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Article 3: Commercial Paper

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Article (Section 2-710), but less any expense saved in consequence of the buyer's breach, except that if the foregoing measure of damages is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer."]

SECTION 2-709. Action for the Price.

(1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price, or the circumstances reasonably indicate that such effort will be unavailing.

Marble Card Elec. Corp. v. Maxwell Dynamometer Co., 15 Chester 145 (Pa. 1961).

See Annotation to Section 2-314, supra.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-302. Holder in Due Course.

(1) A holder in due course is a holder who takes the instrument

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

Perfect Market, Inc. v. Serro, 42 West Co. L.J. 35 (Pa. 1960).

Defendant had delivered its check in the amount of $2495 in payment for trailers to be built by a trailer company. Before completing the work, the trailer company negotiated the check to another who in turn cashed the check at plaintiff's store. Defendant had stopped payment of the check when none of the trailers were delivered. In plaintiff's action on the check, defendant alleged that plaintiff store was not a holder in due course. The question was submitted to the jury who returned a verdict for the defendant. In denying plaintiff's motions for a new trial and for judgment n.o.v., the court held that "observance of the reasonable commercial standards" in Section 3-302 required an objective test of good faith that must be satisfied by a holder in due course. The court concluded that, in view of the amount of the check and of the practice among other stores, a question sufficient for jury determination was presented by the evidence.

[N.B. This case was decided under the 1953 version of the Code in which Section 3-302 provided:

"(1) A Holder in due course is a holder who takes the instrument

(b) in good faith including observance of the reasonable commercial standards of any business in which the holder may be engaged; . . . ."]

[Annotator's Comment: This case illustrates the dangers inherent in testing good faith by "observance of reasonable commercial standards." This test was omitted from the 1958 version of the Code and good faith is made largely a subjective matter under its general definition of "honesty in fact in the conduct or transaction concerned" (Section 1-201(19)). The test was retained, however, as to merchants in a sales transaction (Section 2-103(1)(b)). As to holders in due course, jurors must decide whether the holder acted honestly in taking the instrument on the basis of the evidence dealing only with those circumstances. Commercial practices of other businesses or in the community generally should be otherwise irrelevant.]

SECTION 3-306. Rights of One Not Holder in Due Course.

Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (Section 3-408); and

(d) the defense that he or a person through whom he holds the instrument, acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

Paramount Distillers, Inc. v. Brookside Distilling Prod. Corp., 62 Lack. Jur. 165 (Pa. 1961).

Plaintiff, payee on a judgment note, confessed judgment against defendants, co-makers of the note. Defendants petitioned to open the judgment and to allow defendants to defend alleging nonperformance of a condition precedent.

The court allowed the judgment to be opened, basing its decision upon Section 3-306 which provided that the defenses of nonperformance of any condition precedent and of delivery for a special purpose are available to the maker of a promissory note. The court noted that the same was true under the Uniform Negotiable Instruments Law.

SECTION 3-307. Burden of Establishing Signatures.

(1) Unless specifically denied in the pleadings, each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

(a) the burden of establishing it is on the party claiming under the signature; but,

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

**Altex Aluminum Supply Co. v. Asay*, 72 N.J. Super. 582, 178 A.2d 636 (1962).

Plaintiff, indorsee of a negotiable note made by defendant, sued the maker for payment. The maker claimed, inter alia, that mere denial of the corporate payee's indorsement required plaintiff to prove not only that the indorsing signature of the corporate officer was genuine, but also that such officer was actually authorized to execute the indorsement.

The court held that plaintiff could recover on the note as a holder in due course upon the basis of New Jersey case law and statutes. The court noted that the Uniform Commercial Code Section 3-307, effective in New Jersey after this transaction arose, clarified New Jersey law, and plaintiff would have no burden of proving the authenticity of the indorser's signature or his authority to sign where the maker offered no evidence in support of its denial.

SECTION 3-403. Signature by Authorized Representative.

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established, the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

In the Matter of Laskin, 204 F. Supp. 106 (E.D. Pa. 1962).

Laskin executed the following note:

"$15,426.50 March 31, 1959
Sixty days after the date__________________promise to pay to the order of Industrial Rayon Corporation Fifteen Thousand Four Hundred Twenty-Six and 50/100 . . . Dollars Payable at Cleveland, Ohio with interest at 6% per annum.
Value received.

LASKIN BROS. OF PHILA. INC.
HAROLD LASKIN
K 71730 Due May 30, 1959"

Laskin became bankrupt and the payee filed a claim as Laskin's creditor for the amount of the note. The referee in bankruptcy held that the bankrupt was not liable on the note and that the payee was not his creditor. The court held that the referee was in error under Section 3-403 by which a signer of a note under a corporation's name is liable personally unless the signer's representative capacity is indicated.

Under section 20 of the Negotiable Instruments Law and under the 1959 amendments to the Uniform Commercial Code in Pennsylvania, parol evidence to show the capacity in which the party signed would be admissible. Since the note was signed before the effective date of the amendments, the bankrupt was personally liable and parol evidence to the contrary was inadmissible.

[N.B. This case was decided under the 1953 version of the Code in which Section 3-403 read as follows:

"(2) An authorized representative who signs his own name to an instrument is also personally obligated unless the instrument names the person represented and shows that the signature is made in a representative capacity. The name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity." Pennsylvania amended this section to conform to the 1958 Official Text of the Code in 1959, effective January 1, 1960.]

[Annotator's Comment: Pennsylvania courts allowed parol evidence between immediate parties to establish representative capacity under Section 20 of the N.I.L. even though that section contained no express exception as does Section 3-403(2)(b) of the 1958 Official Text of the Code. The change from the 1953 version indicates that the draftsmen had not intended to change the rule. The court could have reached a different result had it seen fit to do so.]

SECTION 3-406. Negligence Contributing to Alteration or Unauthorized Signature.

A person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

**Gresham State Bank v. O and K Constr. Co.*, 370 P.2d 726 (Ore. 1962).

A bookkeeper had authority to deposit company's checks for which he was given a stamp marked "for deposit only," and he also was furnished a stamp bearing the name of the company. By using the company stamp, the bookkeeper cashed thirty checks over a three year period at a nearby store at which he was known as defendant's employee. The

store deposited the checks in its bank for collection. The bank collected the proceeds and brought an interpleader action against the company and the store, depositing the proceeds in court. The bank was discharged and the lower court found in favor of the store. On appeal, the company relied upon the rule that one who makes payment upon an unauthorized indorsement of the payee's name is liable to the payee for conversion. The court agreed that the bookkeeper had no apparent or implied authority, but found that there was evidence that both parties had contributed to the success of the forger, the company by its failure to supervise the employee, and the store by failing to inquire into the agent's authority. But the court declined to apply the theory of contributory negligence in the law of commercial paper.

Although the pertinent provisions of Section 3-406 are not effective in Oregon until September, 1963, the court adopted its principle for two reasons. First, there were at that time no contrary statutes and no Oregon decisions, and second, the Uniform Commercial Code represented the most recent legislative pronouncement.

Despite the fact that the company's negligence was found to be a "substantial contribution" to the forgery, this alone did not preclude recovery under Section 3-406. The court took judicial notice that observance of the "reasonable commercial standards" imposed a duty to inquire of the principal. This the store had failed to do and, since no apparent or implied authority had been shown, the court held as a matter of law that the store had not observed the reasonable commercial standards required by Section 3-406.

[Annotator's Comment: This decision points up the danger of applying a section of the Code out of the context of the remainder of its provisions. The court did not consider Section 3-419 which, while creating the liability in conversion of a collecting bank which takes an instrument with a forged indorsement, limits the liability of the bank to proceeds remaining in its possession. In this case, the bank extracted funds from the store's account without inquiry as to whether they were the proceeds of the checks. Certainly, some of them were not. Of course, assuming the court's application of Section 3-406 was correct, the store would be liable to the company in conversion or to the bank in warranty, and the bank would be liable in warranty to the various drawees of the checks since the drawers apparently discovered the forged indorsements within the three year statute of limitations provided in Section 4-406. The court ignored the provision of Section 3-406 which would preclude the company's recovery from a holder in due course, assuming its negligence substantially contributed to the forgery. "Observance of reasonable commercial standards" is not a test for such a holder. See Annotation to Section 3-302, supra. Quaere, however, whether one who takes under an unauthorized indorsement is ever a holder, much less a holder in due course.]

ARTICLE 4: BANK DEPOSITS AND COLLECTIONS

SECTION 4-403. Customer's Right to Stop Payment; Burden of Proof of Loss.

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

SECTION 4-404. Bank Not Obligated to Pay Check More Than Six Months Old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Doodan v. Szawlinsky, 197 Pa. Super. 600, 179 A.2d 661 (1962).

The insurer of the losing defendant in a trespass action issued its check for the amount of the policy, which was less than the judgment, payable to the judgment creditor. The judgment creditor refused to indorse it and his attorney in the trespass action brought suit against him and instituted attachment by garnishment proceedings against the insurer. The insurer pleaded payment by issuance of the check which was in the attorney's possession and which the attorney tendered to the insurer. Reversing the lower court, the Superior Court ordered judgment on the pleadings for the plaintiff. The court held that the check was at most conditional payment and, since over a year had elapsed from the time of issuance, the payor bank probably would not pay it because, under Section 4-404, it had no obligation to honor a check over six months old. The garnishee-insurer could stop payment under Section 4-403 for its own protection.

ARTICLE 6: BULK TRANSFERS

SECTION 6-104. Schedule of Property; List of Creditors.

(1) Except as provided with respect to auction sales (Section 6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

(a) the transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) the parties prepare a schedule of the property transferred sufficient to identify it; and