Boston College Law Review

Volume 9
Issue 4 *Number 4*

Article 5

7-1-1968

Bank Procedures and the U.C.C.—When Is a Check Finally Paid?

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BANK PROCEDURES AND THE U.C.C.—WHEN IS A CHECK FINALLY PAID?

I. Introduction

As checks have supplanted currency as the accepted medium of exchange for transfer of assets and payment of obligations, an increasing importance has been placed upon bank collection procedures for such items. Article 4 of the Uniform Commercial Code is the most recent and most comprehensive attempt at regulation of the aspects of banking concerned with the procedure by which a bank receives and decides whether to pay an item drawn on it.[1] The purported basic purpose of this regulation is to provide uniformity in the rules governing the collection process, including the regulations concerning the concept of "final payment."[2]

The concept of final payment is central to the scheme of Article 4 because the time of final payment of a check or similar item is the starting point for determining the rights and obligations of a number of parties in relation to an item. When final payment occurs, the payor bank[3] is deemed to be accountable to the presenting party for the amount of the item.[4] At the same time the drawer of the instrument is relieved of liability to the holder because the amount is deemed to have been paid.[5] Also, if the payor bank becomes insolvent and suspends payment once final payment has occurred, the owner of an item will have a preferred claim against the payor bank for the amount.[6] Final payment, furthermore, is one of the occurrences which can prevent the "four legals"—notice,[7] stop-order,[8] legal process[9] and setoff[10]—from being effective to prevent actual payment of the item.[11]

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1 See U.C.C. § 4-101, Comment. All Code citations are to the 1962 Official Text, unless otherwise indicated.

2 U.C.C. § 4-213. See Malcolm, Article 4—A Battle With Complexity, 1952 Wis. L. Rev. 265, 270. Malcolm was one of the original draftsmen of Article 4, and later served as chairman for the Subcommittee on Article 4 for the 1958 Edition.

3 "Payor bank" is defined in U.C.C. § 4-105 as the bank by which an item is payable as drawn or accepted.

4 U.C.C. § 4-213(1) "Presentment" is the holder's demand that the payor bank pay or accept the check, or it is such a demand made on behalf of the holder. See U.C.C. § 3-504(1).

5 U.C.C. § 3-603(1). The liability of the drawer and any indorsers is dependent upon dishonor. U.C.C. §§ 3-413(2), -414(1). Final payment by the payor bank necessarily precludes dishonor because liability of the bank to the holder is thereby established.

6 U.C.C. § 4-214(2). If final payment has not occured, then the trustee, receiver, or agent of the closed bank may return the item. U.C.C. § 4-214(1).

7 "Notice" is defined in U.C.C. § 1-201(25) as notification of the fact in question—for example, the bankruptcy of the drawer.

8 A stop-order is an order by the drawer to the payor bank not to honor an item drawn on his account. See U.C.C. § 4-303, Comment 1.

9 Legal process is judicial action such as attachment, execution or injunction. See U.C.C. § 4-303, Comment 1.

10 Setoff is a right of the payor bank to charge a sum against the drawer's account. See U.C.C. § 4-303, Comment 1.

11 U.C.C. § 4-303 provides that "[a]ny knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank . . . comes too late . . ." when the bank has done any of certain specified acts. The actions listed in the section

Provisional settlement, the credit given by the payor bank to the party presenting an item for collection,[12] becomes final when final payment is made, as does credit for the item between the presenting bank,[13] other collecting banks[14] and the customer seeking payment for the item.[15] Final payment, moreover, marks the end of the collection process and the beginning of the remitting process, whereby the amount of the item is returned to the party demanding payment.[16]

The problems involved in defining final payment are particularly significant in light of the considerable volume of checks presently being handled by banks.[17] Commercial banks in the United States handle more than seventy million items every day,[18] and this volume is increasing by about seven percent each year.[19] To accommodate this ever-increasing flow, the banks have sought the allowance of a considerable period of time for their determinations concerning payment in order to assure themselves ample opportunity to examine thoroughly all the items received.[20]

With the increasing volume, however, arguments concerning the protection of other interests have developed, which militate against the unlimited extension of such a time period. Checks and similar items are forms of credit, and thus represent a certain risk to the person who accepts them as a method of payment. Unlike the case with cash, when a check is taken there is always a possibility that payment on it will not be made.[21] Such nonpayment may result from the intervention of bankruptcy or the "four legals," or the insufficiency of adequate funds to pay for the item. If payment is delayed to allow more time for handling, this delay increases the opportunity for a conflicting interest to intervene and prevent payment from being effected.[22] In order to reduce this risk, one goal of check-collection regulations is to make payment "final" as soon as possible.

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include all those that may constitute final payment under U.C.C. § 4-213. See U.C.C. § 4-303, Comment 2.

12 When a payor bank "settles" for an item it pays for it "in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed." U.C.C. § 4-104(j). If this settlement is provisional, it is subject to a right of the payor bank to return the item. See U.C.C. § 4-301(1).

13 "Presenting bank" is defined in U.C.C. § 4-105(e) as any bank presenting an item except a payor bank.

14 "Collecting bank" is defined in U.C.C. § 4-105(d) as any bank handling the item for collection except a payor bank.

15 U.C.C. §§ 4-213(2), (3).

16 U.C.C. § 4-213, Comment 1.

17 See U.C.C. § 4-101, Comment.

18 Clarke, Check-Out Time for Checks, 83 Banking L.J. 847, 848 (1966).

19 Id. at 850.

20 See, e.g., Bank Collection Code § 3. This Code was drafted by the American Bankers Association. (It is superseded by the U.C.C. U.C.C. § 10-102.)

21 At present the percentage of "bad" items represents ½% of all items. The good items presented cover 99¾% of all the money transferred by check. Of those dishonored, half are paid later. Thus the risk in taking a check involves only ⅛% of the money so transferred. Leary, Article 4: Bank Deposits and Collections Under the Uniform Commercial Code, 15 Pitt. L. Rev. 565, 569 (1954). Leary was one of the original draftsmen of Article 4.

22 See U.C.C. § 4-303.

A balancing of these two seemingly inconsistent objectives—speed in handling and provision for sufficient time for the payor bank to handle items—is necessary in order to fix a time for final payment which will reasonably be acceptable in terms of both goals.[23]

The Uniform Commercial Code has been drafted with apparent realization of the need for such a balance.[24] Section 4-213 defines "final payment" as follows:

> (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:
> (a) paid the item in cash; or
> (b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
> (c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
> (d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.
>
> Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

It is the purpose of this comment to examine in detail one particular aspect of final payment under section 4-213(1)(c), the "process of posting." Process of posting is defined under section 4-109 as

> the usual procedure followed by a payor bank in determining to pay an item and recording the payment including one or more of the following or other steps as determined by the bank:
> (a) verification of any signature;
> (b) ascertaining that sufficient funds are available;
> (c) affixing a "paid" or other stamp;
> (d) entering a charge or entry to a customer's account;
> (e) correcting or reversing an entry or erroneous action with respect to the item.

In this examination, the following will be considered: (1) the policy behind the concept of final payment in view of prior law; and (2) the effect of the process of posting as a reflection of this policy.

II. "Final Payment" Before the Uniform Commercial Code

Before uniform bank legislation was attempted, the rule as to when payment was final was dependent upon local case and statutory law. A variety of inconsistent rules evolved concerning the fixing of time for final payment.[25] Some were based upon a differentiation between items presented

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23 See Leary, supra note 21, at 570-71.

24 See U.C.C. §§ 4-101, Comment, -103, Comment 1.

25 See Malcolm, How Bank Collection Works—Article 4 of the Uniform Commercial Code, 11 How. L.J. 71, 76 (1965).

directly to the payor bank either for deposit or for cash ("on us" items), and those presented otherwise, such as through the mails and clearing houses. The traditional rule as to "on us" items was that the person presenting the item directly to the payor bank received final payment when he received either cash or credit to his account.[26]

For items not presented directly, the majority rule was that final payment occurred and the bank became accountable for the amount when the payor bank "posted"[27] the item to the account of the drawer.[28] Rules in other jurisdictions, however, provided that payment was final when an item was stamped "paid,"[29] when the item was retained for an unreasonable time,[30] when a remittance draft was accepted by the presenting bank,[31] or when the remittance could no longer be retrieved by the payor bank.[32]

As check volume increased, those parties whose interests were dependent upon final payment[33] desired a single statement of the time of final payment to end any possible confusion, especially in commercial transactions involving collections from a bank located in a state with a different rule. Uniform legislation was seen as the most suitable means for eliminating uncertainty.[34]

The American Bankers Association attempted to unify the various rules by promoting the adoption of the Bank Collection Code drafted by the Association in 1928. This code retained the system of different rules for "on us" items and for items presented to the payor bank indirectly.[35] For "on us" items, the Bank Collection Code changed the prevailing common law rule by making any credit given by the payor bank to the presenter dependent upon later inspection of the account, rather than designating the time of receipt of credit as the time of final payment.[36] This allowed the payor bank to postpone inspection of the drawer's account until after presentment so

[26] 2 Paton's Digest 1376 (1942); see, e.g., Briviesca v. Coronado, 19 Cal. 2d 244, 120 P.2d 649 (1941).

[27] Webster's Third New International Dictionary 1771 (1963), defines "posting" as simply the transfer of entries to complete a record.

[28] See Note, Bank Collection Under The Uniform Commercial Code, 38 Ind. L.J. 710, 714 & n.18 (1963).

[29] Nineteenth Ward Bank v. First Nat'l Bank, 184 Mass. 49, 67 N.E. 670 (1903).

[30] Wisner v. First Nat'l Bank, 220 Pa. 21, 68 A. 955 (1908).

[31] Page v. Holmes-Darst Coal Co., 269 Mich. 159, 256 N.W. 840 (1934).

[32] This means that the payor bank was liable to its customer for failure to honor a stop-order if it could "recapture" the remittance draft before it reached the presenting bank. This has been called the "recapture" rule. In Bohlig v. First Nat'l Bank, 233 Minn. 523, 48 N.W.2d 445 (1951), the payor bank was held liable to the drawer of an item because it did not have its remittance for the item withdrawn from the mails.

[33] See p. 957 supra.

[34] Early legislation dealing with checks, such as the Uniform Negotiable Instruments Act, commonly referred to as the Negotiable Instruments Law, developed no definitive rules in this area, presumably because at the time of its adoption the use of checks had not reached sufficient proportions to cause any widespread concern over when final payment occurs. Spanogle, The Bank-Depositor Relationship—A Comparison of the Present Tennessee Law and the Uniform Commercial Code, 16 Vand. L. Rev. 79, 107 (1962). Thus no attempt at uniform legislation was initially made to standardize the time of final payment. See U.N.I.A. § 189.

[35] Compare Bank Collection Code § 3 with U.N.I.A. § 7.

[36] Bank Collection Code § 3. See Andrews, The City Clearing House: Payment, Returns, and Reimbursement, 27 Ind. L.J. 155, 170 (1952).

that items did not have to be inspected individually as they came in.[37] For items presented through the mail, the item was deemed finally paid when the amount was debited to the account of the drawer.[38] However, there was no specific provision as to *when* the account was to be debited or how long an item could be retained without being deemed finally paid. If the collecting bank was unhappy about a delay in payment by the payor bank, it could elect to treat the item as dishonored.[39] If the payor bank used reasonable diligence in dishonoring and returning an item, it was relieved of any liability.[40] Emphasis in the Collection Code was thus placed upon protection of the payor bank from liability by providing sufficient time for inspecting and processing each item, with no strict deadline for making a decision.

The emphasis on bank protection was carried to such an extent that the other objectives of an effective collection procedure—rapid handling and a speedy determination to pay—were made secondary. The Bank Collection Code, however, was adopted in only 18 states;[41] this absence of widespread adoption resulted in a continuing general uncertainty.

III. THE CONCEPT OF "FINAL PAYMENT" UNDER THE U.C.C.

When Article 4 of the Uniform Commercial Code was being drafted, the draftsmen indicated a general intent to correct the errors of previous banking law through an effectuation of the necessary balance between the bank's need for time and the customer's need for speed in payment.[42] The product of this drafting attempt, section 4-213, was considered to have attained this balance and achieved uniformity,[43] and was lauded as one of the greatest potential benefits of Article 4.[44]

Under the definition of final payment in section 4-213(1), all items are treated alike regardless of how presented. This alone eliminates one artificial distinction which the pre-Code law had created. The draftsmen also replaced the many existing rules with one rule applicable to all situations and all actions of the payor bank. By necessity the definition is technical, designating final payment as the first of four distinct acts of the payor bank and covering actions to be taken with respect to a variety of items, so that the time of final payment might be ascertained regardless of the particular procedure employed. The draftsmen realized that final payment of an item by the bank might be evidenced by either an internal or an external manifestation.[45] Thus subsection (1)(a) of section 4-213 designates payment for an item in cash as final and subsection (1)(b) lists settlement with the presenting

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37 See 2 Paton's Digest 1376 (1942).

38 Bank Collection Code § 7.

39 Id. § 11.

40 Id. § 12.

41 See 2 Paton's Digest 1372, 1378 (1942). The Bank Collection Code was also adopted in Illinois, but was declared unconstitutional. Id. at 1373.

42 In the 1946 draft, § 1 of Article 4 stated a general policy of speed and certainty in bank collections.

43 See Note, supra note 28, at 715.

44 Malcolm, supra note 25, at 82.

45 See U.C.C. § 4-213, Comments 3, 5.

party without a right to revoke as indicative of final payment—both external manifestations.

The section, in addition, lists two alternatives amounting to final payment as determined by internal action or inaction. If a provisional settlement for the item is made with the party presenting it, and the settlement is not revoked by certain specified means, it becomes final under subsection (1)(d) after the item is retained for a specified period of time. Statutes, agreements and clearing house rules are used to set this time.[46] The deadlines apply both when no action is taken on an item and when action is not completed before the deadline that has been set.[47] If payment has not been made final by the occurrence of the actions in subsections (a) through (c), the internal act of retention of the item is sufficient. If a provisional settlement is made, however, subsection (1)(c) provides that payment is final at the time the process of posting is completed.

Adoption of section 4-213 was considered to have resolved the earlier uncertainties as to final payment.[48] The technical determination of the time of final payment seemed sufficiently precise to prevent uncertainties. Furthermore, basing final payment upon the action of the payor bank achieved the objective of providing sufficient protection for the bank; at the same time, this was not significantly detrimental to the interest of the holder of an item because of the payor's affirmative obligation to honor or dishonor and the time limits imposed.[49]

However, problems soon arose over the meaning of the phrase "process of posting" in subsection (1)(c). A new factor affecting collection procedures created uncertainty in what had been thought to be an unambiguous definition of final payment. The ramifications of this new problem were sufficiently great to induce the Permanent Editorial Board to draft a new provision, section 4-109, further to define "process of posting."

This interpretative problem arose concommitantly with the addition of computers to bank collection procedures. Previously the typical procedure in check handling by the payor bank involved verification of signature, determination of sufficiency of funds, examination of the account for the "four legals" and a *final* step of debiting the amount of the item to the drawer's account.[50] With the adoption of computers, however, the standard procedure is just the reverse. The common practice is to charge the item to the account *first*, then to perform inspection and the other verification steps used by banks in determining whether to pay an item. This practice enables a bank to handle a large volume of items in a single computer run. If the later step of examination of the account by a clerk shows that payment had been stopped or that the signature was forged, reversing entries are made.[51]

[46] U.C.C. § 4-213(1)(d). One such time limit is the midnight deadline stipulated in U.C.C. § 4-301 for deferred posting.

[47] See U.C.C. § 4-213, Comment 6.

[48] Malcolm, supra note 25, at 82.

[49] See U.C.C. § 4-213, Comment 7.

[50] See 1 New York Law Revision Commission Report, Hearings on the Uniform Commercial Code 108 (1954); 2 Permanent Editorial Board for the Uniform Commercial Code Rep. 80-82 (1964) [hereinafter cited as 2 P.E.B. Rep.]

[51] 2 P.E.B. Rep. at 81.

Since the Code draftsmen designated in section 4-213 that completion of the process of posting would be final payment,[52] bankers who used computers became fearful of premature liability. In spite of the existence of a suggested meaning in the official comments to section 4-213,[53] the lack of a definition of "process of posting" in the text of the Code could have resulted in adoption by a court of the traditional definition of posting,[54] imposing immediate liability upon the payor bank.

In California, the first state to adopt the use of computers in banking on a large scale, the problem of interpreting "process of posting" was a factor in the postponement until 1963 of the enactment of the U.C.C.[55] When the Code was finally enacted in California, all references to the process of posting were omitted.[56]

In response to the problems caused by computers, section 4-109 was adopted in 1962 by the Permanent Editorial Board.[57] Section 4-109 defines process of posting as the "usual procedure followed by a payor bank in determining to pay an item and in recording the payment."[58] By defining in such terms, the Permanent Editorial Board attempted to eliminate any fears of a bank faced with either changing its procedure or incurring liability before it has finished processing an item.[59] The section's emphasis was placed upon inclusion within the process of posting of two distinct elements, a mechanical recording and a determination to pay. The definition goes even further, however, by the inclusion in the text of section 4-109 of some of the possible steps that might be included in the payor bank's usual procedure. The draftsmen emphasized the fact that the order of the steps was immaterial; thus, changes in banking procedure would fit within the definition, and liability would be based upon an actual decision to pay. In *Gibbs v. Gerberich*,[60] the first case interpreting section 4-109,[61] the definition was specifically interpreted to mean that liability for payment would not occur prematurely if charging of the account was the first step in the bank's process. Thus, the addition of section 4-109 appeared to have resolved the difficulties created by computerized banking.[62]

The very efforts of the Editorial Board to resolve the process of posting ambiguity, however, have resulted in definitional problems with section

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52 U.C.C. § 4-213(1)(c).

53 U.C.C. § 4-213, Comment 5.

54 See Note, supra note 28, at 714.

55 2 P.E.B. Rep. at 80-82.

56 See W. Willier & F. Hart, 1 Uniform Commercial Code Reporter-Digest §§ 4-109, -213 (1968).

57 The Permanent Editorial Board gave no official reason for the addition. However, the problems with California's adoption were quite apparent. See 2 P.E.B. Rep. at 80-82.

58 See p. 959 supra, for the full provisions of § 4-109.

59 See Comment, Recent Uniform Commercial Code Developments, 5 B.C. Ind. & Com. L. Rev. 360, 367 (1964).

60 1 Ohio App. 2d 93, 203 N.E.2d 851 (1964).

61 Although § 4-109 was not yet in force in Ohio, the court used it as the basis for its opinion. Id. at 97, 203 N.E.2d at 854.

62 In spite of the addition of § 4-109, California has still not adopted any parts of the Code referring to process of posting. W. Willier & F. Hart, supra note 56, §§ 4-109, -213. In fact, Nevada has followed California's lead in omitting any mention of the process of posting. Id.

4-109. The listing of steps that may be part of the process has created uncertainty as to when the process of posting is complete. The first steps listed, signature verification, inspection of the account, and stamping the item "paid,"[63] are traditionally considered part of the action taken by a bank in determining whether to pay. Similarly, the fourth step, charging the account of the drawer,[64] is the very act traditionally associated with completion of the process of posting. Difficulty arises, however, over the correct meaning of the fifth step, which provides for "correcting or reversing an entry or erroneous action."[65]

In the view of some observers, including a member of the Subcommittee on Article Four, this step could be interpreted by a court to include as part of the process of posting a reversal of an entry for any reason after the other steps were taken.[66] Under this interpretation, a reversal, as part of the determination to pay, could take place at any time while an item could still be returned as unacceptable and the process of posting would still not be considered completed.

In a recent case, the Wisconsin Supreme Court was faced with precisely the problem of reaching such an interpretation. It is appropriate, therefore, to examine the result in this case.

IV. "Final Payment" as Viewed by the Wisconsin Supreme Court

In *West Side Bank v. Marine Nat'l Exch. Bank*,[67] the plaintiff West Side Bank, the collecting bank, presented a check drawn on defendant Marine National Exchange Bank, the payor bank, through the local clearing house. Later that day, Marine began the processing of the item by sending it through the electronic computer. As a part of the computer process, the check was stamped "paid" and the drawer's account was charged. On the following banking day, the item was photographed, cancelled and filed in the drawer's account. Hours later, when the drawer issued to Marine a stop-payment order, it withdrew that check from the drawer's files and notified West Side that the check was being returned. The computer entries were reversed that night, the drawer's account was credited, and the check was returned to West Side the following morning at the clearing house exchange. West Side brought suit against Marine on the check, claiming that Marine was accountable for the amount of the item.

In its argument, West Side contended that Marine had completed the process of posting as defined in section 4-109 before the effectuation of the stop-payment order and had therefore finally paid the item under section 4-213(1)(c).[68] West Side's basic arguments leading to this conclusion may be set out as follows: The process of posting as defined in section 4-109 envisions two different steps, a determination to pay and a recording of pay-

[63] U.C.C. §§ 4-109(a)-(c).

[64] U.C.C. § 4-109(d).

[65] U.C.C. § 4-109(e).

[66] Leary, Check Handling Under Article Four of the Uniform Commercial Code, 49 Marq. L. Rev. 331, 359 n.102; Note, supra note 28, at 717.

[67] 37 Wis. 2d 661, 155 N.W.2d 587 (1968).

[68] Brief for Appellant at 15.

ment. The steps Marine had taken in processing the item—charging the account, verifying the signature, ascertaining the sufficiency of funds, and putting the check in the drawer's file—should constitute completion of the process of posting, since they show that Marine had decided to pay and had recorded payment. The key point in such a decision to pay should be when the bookkeeper determines that the check is in good form and there are sufficient funds to cover it;[69] and this decision had been made when Marine performed the operations it did. Furthermore, insofar as the definition of process of posting provides for "correcting or reversing an entry or erroneous action" as a typical step in the usual procedure,[70] this is intended to include correction of an error, and not reversal for any reason whatsoever.[71] The allowance of the inclusion in a bank's procedure of such a reversal where there has been no error would incorrectly broaden the definition of process of posting since it would allow a reversal up to the statutory or consensual deadline imposed under section 4-213(1)(d). Under this interpretation, section 4-213(1)(c) would have no operative effect as a determinant of final payment, and the subsection (1)(d) deadline would be the occasion of final payment in all cases in which the item has not been paid in cash, dishonored or finally settled.[72] West Side's interpretation, on the other hand, would preserve the effectiveness of section 4-213(1)(c) by allowing reversal only when a mechanical error had been made, and not where a stop-payment order is received after there has been what would otherwise amount to a decision to pay.[73]

Marine contended, on the other hand, that the process of posting as defined in section 4-109 had not been completed before the stop-order, and that there was no final payment of the item under section 4-213(1)(c).[74] Marine interpreted section 4-109 to include not only correction of erroneous entries, but also the reversal of entries for any reason up to the occurrence of the subsection (1)(d) deadline.[75] Marine emphasized that *its* "usual procedure . . . in determining to pay" included a decision on whether to reverse up to that time, and thus it was entitled to reverse at any time before such return time and still be within the definition of process of posting. Under this interpretation, it was argued that the item was not finally paid under section 4-213(1)(c) since time remained for such a decision to be made.[76]

69 Id. at 16.

70 U.C.C. § 4-109.

71 Brief for Appellant at 21.

72 Id. at 23.

73 Id.

74 Brief for Respondent at 14.

75 Id.

76 Id. at 14-45. West Side maintained that the item had been finally paid by an internal determination of the payor bank, and thus a clearing house rule which provided that unacceptable items could be returned later than the time set out in the Code was inapplicable. Brief for Appellant at 34. Marine contended, however, that the rule, traditionally given the effect of preventing *any* final payment until the item could no longer be returned, extended the period within which Marine could decide to reverse the entry and return the item. Brief for Respondent at 3, 10-13. The court agreed with Marine that final payment had been effectively postponed by the allowance of more

The court held that Marine was not accountable for the item under section 4-213, reasoning that: (1) payment was not final under section 4-213 because the process of posting had not been completed;[77] and (2) the process of posting had not been completed because section 4-109 allows an entry to be reversed, not just corrected[78]—thus the "process of posting" is not complete until a decision on whether to reverse is made, and this need not be done until the time to return an item has expired.[79]

The court noted that section 4-109 defines "process of posting" as the "usual procedure followed by a payor bank in determining to pay an item and in recording the payment." It reasoned that the language of subsection (e), "correcting or reversing an entry or erroneous action," allowed, as part of a bank's usual procedure, any reversal so long as the subsection (1)(d) deadline has not supervened.[80] The court concluded that Marine's usual procedure included a decision on reversing as part of the decision to pay,

time to reverse the entry. 37 Wis. 2d at 674, 155 N.W.2d at 594. It is unclear, however, exactly what the court's basis was for this decision. In addition to its reference to the rule as allowing further postponement of a decision to reverse, the court emphasized the traditional interpretation of such rules, which provide no payment can be final before the clearing house deadline. Id.

Unless the court's decision in the *West Side* case was actually based on an interpretation of § 4-109, with the clearing house rule providing the deadline, the court misinterpreted the effect of clearing house rules on the Code provisions. The traditional view of such rules, that the item was finally paid only when no longer returnable, evolved from early banking procedures, which required return of unacceptable items on the same day as received. When this system proved to be infeasable, the banks agreed, in the rules, that their interests would best be served by allowing unacceptable items to be returned later, and thus provide more time for handling. These clearing house rules were interpreted, in light of their purpose, was making payment final at the time specified, since there was no provision for any different time for final payment. See Andrews, supra note 36, at 168.

This interpretation of clearing house rules is no longer applicable under the Code. The balancing provisions of § 4-213(1) allow for sufficient time to handle an item, in § 4-213(1)(d), while providing that earlier acts specified in (a) through (c) also amount to final payment. See U.C.C. § 4-213, Comment 7. The official comments on final payment refer to such rules simply as an extension of decision-making time when there has been no final payment through other actions. U.C.C. § 4-213, Comments 4, 6. Thus the clearing house rule does not negate the effect of § 4-213, but supplements it by specifying the time and manner for return of those items found unacceptable.

[77] 37 Wis. 2d at 674, 155 N.W.2d at 594.

[78] Id. at 672, 155 N.W.2d at 593.

[79] Id. The court did not consider one of the contentions advanced by West Side and rebutted by Marine; this contention involved § 4-303, which provides that the "four legals" come "too late . . . if [the "legal"] is received . . . after the bank has . . . completed the process of posting the item . . . or otherwise has evidenced . . . its decision to pay the item." West Side contended that, for this reason, the stop-order came too late, and Marine's actions were at least sufficient to give the item priority over the stop-order and thereby create liability for failure of Marine to do so. Brief for Appellant at 24. However, a bank's accountability for an item is created only by final payment, and until that time there is no obligation to pay. Rather, the purpose of § 4-303 is to relieve the payor bank of liability to its *customer* for failing to honor a stop-order. This is accomplished by allowing the bank discretionary power to honor or dishonor after the process of posting is substantially completed. See Leary, supra note 66, at 364-65. Thus there is no duty of a payor bank to give the item priority over the stop-order, and West Side's contention was properly rejected.

[80] 37 Wis. 2d at 672, 155 N.W.2d at 593.

and thus, since Marine postponed such a decision on reversal as long as time remained to return the item, the process of posting could not have been completed when the entry was reversed.

Although this interpretation may be technically possible in terms of the language of section 4-109, it clearly cannot be the interpretation intended by the Permanent Editorial Board.[81] If section 4-109(e) is interpreted to allow reversal at any time while the item may still be returned, then the process of posting will have no autonomous meaning as a measuring point for final payment. An item may be returnable under section 4-213(1)(d) so long as the credit given the presenter for it remains provisional; determination of the credit's provisional status would depend upon the time period fixed by either the Code itself or by clearing house rule or agreement.[82] Such provisional settlements will thus become final payment at the midnight deadline under section 4-301 or at a time provided by clearing house rule.[83] Code section 4-213, however, was drafted to make the *earliest* of the four distinct events constitute final payment.[84] Thus the court's interpretation of section 4-109 ignores one of the goals of Article 4, the fact that, for credit reasons, it was drafted to allow the process of posting to be completed and payment to be final *as soon as possible* after the item is received.[85] It was through the difference between subsections (c) and (d) that a balance could be achieved between protection against the customer's risk of loss and the payor's desire for ample handling time. Protection of the owner of an item being collected was completely disregarded in the interpretation of the process of posting in the *West Side* case.[86]

The observers[87] who feared interpretational difficulties with section 4-109(e) have suggested the more narrow construction, which was offered by West Side Bank: that the subsection be limited to correction of entries made in error, such as by charging the wrong account or involving an incorrect amount.

The contention, however, would ignore the clear language of the Code, which provides for "correcting *or reversing* an entry or erroneous action."[88] (Emphasis added.) The effect of West Side's interpretation, moreover, would be to intensify the problems raised by computerized procedures. Under such an interpretation, the payor bank might be reluctant to make an entry to the account as the first step where reversals could be made only if the entry was erroneous. It is arguable that the only entries that would qualify as erroneous

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81 See U.C.C. § 4-213, Comment 7.

82 U.C.C. § 4-213(1)(d). See U.C.C. § 4-213, Comment 6.

83 Id.

84 U.C.C. § 4-213, Comment 7.

85 See U.C.C. §§ 4-101, Comment, -103, Comment 3.

86 The *West Side* court suggested that, if the result they reached was undesireable, a legislative repeal of subsection (e) would be the proper remedy. 37 Wis. 2d at 671, 155 N.W.2d at 592. Yet even if subsection (e) were omitted, the same result could be imputed, since the preamble to § 4-109 allows for other steps, and only lists subsections (a) through (e) as illustrations. The absence of a specific step from the listing would not prevent its implication into § 4-109 if part of a bank's procedure. Thus even omission of subsection (e) would not prohibit inclusion of such a step.

87 See authorities cited note 66 supra.

88 U.C.C. § 4-109(e).

would be such mechanical errors as charges to the wrong account and incorrect amounts. Other entries, such as those involving insufficient funds, forged signatures, or preexisting stop orders, might not be considered reversible on the basis that there was no mechanical error involved in making the entry. Thus computerized banks would either have to change their procedure or generally be liable once an entry is made since they could correct entries only under limited circumstances. Clearly this interpretation of section 4-109 ignores the obvious purpose of the section—to make the process of posting more flexible in terms of different banking procedures and thus promote uniform adoption of the section on final payment, section 4-213.

In the *West Side* case, neither party offered the court an alternative based upon both the language of section 4-109 and the policies underlying its adoption. Such an interpretation is that subsection (e) of section 4-109 allows for both correcting and reversing entries, but that the step is to be considered a step only in "recording the payment" and not in "determining to pay." Both sides in the *West Side* case apparently assumed that such a correcting or reversing was a decisional step, and part of the determination to pay, as are subsections (a) and (b) of section 4-109, which refer to signature verification and ascertaining sufficiency of funds. However, the action involved in correcting or reversing is the same as that involved in originally charging to the account. This action is clearly part of the recording of payment and not part of the determination to pay. Subsection (c) involves recording of payment on the instrument itself. Both (d) and (e) involve the mechanical process of *recording* on the ledger of the bank (or through its computer process) a decision that has taken place with respect to the item. In effect, the actual step of reversing or correcting an entry is a recording of nonpayment.

By considering the reversal of entries to be distinct from the determination to pay, the completion of the steps involved in making a determination, when coupled with a recording of payment, will constitute completion of the process of posting at a time distinct from the subsection (1)(d) deadline for returning unacceptable items. If the usual procedure in a bank involves recording payment as the last step, no problem would arise, since the process of posting would not be complete until an entry was made; if a decision not to pay was made, there would be no entry, and the item could be returned. In banks where the usual procedure is to charge the item to the account first, completion of the process of posting would be dependent upon the payor bank making a determination to pay the item. Thus if an inspection of the account showed the presence of a stop-order or insufficient funds, a reversal could be made and the drawer's account credited. The reversal would be allowed because there had been no decision to pay. On the other hand, if the steps involved in determining to pay are completed (other than reversal as a step in determination to pay), the process of posting is completed, and payment is final. In the *West Side* case, the process of posting should have been considered completed before the stop-order was received, since Marine had taken sufficient steps to indicate both a determination to pay and a recording; thus a reversal should not have been possible.

V. Conclusion

An interpretation of section 4-109 as providing for reversals and corrections of entries only as a part of the procedure in recording payment is the most sensible one, since it preserves a meaning for completion of the process of posting as a measuring point of final payment distinct from the expiration of the provisional-settlement time, and at the same time provides the flexibility necessary to encompass varying banking procedures. As a result, section 4-213 is able to achieve both desired objectives of a set of rules to govern collection procedures: reduction of risk by having provisional settlements become final when the determination to pay and recording of payment are completed, and allowance for sufficient time to handle a large volume of items. The interpretation adopted by the court in the *West Side* case, however, is unacceptable since it sacrifices one objective for the other.

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