, or if it seeks to recover assets for the corporation or to prevent dissipation of its assets. If damages to a shareholder result indirectly, as the result of an injury to the corporation, and not directly, the shareholder cannot sue as an individual.<sup>18</sup>

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<sup>17</sup> See *Hill v. Ofalt*, 85 A.3d 540, 548–49 (Pa.Super. 2014) citing *Reifsnnyder v. Pgh. Outdoor Adver. Co.*, 405 Pa. 142, 173 A.2d 319, 321 (1961) and *Burdon v. Erskine*, 264 Pa.Super. 584, 401 A.2d 369, 370 (1979) (*en banc*) (“[a]n injury to a corporation may ... result in injury to the corporation's stockholders. Such injury, however, is regarded as ‘indirect’, and insufficient to give rise to a direct cause of action by the stockholder”).

<sup>18</sup> See, *Hill v. Ofalt*, 85 A.3d 540, 548–49 (Pa.Super. 2014) citing 12B FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 5911 (2013); see also ALI Principles

Here, the amended complaint alleges that at the time Honik was frozen out of his Firm, there were substantial funds in the Firm's operating accounts, including funds resulting from fees Honik had been responsible for earning for the Firm clients.<sup>19</sup> Honik further alleges that he was unlawfully removed from the Firm accounts as defendant Bank had actual knowledge that Honik was an officer and co-equal shareholder of the Firm and that the Bank's actions harmed the business interests of the Firm and its clients by depriving Honik access to needed funds and credit.<sup>20</sup> Honik alleges the following injuries allegedly caused by defendant Bank's actions: conversion of hundreds of thousands of dollars of funds in Firm accounts; loss of salary and benefits made possible by defendants' removing Mr. Honik access to Firm funds; loss of access to the Firm's line of credit; inability to fund Firm cases that Mr. Honik was and continues to work on; credit impairment because Mr. Honik's home has been retained as collateral on the Firm's line of credit and loans, even though Mr. Honik has been denied access to that line and funds; injury to reputation; loss of business opportunities; and lost revenue to the Firm."<sup>21</sup>

The foregoing allegations as well as the whole amended complaint show that the gravamen of the amended complaint is derivative in nature. The Firm owned the accounts and the line of credit and used the accounts to conduct Firm business. Consequently, any harm suffered resulting from defendant Bank's actions were directly suffered by the Firm and perhaps indirectly by Honik. While Honik does allege some injury that could be characterized as individual such as injury to reputation and loss of salary and benefits, the alleged injuries are

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of Corporate Governance § 7.01(a) ("[a]n action in which the holder can prevail only by showing an injury or breach of duty to the corporation should be treated as a derivative action").

<sup>19</sup> Amended Complaint ¶ 19.

<sup>20</sup> Amended Complaint ¶ 22.

<sup>21</sup> Amended Complaint ¶ 49.



directly related to the shareholder dispute between Golomb and Honik and indirectly related to the action presently before the court. As such, there is no direct injury to Honik as an individual.

Honik attempts to allege a personal right to the Firm accounts and Firm line of credit with his allegations of "equitable and/or beneficial" ownership<sup>22</sup> of the accounts and line of credit. However, Honik's status as an "equitable and/or beneficial owner" arises directly from his shareholder and officer status in the Firm and not from any personal rights. As such, this status confirms that any claim Honik makes as an "equitable and/or beneficial owner" of the accounts and line of credit are derivative in nature not individual.

As the injury alleged in this case are derivative, Honik does not have standing to sue individually and the Bank's preliminary objections are sustained and the claim for breach of contract and fraud are dismissed.<sup>23</sup>

### CONCLUSION

Based on the foregoing, defendant Bank's preliminary objections are sustained and the amended complaint is dismissed.

BY THE COURT,

  
NINA WRIGHT PADILLA, S. J.

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<sup>22</sup> The term "beneficial owners" as defined in part by "The Beneficial Ownership Requirements for Legal Entity Customers" 31 C.F.R. § 1010.230 means each individual if any who directly or indirectly through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer, a single individual with significant responsibility to control, manage or direct a legal entity customer including but not limited to a Vice President. This term is coined as part of the government's efforts to fight financial crimes.

<sup>23</sup> Defendant Bank also objected to the counts for breaches of contract and fraud as legally insufficient. Notwithstanding the fact that Honik lacked standing to bring the claims, the counts are legally insufficient since they failed to allege the contract that was breached by Honik individually and the term of any alleged contract that was breached. Additionally, the claim for fraud was also legally insufficient as Honik failed to allege a misrepresentation/omission of material fact relied upon by Honik.