

7-1-1965

## Article 8: Investment Securities

Mark L. Cohen

Ronald W. DelSesto

W Joseph Engler Jr

Gerald E. Farrell

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



Part of the [Securities Law Commons](#)

---

### Recommended Citation

Mark L. Cohen, Ronald W. DelSesto, W Joseph Engler Jr, and Gerald E. Farrell, *Article 8: Investment Securities*, 6 B.C.L. Rev. 795 (1965), <http://lawdigitalcommons.bc.edu/bclr/vol6/iss4/11>

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 administrator of Digital Commons @ Boston College Law School. For more information, please contact [nick.szydowski@bc.edu](mailto:nick.szydowski@bc.edu).

UNIFORM COMMERCIAL CODE ANNOTATIONS

court suggested, implied that where privity exists between the owner of the goods and the converter, the plaintiff can recover only his actual losses. Without discussing the merits of the point, the court noted that such privity may have existed in the instant case by virtue of Allied's having originally transferred some of the oil to the defendant.

It is submitted that the cases relied upon, neither of which involved documents of title, are irrelevant to the issue presented in the instant case. The court's conclusion would have rested on a less tenuous basis had it ignored the possibility of conversion and proceeded on the equally rational assumption that the problem was one of non-receipt covered by the damages provision of Section 7-203.

W.J.E., JR.

**SECTION 7-403. Obligation of Warehouseman or Carrier to Deliver; Excuse**

DAVID CRYSTAL, INC. v. CUNARD STEAM-SHIP CO.  
223 F. Supp. 273 (S.D.N.Y. 1963)  
Annotated under Section 1-201, supra.

NATIONAL DAIRY PRODS. CORP. v. LAWRENCE AM. FIELD WAREHOUSING CORP.  
225 N.Y.S.2d 788 (App. Div. 1965)  
Annotated under Section 7-203, supra.

**SECTION 7-404. No Liability for Good Faith Delivery Pursuant to Receipt or Bill**

DAVID CRYSTAL, INC. v. CUNARD STEAM-SHIP CO.  
223 F. Supp. 273 (S.D.N.Y. 1963)  
Annotated under Section 1-201, supra.

**ARTICLE 8: INVESTMENT SECURITIES**

**SECTION 8-301. Rights Acquired by Purchaser; "Adverse Claim"; Title Acquired by Bona Fide Purchaser**

GWATNEY v. ALLIED COMPANIES, INC.  
385 S.W.2d 940 (Ark. 1965)

The Great Security Life Insurance Company issued 150,000 shares of stock to Arkansas Memorial Gardens, Inc., taking in return a deed to 698 burial places. Arkansas Memorial then sold the shares to the defendant Harold Gwatney who had borrowed the purchase price from Tommy Russell, the president of Arkansas Memorial. The plaintiff, a substantial shareholder of Great Security, sought cancellation of the stock on the ground that its issuance was unauthorized by statute. The defendant Gwatney claimed that he was a good faith purchaser and that the stock could not be cancelled in his hands. At trial, he testified that before buying the stock he had

checked a financial statement of Great Security and that he had no intention of paying Russell if the judgment in the present case proved unsatisfactory to him. The lower court found that the issue was unauthorized, that at the time Gwatney bought the stock Great Security was insolvent, that Gwatney should have known of this since he had checked its financial statement, and that Gwatney was not a bona fide purchaser. It therefore found no reason not to order cancellation. On appeal, affirmed. In light of the definition of bona fide purchaser in Black's Law Dictionary, it could not be said that the lower court's finding was against the preponderance of the evidence. Gwatney not being a bona fide purchaser, he could not take advantage of Arkansas case law prohibiting cancellation in the hands of a bona fide purchaser. Section 8-301(2) was quoted verbatim by the court. That section provides: "A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim."

#### COMMENT

It is not clear from the court's opinion whether Section 8-301(2) was relied on or not. If it was, then the court would have done well to look to Section 8-302 for its definition of bona fide purchaser, instead of to Black's Law Dictionary. The test is the same but the statutory wording is obviously preferable.

Assuming that the Code is applicable, there is still a question whether the plaintiff's insistence that the stock be cancelled is the type of "adverse claim" contemplated by the draftsmen in Section 8-301(2). "Adverse claim" is not defined in the Code. Certainly, however, the plaintiff's claim is not adverse in the sense that he is claiming the defendant's stock as his own. In short, if the plaintiff's claim were considered to be something other than "adverse," the defendant could not take free of it under Section 8-301(2) even if he were a bona fide purchaser.

The court, in placing the burden of establishing bona fide purchase on the holder, adopted a rule similar to that in Section 3-307(3) for holders in due course. Once a defense is established, as here by plaintiff, the entire burden is on the holder.

G.E.F.

## ARTICLE 9: SECURED TRANSACTIONS

### SECTION 9-102. Policy and Scope of Article

JACOBS V. NORTHEASTERN CORP.

206 A.2d 49 (Pa. 1965)

Northeastern Corp. entered into two construction contracts, one with the General State Authority for the construction of a state building and the other with the Secretary of Highways for the construction of state roads. Each contract required Northeastern to furnish a performance bond and a bond for the payment of labor and materials, and each gave unpaid labor and materialmen a right of action against Northeastern and the sureties on