

COMMENT AND CASE NOTES

WHAT CONTRACTS TO GIVE A TRUST RECEIPT ARE EQUIVALENT TO TRUST RECEIPTS?

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When attempting to ascertain what contracts to give a trust receipt have been made by the Uniform Trust Receipts Act¹ equivalent in all respects to trust receipts, one finds the terms of section 4(1) somewhat obscure, giving the impression that with respect to this question the statute needs clarification. As it stands, section 4(1) of the act appears to make some, but not all, contracts to give a trust receipt, which are part of trust receipt transactions, equivalent in all respects to trust receipts.

If the subsection is intended to specify certain contracts to give a trust receipt which may be part of trust receipt transactions, and to make them, but not the others, equivalent in all respects to trust receipts, then, of course, the subsection may be open to no criticism other than as to the wisdom of so doing. If, on the other hand, the subsection is intended to make all contracts to give a trust receipt, which are part of trust receipt transactions, equivalent in all respects to trust receipts, one may well question whether its object will be realized under the terms of the act.

Section 4(1) of the Uniform Trust Receipts Act provides:

1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract, be equivalent in all respects to a trust receipt.

If this subsection is intended to make all contracts to give a trust receipt, which are part of trust receipt transactions as provided in section 2 of the act, equivalent in all respects to trust receipts, it seems that the terms of the subsection are not consistent with such purpose. In the first place, the subsection does not appear to apply to contracts to give a trust receipt made in connection with trust receipt transactions which may arise under the circumstances described in section 2(1)(b) of the act.

Section 2 of the Uniform Trust Receipts Act in part provides:

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¹ 9 U.L.A. 665.

1. A trust receipt transaction within the meaning of this act is any transaction to which an entruster and a trustee are parties, for one of the purposes set forth in Subsection 3, whereby

(a) the entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster (i) prior to the transaction has, or for new value (ii) by the transaction acquires or (iii) as the result thereof is to acquire promptly, a security interest; or

(b) the entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents² which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee;

provided that the delivery under paragraph (a) or the giving of new value under paragraph (b) either

(i) [be against a trust receipt], or

(ii) be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

According to section 2(1)(b), a contract to give a trust receipt may be part of a trust receipt transaction when the trustee has and retains possession of the instruments or documents, which are merely exhibited to the entruster, or to his agent in that behalf. Yet, under the terms of section 4(1), it appears that a contract to give a trust receipt shall be equivalent in all respects to a trust receipt only when it is made with reference to goods, documents, or instruments "*delivered* by the entruster to the trustee." Therefore, under such an interpretation, contracts to give a trust receipt which are part of trust receipt transactions involving circumstances described in section 2(1)(b), are not, under the terms of section 4(1), made equivalent in all respects to trust receipts.

It might be contended that the circumstances described in section 2(1)(b), out of which trust receipt transactions may arise, constitute in effect a pledge of the instruments or documents by the trustee, and a surrender of the pledged instruments or documents by the entruster to the trustee; and that the statute has merely eliminated, as needless acts, certain steps in the procedure. Under such an assumption, the surrender of the instruments or documents by the pledgee could be deemed a delivery of the instruments or documents by the entruster to the trustee, thereby meeting the requirements of section 4(1). If, however, such an interpretation is necessary in order that all contracts to give a trust receipt which are part of trust receipt transactions will be deemed equivalent in all respects to trust receipts, the need for clarification is at once obvious, for it not only calls unnecessarily for an interpretation of doubtful validity, but endan-

² It is immaterial for the purpose of this discussion whether, as here, the suggestion of the draftsman has been followed as to inserting "or documents."

gers uniformity of decisions, particularly in view of the fact that lack of delivery of the instruments or documents by the entruster to the trustee seems to be emphasized in section 2 of the act.

If section 4(1) is not intended to apply to contracts to give a trust receipt made in connection with trust receipt transactions under circumstances set forth in section 2(1)(b), but is intended to apply only to such contracts made in connection with trust receipt transactions under circumstances set forth in section 2(1)(a), it seems that the terms of the subsection are even inconsistent with this limited purpose. It appears that section 4(1) makes some of the contracts to give a trust receipt, but not all, which are part of trust receipt transactions as described in section 2(1)(a), equivalent in all respects to trust receipts.

According to Section 2(1)(a), contracts to give a trust receipt may be part of trust receipt transactions when goods, documents, or instruments are delivered by "the entruster or any third person" to the trustee. Yet, under the terms of section 4(1), it appears that contracts to give a trust receipt are deemed equivalent in all respects to trust receipts only when they are with reference to goods, documents, or instruments "delivered by the entruster to the trustee." Therefore, under such an interpretation, contracts to give a trust receipt which are part of trust receipt transactions when, as provided in section 2(1)(a), goods, documents, or instruments are delivered by a third person to the trustee, are not, under the terms of section 4(1), made equivalent in all respects to trust receipts.

If section 4(1) is not intended to apply to contracts to give a trust receipt which are part of trust receipt transactions when made in connection with circumstances described in section 2(1)(b) and when made in connection with a delivery of goods, documents, or instruments by a third person to the trustee, as described in section 2(1)(a), but is intended to apply only to such contracts when, under section 2(1)(a), a delivery of goods, documents, or instruments is made by the entruster to the trustee, it seems that the terms of the subsection are even inconsistent with this more limited purpose. It appears that section 4(1) makes some of the contracts to give a trust receipt, but not all, which are made when, under section 2(1)(a), there is a delivery by the entruster to the trustee, equivalent in all respects to trust receipts.

According to section 2(1)(b)(ii), a trust receipt transaction may arise, provided the delivery described in section 2(1)(a) be "pursuant to a prior or concurrent written and signed agreement of the trustee." Yet, under the terms of section 4(1), it appears that contracts to give a trust receipt shall be equivalent in all respects to trust receipts only "with reference to goods, documents or instruments thereafter delivered by the entruster to

the trustee." Therefore, under such an interpretation, contracts to give a trust receipt made concurrently with the delivery of goods, documents, or instruments by the entruster to the trustee, are not, under the terms of section 4(1), made equivalent in all respects to trust receipts.

Both Illinois³ and Indiana⁴ have made alterations in the phraseology of section 4(1) of the Uniform Trust Receipts Act. These changes do not, however, clarify the meaning of the subsection with respect to the points here raised. It seems that they are also open to the objections that they make contracts to give a trust receipt equivalent in all respects to trust receipts, when they are with reference to goods in the trustee's possession, which apparently includes "old possession," as distinguished from "new possession," with which the Uniform Trust Receipts Act is presumed to be concerned.

If section 4(1) is intended to make all contracts to give a trust receipt which are part of trust receipt transactions as provided in section 2, equivalent in all respects to trust receipts, it seems that the subsection should read:

1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments *concurrently or* thereafter delivered by the entruster *or any third person* to the trustee, *or with reference to instruments or documents exhibited to the entruster, or to his agent in that behalf, who gives new value to the trustee,* in reliance on such contract, be equivalent in all respects to a trust receipt.

It would be much better, however, if section 4(1) were changed to read simply and clearly as follows:

1. A contract to give a trust receipt, if made as part of a trust receipt transaction as described in Section 2, shall, with reference to such goods, documents or instruments, be equivalent, in all respects to a trust receipt.

If section 4(1) is not intended to apply to contracts to give a trust receipt which are part of trust receipt transactions under circumstances described in section 2(1)(b), it seems that the subsection should be changed to read:

1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to goods, documents or instruments *concurrently or* thereafter delivered by the entruster *or any third person* to the trustee in reliance on such contract, be equivalent in all respects to a trust receipt.

Here, also, it would be much better if section 4(1) were changed to read simply and clearly as follows:

1. A contract to give a trust receipt, if made as part of a trust receipt transaction under circumstances described in section 2(1)(a), shall, with reference to such goods, documents or instruments, be equivalent in all respects to a trust receipt.

³ Ill. Rev. Stat. (1943), c. 121½, § 169.

⁴ Ind. Stat. Ann. (Burns, 1933), § 51-604.

If, in addition to the foregoing limitation, section 4(1) is intended to impose two other limitations on contracts to give a trust receipt deemed to be equivalent in all respects to trust receipts, by making a distinction between the entruster and a third person with respect to delivery of goods, documents, or instruments, and by making a distinction between prior and concurrent contracts to give a trust receipt, which are part of trust receipt transactions, the terms of the subsection seem to be consistent with such purpose. Yet, there may be courts who, seeing no reason for making some, but not all, contracts to give a trust receipt, which are part of trust receipt transactions as prescribed by section 2, equivalent in all respects to trust receipts, will interpret the subsection contrary to this assumed object. Therefore, in order to avoid lack of uniformity of decisions, it would perhaps be better if a word or phrase be inserted to indicate that the limitations were not unintentional. For example, the insertion of "only" before "with" in section 4(1) might be sufficient to make it clear that the three apparent limitations in the subsection were not the result of inadvertence or oversight.