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## 2002 Survey of Rhode Island Law: Cases: Agency Law

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**Agency Law.** *Santucci v. Citizens Bank of Rhode Island*, 799 A.2d 254 (R.I. 2002). Lacking a contractual obligation to do so, a bank does not owe a duty of care to an elderly depositor to investigate and report an alleged suspected financial exploitation.

#### FACTS AND TRAVEL

In December 1995, Assunta Santucci, an elderly woman, opened an eighteen-month certificate of deposit account with a \$39,000 deposit at Citizens Bank (Citizens).<sup>1</sup> Shortly thereafter, Santucci began to withdraw \$300 a month from the account.<sup>2</sup> According to the plaintiffs, co-guardians of Santucci, in June 1996 Santucci's mental and physical health began to rapidly decline and in August 1996 she withdrew \$2,400 from her account.<sup>3</sup> Her withdrawals became progressively larger until April 1997, by which time she had withdrawn \$27,012.34.<sup>4</sup> The plaintiffs also stated that a known drug abuser had accompanied Santucci to Citizens to make the withdrawals and that he had subsequently stolen the amount that had been withdrawn.<sup>5</sup> Santucci was declared incompetent by the probate court in May 1997 and the plaintiffs were appointed co-guardians.<sup>6</sup>

The plaintiffs filed a four-count complaint against Citizens alleging a breach of statutory duty to report exploitation of the elderly (count one); negligence (count two); breach of contract (count three); and breach of fiduciary duty (count four).<sup>7</sup> Count one was dismissed pursuant to rule 12(b)(6) of the Superior Court Rules of Civil Procedure and the defendant's motion for summary judgment was granted for all remaining counts.<sup>8</sup> Final judgment was entered and plaintiffs appealed the summary judgment for counts two, three, and four.<sup>9</sup>

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1. *Santucci v. Citizens Bank of R.I.*, 799 A.2d 254, 255 (R.I. 2002).

2. *Id.* at 256.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

## ANALYSIS AND HOLDING

On the count of negligence, the Rhode Island Supreme Court has held that the defendant must owe a duty to the plaintiff in order to be liable for negligence.<sup>10</sup> Whether a duty exists is a question of law for the trial or motion justice.<sup>11</sup> The court held that the plaintiffs failed to articulate specific facts that would trigger a duty of care.<sup>12</sup>

On the count of breach of contract, the plaintiffs claimed that Citizens had the right to refuse Santucci's withdrawal requests per their contract and Citizens was negligent when it did not refuse her requests.<sup>13</sup> The supreme court ruled that the contract did not specify when Citizens could refuse to allow Santucci to withdraw her funds, nor did it require that the bank inquire into the reason for the withdrawals, therefore, the contract between Santucci and Citizens did not create the duty as claimed by the plaintiffs.<sup>14</sup>

On the fourth count, breach of fiduciary duty, the plaintiffs had an affirmative duty to set forth specific facts that would have shown that there were special factors in this case that created a fiduciary duty between Citizens and Santucci,<sup>15</sup> but they failed to do so.<sup>16</sup> The supreme court held that a depository relationship by itself does not create a fiduciary relationship.<sup>17</sup>

## CONCLUSION

Lacking a contractual obligation to do so, a bank does not owe a duty of care to an elderly depositor to investigate and report an alleged suspected financial exploitation. A depository relationship does not create a fiduciary duty between a depositor and a bank.

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10. *Id.* (quoting *Ferreira v. Strack*, 636 A.2d 682, 685 (R.I. 1994) (citing *Rodrigues v. Miriam Hosp.*, 623 A.2d 456, 460 (R.I. 1993))).

11. *Id.* (citing *Ohms v. State Dep't of Transp.*, 764 A.2d 725, 727 (R.I. 2001) (per curiam)).

12. *Id.* at 257.

13. *Id.* at 258.

14. *Id.*

15. *Id.* (citing *Bourg v. Bristol Boat Co.*, 705 A.2d 969, 971 (R.I. 1998)).

16. *Id.*

17. *Id.*