Boston College Law Review

Volume 7 | Issue 4 Article 10

7-1-1966

Article 5: Letters of Credit

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defendant bank had acted without due care, the plaintiff could not recover since he had been negligent.

Under this view, Section 4-406(4) becomes operative. That section provides: "Without regard to care or lack of care of either the customer or the bank," a customer who does not discover and report an unauthorized signature within one year "from the time of the statement" (three years for an unauthorized indorsement), "is precluded from asserting against the bank such unauthorized signature . . . ." This is to say that, assuming a customer does not comply with Section 4-406(1), but he does establish lack of ordinary care on the part of the bank, Section 4-406(3), the customer can recover only the amount of those forged checks which were returned to him during the year prior to discovery and report of the forgeries.

R.R.B.

ARTICLE 5: LETTERS OF CREDIT

SECTION 5-109. Issuer's Obligations to Its Customer

FAIR PAVILIONS, INC. v. FIRST NAT'L CITY BANK
264 N.Y.S.2d 255 (App. Div. 1965)

Plaintiff Pavilions contracted to construct a building for Exhibitions at the World's Fair. The contract contained a provision for termination should specified occurrences come to pass. Exhibitions then contracted with Willard, pursuant to which Willard had the defendant bank issue an irrevocable letter of credit in favor of plaintiff. The letter provided that the credit could be cancelled after a certain date on receipt by defendant of an affidavit issued by an officer of Willard "to the effect that one or more of the events described in . . . [the termination provision of the contract between plaintiff and Exhibitions] has occurred." Before the final payment had been made to plaintiff, defendant received an affidavit stating that " 'one or more of the events . . . have occurred,' " and notified plaintiff that the credit had been terminated. None of the specified occurrences had in fact come to pass. Plaintiff then commenced an action for damages resulting from the cancellation of the credit. Defendant, in turn, moved for summary judgment, which the lower court denied.

The Appellate Division granted defendant's motion on the ground that, under the terms of the letter of credit, defendant could cancel the credit merely on receipt of the affidavit without making an investigation as to its accuracy. The court, citing Sections 5-109 and -115, determined that, although the letter of credit was by its terms irrevocable, with the result plaintiff's consent to any modification of its terms would have been required, defendant could be held only to its engagement and was therefore empowered to terminate the credit upon receipt of the affidavit from Willard.

COMMENT

Although the court cited certain Code sections as applicable to the case, the result of the case could not be dependent upon these sections, since

all the transactions occurred before the effective date of the Code in New York.

H.A.H.

SECTION 5-115. Remedy for Improper Dishonor or Anticipatory Repudiation

FAIR PAVILIONS, INC. v. FIRST NAT'L CITY BANK
264 N.Y.S.2d 255 (App. Div. 1965)
Annotated under Section 5-109, supra.

ARTICLE 9: SECURED TRANSACTIONS

SECTION 9-203. Enforceability of Security Interest; Proceeds; Formal Requisites

CENTRAL ARK. MILK PRODUCERS ASS'N v. ARNOLD
394 S.W.2d 126 (Ark. 1965)

On July 17, 1964, plaintiff commenced an action of replevin to recover a vacuum tank, alleging that (1) on January 15, 1961, it sold the tank to defendant Minnick, retaining title thereto and taking a promissory note as evidence of defendant's debt; (2) defendant entered into a security agreement, and a financing statement had been filed on July 19, 1962; and (3) the balance of the note was due and defendant Arnold was in possession of the property. Plaintiff submitted the promissory note and financing statement which had been signed by Minnick and which stated it covered "a 500 gallon vacuum tank" but failed to introduce the security agreement. Miller then filed an intervention, contending that, prior to this action, he had purchased the real estate on which the tank was attached and that, at the time of the purchase, he had no notice of plaintiff's claim. The lower court entered judgment for the defendants and the supreme court affirmed.

In relevant part, the court stated: "Even if it can be said that the Uniform Commercial Code, which went into effect January 1, 1962, is applicable, . . . [plaintiff would not prevail] because the financing statement which was filed merely gave notice of the security agreement, and here the instrument relied on as a security agreement is simply a promissory note, nothing more. It does not purport to reclaim title or to create a lien."

P.F.B.