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733 F.2d 642, 38 UCC Rep.Serv. 930

United States Court of Appeals,
Ninth Circuit.
Terry William ALLEN, et al., Appellants,
v.
CROCKER NATIONAL BANK, et al., Appellees.
No. 83-6088.
Argued and Submitted May 9, 1984.
Decided May 14, 1984.

Taxpayers whose refund checks had been mailed to their former attorney, who endorsed the checks without authorization and kept the money, brought action against banks which cashed the checks. The United States District Court for the Central District of California, Terry J. Hatter, Jr., J., dismissed and taxpayers appealed. The Court of Appeals held that there was no private right against banks for paying the checks.

Affirmed.

West Headnotes

[1] [KeyCite Notes](#) 

- ↳ [52](#) Banks and Banking
 - ↳ [52III](#) Functions and Dealings
 - ↳ [52III\(C\)](#) Deposits
 - ↳ [52k154](#) Actions by Depositors or Others for Deposits
 - ↳ [52k154\(1\)](#) k. In General. [Most Cited Cases](#)

There is no private right of action against bank created by federal statute which creates a revolving fund from which the treasury can reimburse payees whose government checks are negotiated over an unauthorized endorsement; taxpayers whose tax refund checks were mailed directly to their attorney, who endorsed the checks without authorization and kept the money, did not have private right of action against banks which cashed the checks. [31 U.S.C.A. § 3343](#).

[2] [KeyCite Notes](#) 

- ↳ [52](#) Banks and Banking
 - ↳ [52III](#) Functions and Dealings
 - ↳ [52III\(C\)](#) Deposits
 - ↳ [52k154](#) Actions by Depositors or Others for Deposits
 - ↳ [52k154\(1\)](#) k. In General. [Most Cited Cases](#)

Regulations implementing federal statute which creates a revolving fund from which the Treasury Department can reimburse payees whose government checks are negotiated over an unauthorized endorsement did not expressly provide a private right of action against banks by payees and, because statute does not provide private right of action, regulations cannot implicitly provide it. [31 U.S.C.A. § 3343](#).

[\[3\] KeyCite Notes](#)[170B](#) Federal Courts[170BVI](#) State Laws as Rules of Decision[170BVI\(C\)](#) Application to Particular Matters[170Bk407](#) Bills, Notes, and Bonds; Mortgages, Pledges and Liens[170Bk407.1](#) k. In General. [Most Cited Cases](#)
(Formerly 170Bk407)

Although federal law governs the rights and duties of the United States concerning its commercial paper, in disputes between private parties over government instructions, state law governs absent a congressional pronouncement.

***643** Jonathan B. Cole, Sherman Oaks, Cal., for appellants.

Dennis C. Brown, Munger, Tolles & Rickershauser, William R. Francis, John W. Harris, Harris & Salica, Los Angeles, Cal., for appellees.

Appeal from the United States District Court for the Central District of California.

Before GOODWIN, SNEED, and ALARCON, Circuit Judges.

PER CURIAM.

Plaintiffs' former lawyer prepared their tax returns, had their refund checks mailed to him, endorsed the checks without authorization, and kept the money. Plaintiffs assert they have a federal private right of action against the banks which cashed the checks.



[1] [Title 31 U.S.C. § 3343](#) creates a revolving fund from which the Treasury can reimburse payees whose government checks were negotiated over an unauthorized endorsement. Any sums later recovered by the Treasury are credited to the revolving fund. The plain language of [§ 3343](#) does not authorize a federal private right of action against banks that wrongly cash government checks. Plaintiffs claim that a federal right of action must be implied in order to allow them to make the showing of delay in reimbursement required under [§ 3343\(b\)\(4\)](#). However, plaintiffs' pursuit of their state law claims in state court would be sufficient basis for making the required determination of delay. Moreover, legislative history clearly indicates that no private right of action against banks receiving payment on the original checks was intended. It states,

This bill in no way affects ... the liability of the parties who received the payment on the original check.

H.R.Rep. No. 1113, 77th Cong., 1st sess. 901 (1941). Because Congress neither expressly nor by implication intended to create a private right of action, the district court's dismissal is affirmed. [Touche Ross & Co. v. Redington](#), 442 U.S. 560, 575-76, 99 S.Ct. 2479, 2488-89, 61 L.Ed.2d 82 (1979).



[2] Plaintiffs further claim that 31 C.F.R. §§ 240 *et seq.*, as regulations implementing [31 U.S.C. § 3343](#), provide a private right of action. The regulations do not expressly provide a private right of action, and because the statute does not provide the private right of action sought by plaintiffs, the regulations cannot implicitly provide ***644** it. [Touche Ross](#), 442 U.S. at 577 n. 18, 99 S.Ct. at 2489 n. 18.



[3] Finally, plaintiffs claim that federal law should control the propriety of endorsements on government checks. Although federal law governs the rights and duties of the United States concerning its commercial paper, *see, e.g., Clearfield Trust Co. v. United States*, 318 U.S. 363, 366, 63 S.Ct. 573, 574, 87 L.Ed. 838 (1943), in disputes between private parties state law should govern absent a Congressional pronouncement or a more direct impact on the United States than present in this case. *Bank of America v. Parnell*, 352 U.S. 29, 33-34, 77 S.Ct. 119, 121, 1 L.Ed.2d 93 (1956) (rule on liability of a converter as between private parties has impact too speculative to justify application of federal law). Although the states may well have less interest than the United States in regulating the proper endorsement of government checks, it is for Congress, not this court, to create a private right of action to assist the Treasury in policing the banks.

Affirmed.

C.A.Cal., 1984.
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