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Article 4: Bank Deposits and Collections

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SECTION 3-307. Burden of Establishing Signatures, Defenses and Due Course

UNIVERSAL C.I.T. CREDIT CORP. v. INGEL
196 N.E.2d 847 (Mass. 1964)
Annotated under Section 3-104, supra.

ARTICLE 4: BANK DEPOSITS AND COLLECTIONS

SECTION 4-202. Responsibility for Collection; When Action Seasonable

HYDROCARBON PROCESSING CORP. v. CHEMICAL BANK N.Y. TRUST CO.
209 N.E.2d 806, 262 N.Y.S.2d 482 (1965)

The defendant, a commercial bank, extended loans totaling \$750,000 to Cuban Electric Corp., a Florida company operating in Cuba. These loans matured in September 1958. In September 1959 the plaintiff deposited a sight draft in the amount of \$2,500 with the defendant for collection from the plaintiff's debtor-vendee in Cuba. Although the funds in payment of the draft reached a Cuban bank (Banco), they were transmitted to neither the defendant nor the plaintiff for lack of a permit from the Currency Stabilization Fund in Cuba. The defendant promptly notified the plaintiff of this impasse. The Cuban nationalization in 1960, which embraced both Banco and Cuban Electric Corp., rendered the collection from Banco virtually impossible. A month later the defendant received instructions from a depositor to credit Banco's account with \$38,600. The defendant complied and then on its own initiative charged the Banco account with the \$38,600 to offset the Cuban Electric Corporation's debt. It reasoned that Banco and the Cuban Electric Corp. were a single entity (Cuba) as a result of the nationalization. The plaintiff commenced this suit, alleging that the defendant, as plaintiff's collection agent, was obligated either to apply Banco's credit to its draft or to give notice of the credit so that it might act for itself. Plaintiff concluded that failure to do so made the defendant liable for the amount of the draft. The lower court agreed.

The court of appeals reversed, holding first that the propriety of defendant's appropriation of Banco's credit was irrelevant to the case and secondly, that the defendant had performed its statutory duties under both Section 5 of the Banking Collection Code (N.Y. Negotiable Instruments Law, Section 350-d) and Section 4-202 of the Code. It concluded that since the defendant had fulfilled its statutory requirements, under Section 4-202(3) of the Code it was not liable for Banco's default. The court then determined that the law levied no extra-statutory duties upon the defendant and that since it had received the new Banco credit in good faith, it was free to apply this credit for its own benefit without notifying the plaintiff.

COMMENT

The transactions which gave rise to this litigation all occurred prior to the date upon which the Code became effective in New York. See N.Y. Com-

mercial Code § 10-101. During the period in which the transactions took place, Section 5 of the Banking Collection Code was the applicable law. Thus, if the court were citing the Code as the controlling law, it was in error. However, the court may well have been adopting the provisions of Section 4-202 to supplement the rule of Section 5 of the Banking Collection Code; the former says, in essence, the same as the latter, except in more detail.

S.H.G.

ARTICLE 9: SECURED TRANSACTIONS

SECTION 9-102. Policy and Scope of Article

IN THE MATTER OF UNITED THRIFT STORES, INC.

242 F. Supp. 714 (D.N.J. 1965)

Redisco, Inc., financing agent for a manufacturer of home appliances, filed a financing statement with the Secretary of State of New Jersey covering appliances that were to be delivered to United Thrift Stores, Inc. (Thrift), a distributor. Thereafter, Redisco, Thrift and the manufacturer entered into four separate but identical agreements, each containing the following sections: (1) A bill of sale from the manufacturer to Redisco; (2) a promissory note from Thrift to Redisco; and (3) a trust receipt from Thrift to Redisco. The release amount of the trust receipts was fixed at the full amount of the promissory notes, and the terms of payment were set at ninety days or one-third at thirty, sixty and ninety days. Shortly after the execution of the four agreements, Thrift filed a Chapter XI petition in bankruptcy. Redisco, in turn, filed a petition for reclamation of the appliances, which the referee denied.

The district court reversed and held that Redisco had a valid security interest in the appliances and was thus entitled to reclamation. In reaching this result the court first decided that the trust receipts had created a valid security interest under Sections 1-201(37), 9-102(1)(a) and -102(2), and had met the requirements for a valid security agreement under Sections 9-105(1)(h), -201 and -203(1)(b). It then found that the financing statement was correctly filed under Section 9-401 and that the security interest had attached under Section 9-204(1) "when the agreements were made, value was given, and United Thrift received possession of the collateral."

The trustee contended that the security interest had not been perfected because the agreements had not been executed prior to the filing of the financing statement. The court, however, held otherwise, citing Sections 9-303(1) and -402(1) which provide that the steps for perfection may be taken prior to attachment and in such a case, perfection occurs on attachment. The court then concluded that because of Thrift's default, Redisco was entitled to repossession of the collateral or the proceeds thereof under Sections 9-306 and -503 and, because the perfection had preceded the bankruptcy, Redisco had priority over the trustee.

In a separate argument, the court also rejected the referee's argument that the terms of payment indicated that the sale had been on open account,