

4-1-1966

## Article 4: Bank Deposits and Collections

John F. Burke

Michael L. Goldberg

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



Part of the [Banking and Finance Law Commons](#), and the [Commercial Law Commons](#)

---

### Recommended Citation

John F. Burke & Michael L. Goldberg, *Article 4: Bank Deposits and Collections*, 7 B.C.L. Rev. 661 (1966),  
<http://lawdigitalcommons.bc.edu/bclr/vol7/iss3/18>

This Uniform Commercial Code Commentary 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](mailto:nick.szydowski@bc.edu).

husband would be unable to attend the settlement. She and a man posing as Mr. Jezemski then met with Mc Allister and Di Benedetto and executed a deed and the mortgage. Shortly thereafter, Mc Allister and Di Benedetto, accompanied only by Mrs. Jezemski, attended the settlement. The signed mortgage and deed were produced; the mortgagee handed over the amount of the mortgage; and the plaintiff delivered its check drawn on the defendant bank and made payable to Mr. and Mrs. Jezemski individually and Mr. Jezemski as administrator of his mother's estate. Mrs. Jezemski cashed the check which bore the forged indorsement of her husband, and the defendant charged the amount of the check against the plaintiff's account. Edmund Jezemski, upon learning of its existence, had the mortgage set aside and the fund advanced by the mortgagee returned to him.

Plaintiff commenced this action in assumpsit to recover the sum of \$15,650 charged against its account, alleging that since one of the indorsements had been forged, defendant should not have paid the check. The trial court found for the defendant. The supreme court affirmed on the ground that since plaintiff was induced to issue the check to Mrs. Jezemski by an impostor, the forged indorsement was effective under Section 3-405(1)(a) of the Code. The plaintiff then argued that the instant case was not within Section 3-405(1)(a) since the impostor never faced the plaintiff and directly induced the issuance of the check. The court rejected this argument, interpreting Section 3-405(1)(a) as applicable whenever the impostor induced the issuance of the check in the name of the payee, whether by mail, face-to-face or "otherwise."

M.L.G.

**SECTION 3-413. Contract of Maker, Drawer and Acceptor**

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, supra.

**SECTION 3-414. Contract of Indorser: Order of Liability**

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, supra.

**ARTICLE 4: BANK DEPOSITS AND COLLECTIONS**

**SECTION 4-201. Presumption and Duration of Agency Status of Collecting Banks and Provisional Status of Credits; Applicability of Article; Item Indorsed "Pay Any Bank"**

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, supra.

**SECTION 4-208. Security Interest of Collecting Bank in Items,  
Accompanying Documents and Proceeds**

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N  
213 A.2d 315 (N.J. Super. Ct. 1965)  
Annotated under Section 3-302, supra.

**SECTION 4-209. When Bank Gives Value for Purposes of  
Holder in Due Course**

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N  
213 A.2d 315 (N.J. Super. Ct. 1965)  
Annotated under Section 3-302, supra.

**SECTION 4-303. When Items Subject to Notice, Stop-Order,  
Legal Process or Setoff; Order in Which  
Items May Be Charged or Certified**

SUMITOMO SHOJI N.Y., INC. V. CHEMICAL BANK N.Y. TRUST CO.  
263 N.Y.S.2d 354 (Sup. Ct. 1965)  
Annotated under Section 4-402, infra.

**SECTION 4-402. Bank's Liability to Customer for  
Wrongful Dishonor**

SUMITOMO SHOJI N.Y., INC. V. CHEMICAL BANK N.Y. TRUST CO.  
263 N.Y.S.2d 354 (Sup. Ct. 1965)

Plaintiff, a judgment creditor of an individual debtor, caused a restraining notice to be served upon the defendant bank, specifying certain corporate bank accounts on the ground that these funds, while not in the debtor's name, represented a debt owed to the judgment debtor or property in which he had an interest. After receipt of the restraining notice, but prior to a judicial determination of the debtor's interest in the accounts, defendant honored checks drawn on these funds, thereby closing out the accounts. Plaintiff commenced this action for the damages sustained by defendant's failure to comply with the restraining order. The defendant answered that the restraining notice was unavailing against it since it was obliged to honor promptly all duly drawn checks or to render itself liable for wrongful dishonor under Sections 4-302 and -402.

The court found that the purpose of Section 5222 of the New York Civil Practice Law, under which the order was issued, is to prevent payment of the property specified in the restraining order until a court has the opportunity to determine the validity of the judgment debtor's interest in the account. Since this provision was enacted subsequent to the Code, the court held that a temporary dishonor of a customer's checks in compliance with such notice would not constitute a wrongful dishonor under Section 4-402. It concluded that if the person in whose name the account is kept should be injured by an unfounded specification in a restraining notice, he is provided with a statutory remedy against the creditor and need not proceed against the drawee bank for wrongful dishonor.

**COMMENT**

It seems that the Code also recognizes that a dishonor of a customer's checks in compliance with a restraining notice does not constitute a wrongful dishonor under Section 4-402. Section 4-303, while speaking negatively, specifically infers that a payor bank must respect any "legal process" seasonably served upon it. To this is added the positive statements of Comment 1 of this section that the payor bank "may have served on it an attachment of the account of the drawer . . ."; this event "affects the account of the drawer and may eliminate or freeze all or part of whatever balance is available to pay the item." Under Section 3-603, furthermore, the payor bank will not be discharged of its liability "to the extent of . . . [its] payment . . . to the holder" if prior to the payment, a person making a claim upon the amount of the account enjoins payment. See Section 3-603, Comment 3.

J.F.B.

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

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N  
213 A.2d 315 (N.J. Super. Ct. 1965)  
Annotated under Section 3-302, supra.

**ARTICLE 9: SECURED TRANSACTIONS**

**SECTION 9-201. General Validity of Security Agreement**

LYLES V. UNION PLANTERS NAT'L BANK  
393 S.W.2d 867 (Ark. 1965)  
Annotated under Section 1-105, supra.

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

CITIZEN & SOUTHERN NAT'L BANK V. CAPITAL CONSTR. CO.  
144 S.E.2d 465 (Ga. Ct. App. 1965)

Defendant's creditor assigned an account due from the defendant to the plaintiff bank as security for a loan. A written notice of the assignment was sent by the creditor and was accepted by the defendant. Plaintiff commenced this suit to recover on the account. The lower court sustained defendant's demurrer to the plaintiff's complaint, but the appellate court reversed, holding that under Sections 9-203, -204 and -302(1)(e) of the Code, the plaintiff had stated a cause of action. The court reasoned that the letter sent to the defendant by the creditor and accepted by the defendant constituted an assignment of the account, thus creating a security interest under Section 9-204. The court then determined that plaintiff's interest, since it was based on "an assignment of an account not embracing alone or in conjunction with other assignments to the same assignee, a significant part of the outstanding accounts or contract rights of the assignor," was perfected without filing under