

4-1-1964

Secured Transactions—Tortious Repossession of Inventory—Right of Debtor to Receive Notice of Disposition of Repossessed Collateral under Uniform Commercial Code.—*Skeels v. Universal C.I.T. Credit Corp.*

Stuart L. Potter

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/bclr>



Part of the [Secured Transactions Commons](#)

Recommended Citation

Stuart L. Potter, *Secured Transactions—Tortious Repossession of Inventory—Right of Debtor to Receive Notice of Disposition of Repossessed Collateral under Uniform Commercial Code.—Skeels v. Universal C.I.T. Credit Corp.*, 5 B.C.L. Rev. 831 (1964), <http://lawdigitalcommons.bc.edu/bclr/vol5/iss3/32>

This Casenotes is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Nonetheless this limitation on availability of forums is exactly the effect of the decision in the *Lott* case. The Texas federal court, adhering to the Supreme Court's traditional uniformity obsession in an area where it has been largely discarded (albeit begrudgingly) by the Court itself, ignores what was virtually a congressional mandate and has worked a considerable hardship on the injured employer. The court in the interests of this questionable federal judicial policy has precluded the plaintiff from obtaining the most essential part of his petition—injunctive relief against further breaches of the no-strike clause by the defendant-union.

The United States Supreme Court's specific remark as to the absence of any ruling on their part with respect to the applicability of Norris-La-Guardia to state court injunction proceedings, coupled with the implications which obtain from the Court's statement as to the non-preemptive nature of section 301, would seem to have foreclosed any attempt by the district court to extend the *Sinclair* ruling to state court proceedings. It would thus appear that the district court's ruling in the *Lott* case was based on the more narrow ground that because the plaintiff's injunctive claim was brought in a state court *simultaneously* with his petition for damages, the discretionary remand procedure under Rule 12(h) of the Federal Rules of Civil Procedure will be used to prevent the state courts from granting such injunctive relief—injunctive relief which they could unquestionably have granted had plaintiff brought his injunction petition independently, postponing until a later date his petition for damages. Thus this court—in an effort to eliminate the threat posed by the *Dowd*, *Lucas*, *Sinclair*, and *Smith* cases to the doctrine of uniformity of law and uniformity of tribunals for the regulation of interstate commerce labor disputes—has resorted to the very procedural niceties, the absence of which had for so long been the hallmark of the federal judiciary.

THOMAS P. KENNEDY

Secured Transactions—Tortious Repossession of Inventory—Right of Debtor to Receive Notice of Disposition of Repossessed Collateral under Uniform Commercial Code.—*Skeels v. Universal C.I.T. Credit Corp.*¹—In the spring of 1959, the plaintiff, a franchised Chrysler automobile dealer, agreed to let the defendant credit company finance the purchase of his automobiles. The defendant was to pay Chrysler Corporation for the cars, the cars were to be delivered to the plaintiff, and the plaintiff was to repay the defendant immediately upon selling the cars. At the time of contracting, or shortly thereafter, the defendant made a capital loan of \$25,000 to the plaintiff, who, in the months that followed, was never in default on this loan but was often in default on the cars he sold. The defendant, however, disregarded these defaults, choosing not to enforce its rights under their security arrangement. By the fall of 1960, the plaintiff had fallen in arrears for the price of several cars. He thereupon applied for a second loan of \$25,000, which request was forwarded through channels to the defendant's New York office where it

¹ 222 F. Supp. 696 (W.D. Pa. 1963).

was in fact denied. According to the plaintiff, however, from the 10th of November onward the defendant's local representative almost daily assured him that the loan had been approved and that a check was forthcoming. While the plaintiff was waiting, the defendant notified Chrysler Corporation that it was cancelling its agreements to pay for the plaintiff's automobiles. *On November 28th the defendant, on some pretext, acquired the keys to the plaintiff's place of business, and early next morning, without prior notice of any kind, removed from the plaintiff's establishment all the new and used cars. Again without notice the cars were sold.* The plaintiff brought a civil action in the federal district court for the Western District of Pennsylvania, alleging that the defendant had pre-emptively seized his cars and thereby destroyed his business. The defendant counterclaimed: (a) for the money still owed on the original loan (\$12,400); (b) for the price of nine cars which the plaintiff had sold but not paid for (\$25,637.53); (c) for the loss resulting from the sale of the repossessed cars (\$9,378.16); and (d) for the expenses of selling these cars (\$1,259.21).² The jury returned a verdict for the plaintiff on his claim, awarding him \$105,000 in compensatory and punitive damages, and on the counterclaim found for the defendant in the full amount of \$48,674.90. The plaintiff moved alternatively for a reduction of the defendant's recovery on the ground that the most the evidence proved he owed was \$22,257.87, or for a new trial. Both motions were denied but the verdict was altered. HELD: The defendant's recovery should be reduced to \$38,037.53. Section 9-504(3) of the Uniform Commercial Code³ required the defendant to notify the plaintiff of its intended disposition of the repossessed cars, and failure to do so precluded it from recovering items (c) and (d) above, *i.e.*, its deficiency.

With respect to his theory of conversion,⁴ the plaintiff acknowledged that he was indebted to the defendant for cars he had sold but argued that he was not *in default*, that the defendant had waived its right to immediate payment by acquiescing in earlier delays, and that the defendant therefore had no right whatever to repossess when and in the manner it did. Assuming that the agreement did not contain a provision barring an implied waiver, the

² Had the defendant proceeded properly under the Code, he would first have applied the proceeds from the sale of the repossessed cars to his expenses, then to the debt they secured. Thus, instead of suing for a deficiency of \$9,378.16 and for expenses of \$1,259.21, he would have sued for a deficiency of \$10,637.37. Substantively, the distinction is unimportant. See § 9-504(1) of the Uniform Commercial Code.

³ Pa. Stat. § 9-504(3) provides:

... Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor. . . .

(Hereafter, when the Uniform Commercial Code is cited, reference to the Pennsylvania Statutes will not be given.)

⁴ The plaintiff cited in his brief the following authority: *Stone v. C.I.T. Corp.*, 122 Pa. Super. 71, 184 Atl. 674 (Philadelphia County Ct. 1936) and Restatement, Torts §§ 221 and 222 to support his claim for conversion; *Courtney v. Brighenti*, 98 Pgh. L.J. 209 (1948), *Stone v. C.I.T. Corp.*, *supra*, and Restatement, Torts §§ 908 and 909 to support his claim for punitive damages; and *Provident Tradesmens Bank & Trust Co. v. Pemberton*, 24 Pa. D. & C.2d 720 (1961) to support his argument concerning "course of dealing."

CASE NOTES

plaintiff's approach is sound. The only difficulty he apparently had was in relating his claim to appropriate provisions in the Code. He suggested that his earlier delays in payment had established a "course of dealing" under section 1-205(1)⁵ or a "course of performance" under section 2-208(1),⁶ but neither of these sections is applicable. Neither support his concept of waiver. Comment 2 to section 1-205⁷ explicitly states that a "course of dealing" refers solely to a sequence of conduct under contracts *prior* to the issuable one; and section 1-205(4)⁸ clearly provides that when a "course of dealing" hopelessly conflicts with an express contractual term, the latter controls. In asserting that the parties' conduct under the issuable agreement had established a "course of dealing" and that the parties' "course of dealing" could be relevant to show a waiver of his express obligation to pay forthwith for the cars he had sold, the plaintiff simply drew from an erroneous assumption an erroneous conclusion.

Nor did the delayed payments constitute a "course of performance" under section 2-208(1).⁹ While a "course of performance" *does* refer to a pattern of action under the contract in issue and *is* relevant to demonstrate the waiver of an inconsistent contractual provision, a "course of performance", as contemplated by the Code, relates solely to contracts for the sale of goods. Sections 2-102¹⁰ and 2-208(1)¹¹ make this clear. The contract in question is not for the sale of goods; it is a security arrangement. This does not mean that the Code ignores or fails to recognize the common law doctrine of waiver in commercial contracts other than those for the sale of goods but simply that the plaintiff was hanging his hat on the wrong sections of the Code. Instead of relying on sections 1-205(1)¹² and 2-208(1),¹³ he *should* have relied on section 1-103¹⁴ which sweepingly states that, unless otherwise provided, the principles of law and equity shall supplement the Code.

⁵ UCC § 1-205(1) defines a "course of dealing" as "a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct."

⁶ UCC § 2-208(1) describes a "course of performance" as follows:

Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

⁷ Comment 2 to UCC § 1-205 states that a "course of dealing under subsection (1) is restricted, literally, to a sequence of conduct between the parties previous to the agreement. . . ."

⁸ UCC § 1-205(4) provides that "the express terms of an agreement and an applicable course of dealing . . . shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control. . . ."

⁹ UCC § 2-208(1) *supra* note 6.

¹⁰ UCC § 2-102 provides: "Unless the context otherwise requires, this Article [Article 2: Sales] applies to transactions in goods. . . ."

¹¹ UCC § 2-208(1) *supra* note 6.

¹² UCC § 1-205(1) *supra* note 5.

¹³ UCC § 2-208(1) *supra* note 6.

¹⁴ UCC § 1-103 provides that "unless displaced by the particular provisions of this Act, the principles of law and equity . . . shall supplement its provisions."

Another provision manifestly on point is section 1-203,¹⁵ which imposes an obligation of good faith on any person seeking to enforce a contract within the purview of the Code. This is one section which the defendant unequivocally violated. The defendant gave no notice whatever of its intention to repossess, thus depriving the plaintiff of an opportunity to refinance elsewhere and preserve his dealership. Since section 1-106(2)¹⁶ explicitly states that a remedy is available in the event that any Code-imposed obligation is breached, it would appear to be simply a question of fact whether a causal connection could be established between the bad faith repossession and the destruction of the plaintiff's business.

The plaintiff's allegations also supported a theory of misrepresentation. Indeed, since the issues were framed by the trial judge in a very broad fashion, there is no guaranty that the plaintiff recovered on his own theory of the case.¹⁷ The gist of the misrepresentation theory is that while the local representative concededly had no authority, real or apparent, to approve the second loan, he did have authority to *inform* the plaintiff whether or not the New York office had approved the loan. Thus, his asseverations that the loan had been granted, when in fact it had not, constituted a misrepresentation imputable to the defendant. The court said: "That is the whole crux of the thing. If that took place, then it seems to put Mr. Skeels asleep; he is not aware that he has to go out and raise money. . . ."¹⁸ Had the plaintiff been told the truth, or not been told a falsehood, he might well have borrowed elsewhere, paid what he owed on his indebtedness and thus have obviated the repossession. The defendant's misrepresentation lulled the plaintiff into a false sense of security, and it was arguably *this*, not the repossession itself, which was at bottom the source of his loss. The malice necessary to sustain the punitive damages could be inferred from the commercially objectionable methods by which the repossession was effected and from the failure of the defendant to give any notice whatsoever of the repossession, the subsequent sale, or the prior notification to Chrysler Corporation that it was cancelling its agreements to pay for the plaintiff's cars.

With respect to the counterclaim, the court held that the defendant was not entitled to recover the loss it suffered or the expenses it incurred in selling the repossessed cars. Said the court:

[T]o permit recovery by the security holder of a loss in disposing of collateral when no notice has been given, permits a continuation of the evil which the Commercial Code sought to correct. The owner should have an opportunity to bid at the sale. It was the secret disposition of collateral by chattel mortgage owners and others

¹⁵ UCC § 1-203 provides that "every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement."

¹⁶ UCC § 1-106(2) provides: "Any right or obligation declared by this Act is enforceable by action unless the provision declaring it specifies a different and limited effect."

¹⁷ A broad framing of the issues is, of course, not improper under the federal rules. Fed. R. Civ. P. 8(a) provides: "A pleading which sets forth a claim for relief . . . shall contain . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief. . . ."

¹⁸ *Skeels v. Universal C.I.T. Credit Corp.*, supra note 1, at 700.

CASE NOTES

which was an evil which the Code sought to correct. . . . *In my view, it must be held that a security holder who sells without notice may not look to the debtor for any loss.*¹⁹ (Emphasis supplied.)

Under the peculiar facts of the instant case the court's refusal to award the defendant its deficiency does not seem unjust. The defendant *has* acted outrageously. Nevertheless, it should be noted that there is no provision in the Code which expressly sanctions such a refusal, and that to this extent the court has simply read into the Code something which is not there. In so doing, however, it is not without precedent, for many courts, in construing substantially the same provisions under the Uniform Conditional Sales Act, have come to a like conclusion. The Uniform Conditional Sales Act not only requires a reposessor to notify a repossessee of an intended resale,²⁰ but also, like the Code, does not in express terms prohibit the reposessor from recovering his deficiency in the event that he fails to give notice. Courts interpreting the Act have nonetheless consistently refused to award the seller his deficiency unless the provisions for notice have been squarely met.²¹ Though the instant court does not allude to these decisions, it follows their lead by suggesting that a secured party who fails to give notice should *never* be allowed to look to the debtor for any loss.

Unfortunately, the denial of a deficiency recovery, as a hard and fast rule, is better suited to cases involving failure of notice under the Act than under the Code. The reason for this is that the Act prescribes the precise manner in which notice is to be given and also that it is to be given in every case of resale, whereas the Code provides for "reasonable notification"²²

¹⁹ *Id.* at 702.

²⁰ Uniform Conditional Sales Act § 19 provides:

Compulsory resale by seller.—If the buyer does not redeem the goods within ten days after the buyer has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction. . . . The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. . . .

Uniform Conditional Sales Act § 20 provides:

Resale at option of parties.—If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in Section 19, unless the buyer serves upon the seller, within ten days after retaking, a written notice demanding a resale, delivered personally or by registered mail. . . . The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

²¹ *Diamond T Motor Car Co. v. Eucker*, 10 N.J. Misc. 814, 160 Atl. 41 (Sup. Ct. 1932); *Veterans Loan Authority v. Rozella*, 21 N.J. Super. 1, 90 A.2d 505 (1952); *Mott v. Moldenbauer*, 261 App. Div. 724, 27 N.Y.S.2d 563 (1941); *Public Nat'l Bank & Trust Co. v. Fernandez*, 121 N.Y.S.2d 721 (New York Munic. Ct. 1952); *Capitol Dist. L.A.W. Corp. v. Blake*, 136 Misc. 651, 241 N.Y.S. 476 (Albany City Ct. 1930). In *Oneida Nat'l Bank & Trust Co. v. Manikas*, 10 Misc. 2d 671, 175 N.Y.S.2d 612 (Herkimer County Ct. 1958), a deficiency judgment was denied even though the debtor received actual notice by certified mail. Notice by registered mail was required. *Contra*, *Pacific Discount Co. v. Jackson*, 37 N.J. 169, 179 A.2d 745 (1962); *Frantz Equip. Co. v. Anderson*, 37 N.J. 420, 181 A.2d 499 (1962).

²² UCC § 9-504(3), *supra* note 3. Section 1-201(26) provides: "A person 'notifies' or 'gives' a notice or notification to another by taking such steps as may be reasonably

when notice is in fact required and for no notice at all when "the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market. . . ." ²³ It would appear that the flexibility of the notice provisions under the Code leaves too much room for honest error to warrant the indiscriminate use of the rule which the instant court applies. Should a conditional seller fail to give notice under the Act, it is solely because he has failed to comply with provisions which are mechanically followed; but if he fails to give notice under the Code, it could well be for the reason that a court has determined that the collateral was not declining *speedily* in value or that the notice given was unreasonable under the circumstances.

To be sure, where the Code has replaced the Act, the practical impact of the change in notice provisions will be slight: very few persons will fail to give notice because of honest errors in judgment. Nevertheless, since the Code has assumed the posture of reason by requiring reasonable notice only when notice should reasonably be given, it would perhaps be *unreasonable* for the courts to adopt a rule which would preclude the recovery of a deficiency in *every* case in which notice has not been given.

Perhaps a better approach, at least in "hard" cases, would be to award the secured party his deficiency solely on the showing of a commercially reasonable ²⁴ disposition and leave it to the debtor to counterclaim under section 9-507(1) ²⁵ for whatever loss he can show as a result of not being notified. Considering that the debtor *has* defaulted, that the secured party *does* have a right to dispose of the collateral, that a commercially reasonable disposition has, we assume, been conducted and that notice is in many cases but a formal gesture, there would seem, in any event, to be a serious question as to whether it is more equitable to penalize a non-notifying secured party in the amount of his deficiency or to award him his deficiency and require the debtor to prove the loss he has suffered from not being notified. To refuse to award a defi-

required to inform the other in ordinary course whether or not such other actually comes to know of it. . . ."

²³ UCC § 9-504(3), *supra* note 3.

²⁴ The Code requires a commercially reasonable disposition of repossessed collateral. Section 9-504(3). The term is more or less defined in section 9-507(2) which provides:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences also apply as may be appropriate to other types of disposition. . . .

²⁵ UCC § 9-507(1) provides:

. . . If the disposition has occurred the debtor or any person entitled to notification . . . has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

CASE NOTES

ciency judgment on the ground that the secured party has failed to give notice is in effect to award the debtor damages which he might not have suffered, which he might not have sought and which he has not been required to prove. The question becomes even stickier when it is remembered that not all secured creditors are banks and finance companies. Perhaps a deficiency judgment should be denied only when, as in the instant case, a malicious failure to give notice can be shown.

The debtor's task in proving his loss would not be overwhelming, and the disdain of both judge and jury for commercially dubious practices would only make it easier. If the collateral were consumer goods, as defined by section 9-109(1),²⁶ then the debtor would not even have to prove his loss: he would be entitled to a minimum recovery merely by showing absence of notice.²⁷ But if, as in the instant case, the collateral were inventory,²⁸ the debtor could prove his loss in a relatively easy manner, *i.e.*, by establishing that at the time of the resale he had access to funds sufficient to have redeemed²⁹ or "bought in," and that given the statutory opportunity, he would have done so. His loss thus proved would ordinarily offset the secured party's deficiency. This can best be seen by hypothesis. Assume that a diamond worth \$500 secures a debt of \$500 and that on default it is sold in a commercially reasonable manner, but without notice, for \$400. At trial, the debtor proves that at the time of the resale he had access to \$500 and convinces the fact-finder that if he had received notice he would have redeemed the diamond rather than suffer both its loss (\$500) and a deficiency judgment of \$100. Has he not then proved that his failure to receive notice has cost him \$100? He would have paid his debt of \$500, redeemed collateral worth \$500, and not been confronted with a deficiency judgment of \$100. In certain cases the debtor's loss would exceed that of the secured party, as when he could show

²⁶ UCC § 9-109(1) provides: "Goods are (1) 'consumer goods' if they are used or bought for use primarily for personal, family or household purposes. . . ."

²⁷ UCC § 9-507(1), *supra* note 16. In *Atlas Credit Corp. v. Dolbow*, 193 Pa. Super. 649, 165 A.2d 704 (1960), a recovery under section 9-507(1) by a consumer who had not been notified of the sale of his repossessed boat was affirmed. See also, *Alliance Discount Corp. v. Shaw*, 195 Pa. Super. 601, 171 A.2d 548 (1961), *annot.* B.C. U.C.C. Co-ord. 366, 369.

²⁸ UCC § 9-109(4) provides:

Goods are . . . (4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

²⁹ UCC § 9-506 provides:

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9-504 or before the obligation has been discharged under Section 9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses.

that special circumstances caused special damages or that the collateral was worth more than the debt it secured but was sold on default for less.³⁰

There is no gainsaying that proving loss by this method is relatively speculative and opens the door to possible fraud. Nevertheless, a mature consideration of the equities involved may in the future induce an adventurous court with a "hard" case before it to adopt the procedure suggested. Until that time, however, it would be fair to say that the rule in *Skeels* is likely to be followed.

STUART L. POTTER

Securities—Investment Advisers Act—Requirement of Full Disclosure.—*Securities Exchange Comm'n v. Capital Gains Research Bureau.*¹—The SEC sought an injunction² prohibiting Capital Gains from making any recommendations of stock in its advisory bulletin without disclosing to its clients its own intention to purchase or sell that stock in the near future. Capital Gains distributes monthly to five thousand clients a bulletin describing and recommending stocks it considers worthwhile for long-term investment. On six occasions in 1960,³ Capital Gains bought shares of a stock just prior to recommending this stock in its bulletin.⁴ Each time, within two weeks after mailing the bulletin, these shares were sold at a profit. The SEC contended that the sequence of purchase, recommendation, and sale constituted a violation of the antifraud section⁵ of the Investment Advisers Act of 1940.⁶ The District Court denied the motion for the injunction;⁷ a panel of the Court of Appeals⁸ and the Court of Appeals *en banc* affirmed.⁹ The United States Supreme Court, in reversing, HELD: That Capital Gains had breached its fiduciary duty to its clients by not fully disclosing its in-

³⁰ For example, if the debt is \$500 and the collateral securing it is worth \$650 but is sold without notice in a commercially reasonable manner for \$400, then the deficiency would be \$100 but the loss sustained by the debtor who could prove he had the resources and the willingness to redeem or "buy in" is \$50 more. He would have paid his debt of \$500 and redeemed collateral worth \$650.

¹ 375 U.S. 180 (1963).

² *Id.* at 183 n.5, for the requested injunction in full.

³ The six stocks were: Continental Insurance Co.; United Fruit Co.; Creole Petroleum Corp.; Hart, Schaffner & Marx; Union Pacific; and Frank G. Shattuck Co.

⁴ On one occasion Capital Gains sold short shares of a security immediately before stating in its bulletin that the security was overpriced. After the publication of the bulletin, they profitably covered their short sales.

⁵ It shall be unlawful for any investment adviser under § 80b-3 of this title, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.

⁶ 54 Stat. 847 (1940), as amended, 15 U.S.C. § 80b (Supp. IV, 1961).

⁷ 191 F. Supp. 897 (S.D.N.Y. 1961).

⁸ 300 F.2d 745 (2d Cir. 1961).

⁹ 306 F.2d 606 (2d Cir. 1962).