

STATE OF MAINE,
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
BCD-CV-14-12

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LEONTINA M. ANDRADE, individually
and as Personal Representative of the
ESTATE OF ANTONIO J. ANDRADE,
SR.,

Plaintiffs

**ORDER ON PEOPLE'S UNITED
BANK'S MOTION TO DISMISS**

v.

DAVID M. ANDRADE, LINDA M. RAND
and PEOPLE'S UNITED BANK

BACKGROUND

Before the Court is People's United Bank's ("the Bank") Motion to Dismiss Count XXII of the Amended Complaint. This is the only count brought by Plaintiffs against the Bank. The Bank argues that the Plaintiffs have failed to plead the requisite elements of a breach of fiduciary duty, and also failed to allege facts that would establish the existence of a fiduciary relationship. The Bank further asserts that "under applicable law no such duty or relationship can exist in the circumstances." (The Bank's Motion, pg. 1).

The Bank is represented by Attorney David McConnell and Plaintiffs are represented by Attorneys Kirk Bloomer, Jeffrey Russell, and Carly Andersen. The Court has reviewed the parties' filings on the motion, considered their oral arguments made on September 16, 2014, reviewed case law, and issues the following Order granting the motion to dismiss Count XXII.

ANALYSIS

In *Ramsey v. Baxter Title Company*, 2012 ME 113 the Law Court upheld the dismissal of a complaint under M.R.Civ. P. 12(b)(6) where it recited "in conclusory fashion" the elements of a fiduciary relationship. *Id.* ¶5. The complaint in *Ramsey* asserted that the defendants (a title company and its attorney/owner) "had a duty" to the plaintiff, that they "had a confidential and special relationship with" plaintiff, and "had

certain fiduciary duties to her.” Id. The complaint did assert that plaintiff had “inferior knowledge and experience” and that the plaintiff “relied upon” the defendants.

In this case, the allegations against the Bank are asserted in Count XXII of the Amended Complaint. The allegations are also stated in conclusory fashion that first, the Bank “enjoyed a fiduciary relationship with the elderly Plaintiffs with regard to personal and business-banking matters entrusted to their care.” Secondly, Plaintiffs allege that the Bank had a duty of care to maintain the sanctity and preservation of accounts entrusted to (it) from incursions from persons not authorized to access the accounts.” (§367, 368 of Amended Complaint).¹

The Court concludes that the elements set out in the Amended Complaint, as in *Ramsey*, fall short of the standard established in that case for pleading with particularity the elements of a fiduciary relationship. There is no allegation of an “actual placing of trust and confidence in fact” in the Bank by the Plaintiffs, and no allegation “of a great disparity of position and influence” between the parties in issue.” 2012 ME 113, ¶5, citing *Bryan R. v. Watchtower Bible & Tract Soc’y of N.Y. Inc.*, 1999 ME 113, ¶19. These deficiencies alone would justify the Court granting the Bank’s Motion to Dismiss as the requisite elements have not been alleged.

Further, even in the light most favorable to Plaintiffs, the Court cannot find facts in the Amended Complaint which establish any such a relationship. Plaintiffs do note that at the time this alleged breach occurred that they were elderly, but nowhere in the complaint is there a fact or facts which suggest that they had anything other than a typical, arms-length relationship with anyone at the Bank. Plaintiffs seem to suggest that being elderly in and of itself creates such a relationship, but point to nothing in Maine statutory or common law in support of this proposition. See, *Moulton v. Moulton*, 1998 ME 31 ¶6.

By contrast, the Law Court has consistently held in cases discussing whether a fiduciary relationship exists that something much more than is alleged here must exist between the parties (here, the Plaintiffs and the Bank) that legally entitles a plaintiff to relief under the legal theory asserted in Count XXII. *Key Bank v. Sargent*, 2000 ME 153, ¶31; *Reubsamen v. Maddocks*, 340 A.2d 31, 35 (Me. 1975). “The facts constituting the alleged relationship must be set forth with sufficient particularity to enable the court to determine whether if true, such facts create a fiduciary or confidential relationship.” *Clappson v. Foley*, 96 A.2d 325, 327 (Me. 1953).

Therefore, taking the alleged facts as true for purposes of this motion, there is nothing alleged in the Amended Complaint which suggests that anyone at the bank had ever done or said anything to the Plaintiffs which would suggest that the relationship between the Bank was something other than an arms-length, commercial relationship. In addition, the Court agrees with the Bank that no facts are alleged – in the Amended

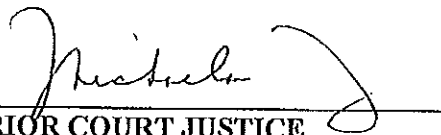
¹ The Amended Complaint, ¶369 goes on to say that the Bank breached that duty by preventing Defendant David Andrade, Plaintiffs’ son, from obtaining access to a line of credit held by them. ¶91 of the Amended Complaint asserts that the Plaintiffs initially used the line of credit to enable their son, David Andrade, to purchase real estate in Bangor.

Complaint²-- that support the assertion that the Bank even knew about the declining health of the Plaintiffs, much less made any representation to them or engaged in any conduct evidencing a fiduciary or confidential relationship. "An allegation of one's inexperience or trust will not by itself warrant an adjudication of a confidential relationship without a statement of facts indicating the actual placing of confidence and trust, and the abuse of that relation." *Stewart v. Machias Savings Bank*, 2000 ME 307, ¶11.

The entry will be: People's United Bank's Motion to Dismiss is GRANTED. This Order may be noted on the docket by reference pursuant to M.R.Civ.P. 79(a).

10/2/14

DATE



SUPERIOR COURT JUSTICE
BUSINESS AND CONSUMER COURT

² The Bank rightfully points out that the Plaintiffs make assertions of fact in their briefs that are not contained in the Amended Complaint. The Court has confined its analysis to facts asserted in the Amended Complaint.