Boston College Law Review

Volume 3 | Issue 2 Article 5

1-1-1962

Article 1: General Provisions

Walter F. Weldon Jr

J Norman Baker

Stuart R. Ross

UNIFORM COMMERCIAL CODE ANNOTATIONS

This section contains a digest of all those decisions interpreting provisions of the Uniform Commercial Code included in the published reports of the National Reporter System from August 14, 1961, through December 15, 1961, and Volume 24 of the Pennsylvania District and County Reports, 2nd series. Also included in this issue's annotations are a few Kentucky Attorney General's Opinions. While the Code has been adopted in fourteen states, no decisions have been found other than from the Pennsylvania and Kentucky courts.

As in the past, Annotator's Comments have been added to significant annotations, analyzing, criticizing, commenting upon and extending a court's treatment of an issue or a section of the Code.

Where a decision interprets only a portion of a Code section, that portion is cited prior to the reported case. Appropriate notation is made concerning those decisions which are based upon language contained in the 1953 version of the Code to the extent that such language differs from the 1958 Official Text.

WALTER F. WELDON, JR.
J. NORMAN BAKER
STUART R. ROSS.

ARTICLE 1: GENERAL PROVISIONS

SECTION 1-201. General Definitions

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind. . . .

Taylor Motor Rental, Inc. v. Associates Discount Corp., Inc., 173 A.2d 688 (Pa. 1961).

Plaintiff purchased an automobile from a dealer who had previously executed a security agreement reserving title in the defendant. Defendant had perfected its interest by following proper Pennsylvania filing procedures. In an action of replevin, the court held that defendant's security interest is paramount to plaintiff's claimed right through the purchase since plaintiff was not a buyer in the ordinary course of business. Evidence established that the plaintiff and the dealer had interlocking officers, shareholders and employees; in particular that plaintiff's manager was dealer's operator and was principally involved in the instant transactions.

[*N.B.* This case was decided under the 1953 draft of the Code where the definition in Section 1-201(9) read: "Buyer in ordinary course

(Where a cited case interprets only a portion of a Code section only that portion is set out.)

of business means a person who buys goods in ordinary course from a person in the business of selling goods of that kind . . . ."]

[Annotator's Comment: Although the decision is correct, the court found little help from the 1953 draft of the Code in reaching the desired result. The 1959 amendment greatly strengthens the secured party's position in tripartite transactions such as this by requiring the buyer to proceed in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party.]

ARTICLE 2: SALES

SECTION 2-202. Final Written Expression: Parol or Extrinsic Evidence

Terms . . . set forth in a writing intended by the parties as a final expression of their agreement . . . may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (Section 1-205) or by course of performance (Section 2-208). . . .

Provident Tradesmens Bank and Trust Company v. Pemberton, 24 D.&C.2d 720, 173 A.2d 780 (Pa. 1961).

Defendant executed a security agreement with plaintiff which required that insurance be placed on the automobile collateral as a condition to making the loan. After paying a claim for damages sustained to the vehicle, the insurance company cancelled the coverage. The bank as loss payee was notified of the cancellation. Subsequently, the automobile was involved in another collision and was damaged irreparably. Defendant defaulted on the note and judgement was entered by confession.

In a per curiam decision affirming a decree to open judgement, the court held that evidence revealed that pursuant to the custom in the trade and a course of dealing between the parties, the bank as loss payee should have given notice to the defendant when the collision policy was cancelled so that he could protect himself.

Although the defendant, by written agreement, waived all notices whatsoever in respect to the agreement as well as those to which he might be entitled, the court opined that the waiver provisions were not sufficient to "carefully negate" the custom or usage and thus the usage was admissible as provided by the cited section.

[Annotator's Comment: In predicating its decision on Section 2-202, the court has overindulged the liberal parol evidence rule of the Code. This section provides that custom or usage may be used to *explain* or *supplement*, but *not* to *contradict* the agreement of the parties. Comment (2) to Section 2-202 states that "unless carefully negated," the customs and usages of the trade become terms of the contract. The court reasoned that the well established custom was not "carefully

(Where a cited case interprets only a portion of a Code section only that portion is set out.)