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Article 6: Bulk Transfers

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ARTICLE 4: BANK DEPOSITS AND COLLECTIONS

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

(1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

SECTION 4-404. Bank Not Obligated to Pay Check More Than Six Months Old.

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Doodan v. Szawlinsky, 197 Pa. Super. 600, 179 A.2d 661 (1962).

The insurer of the losing defendant in a trespass action issued its check for the amount of the policy, which was less than the judgment, payable to the judgment creditor. The judgment creditor refused to endorse it and his attorney in the trespass action brought suit against him and instituted attachment by garnishment proceedings against the insurer. The insurer pleaded payment by issuance of the check which was in the attorney's possession and which the attorney tendered to the insurer. Reversing the lower court, the Superior Court ordered judgment on the pleadings for the plaintiff. The court held that the check was at most conditional payment and, since over a year had elapsed from the time of issuance, the payor bank probably would not pay it because, under Section 4-404, it had no obligation to honor a check over six months old. The garnishee-insurer could stop payment under Section 4-403 for its own protection.

ARTICLE 6: BULK TRANSFERS

SECTION 6-104. Schedule of Property; List of Creditors.

(1) Except as provided with respect to auction sales (Section 6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

(a) the transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) the parties prepare a schedule of the property transferred sufficient to identify it; and

(c) the transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in (a public office to be here identified).

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

Macy v. Oswald, 182 A.2d 94 (Pa. Super. 1962).

Defendant agreed to purchase plaintiff's service station under an oral agreement. Defendant gave plaintiff a cash payment and a judgment note for the remainder. On the day that the station was turned over to defendant, the sheriff levied on various items connected with the service station under a judgment against seller, who paid the judgment shortly thereafter. Defendant attempted to rescind the contract and plaintiff refused. When the note came due, plaintiff obtained a judgment on the note. Defendant attempted to open judgment upon four grounds, three of which are not pertinent to this annotation. In the fourth ground, defendant argued that the parties had not complied with Section 6-104 of the Uniform Commercial Code. The court held that non-compliance with Section 6-104 will not justify rescission between the immediate parties unless the provisions of the section are made expressly a condition of the contract. Since defendant did not comply, he had no standing to complain.

SECTION 6-105. Notice to Creditors.

In addition to the requirements of the preceding section (Section 6-104), any bulk transfer subject to this article except one made by auction sale (Section 6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6-107).

Belber v. H. S. F., Inc., 26 Pa. D. & C.2d 796 (1961).

Plaintiff, a creditor of one defendant, filed an action in equity requesting the appointment of a receiver to take charge of property transferred between defendants in violation of Article 6 of the Uniform Commercial Code. Defendants argued that while under the Bulk Sales Act, in effect before the Uniform Commercial Code, plaintiff could bring an action in equity, the Uniform Commercial Code provides that a transfer without compliance with the terms of the act is ineffective against any creditor of the transferor with the result that plaintiff had an adequate remedy and must bring his action at law.

The court held that Section 6-105 does not change the remedies

of the creditor available under the prior Bulk Sales Act, and plaintiff was entitled to have a receiver appointed in a court of equity. The court quotes with approval language from the Official Comment to Section 6-105 to the same effect.

ARTICLE 9: SECURED TRANSACTIONS

SECTION 9-102. Policy and Scope of Article.

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

Hartford Acc. & Indem. Co. v. State Pub. School Bldg. Authority, 26 Pa. D. & C.2d 717 (1962).

See Annotation to Section 9-204, *infra*.

SECTION 9-103. Incoming Goods Already Subject to a Security Interest.

(3) If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. . . .

In the Matter of Dumont-Airplane and Marine Instruments, Inc., 203 F. Supp. 511 (S.D.N.Y. 1962).

Borrower received money from lender on July 21, 1955, with payment secured by a chattel deed of trust on borrower's equipment in West Virginia which was filed and properly recorded under West Virginia law.

During March, April, and May, 1958, the equipment was removed to Clearfield City, Pennsylvania, and lender filed the chattel deed of trust with the prothonotary of Clearfield County, Pennsylvania. On October 31, 1958, borrower filed a petition for reorganization under Chapter X of the Bankruptcy Act. The court approved the petition and ordered all tangible assets of the borrower to be sold and secured creditors to be paid in full.