North Dakota Law Review

Volume 40 | Number 3 Article 7

1964

Bills and Notes - Crediting Proceeds - Conditional Credit Not Sufficient for Value

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RECENT CASES

BILLS AND NOTES—CREDITING PROCEEDS—CONDITIONAL CREDIT NOT SUFFICIENT FOR VALUE—Plaintiff, a recipient of a dishonored check, having received it from the endorser as additional credit upon a pre-existing debt, brought action against the maker claiming to be a "holder in due course,"[1] thus immune to all personal defenses as between the maker and the endorser.[2] The Supreme Court of Iowa *held*, four judges dissenting, that the recipient of the dishonored check who extended additional credit in exchange for a note due, had not given sufficient "value"[3] to qualify as a "holder in due course for value".[4] *Peterson v Modjeska*, 125 N.W.2d 751 (Iowa 1964)

It is well settled under the Uniform Negotiable Instruments Act that an antecedent or pre-existing debt constitutes value[5] and the transfer of a negotiable paper, in payment of or as collateral security for a pre-existing debt is a transfer for value.[6] Generally recognizing the issuance of a check to a holder for credit on an antecedent debt to be for value, the majority of jurisdictions require the credit to be absolute.[7] When there is no passing of new consideration, change in the holder's position, or diminishing of the debt, the crediting of the antecedent debt has been held by the majority to be merely provisional.[8]

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1. IOWA CODE ANN. § 541.52 (1950) N.D. CENT. CODE § 41-05-02 (1960) UNIFORM COMMERCIAL CODE § 3-302.

2. IOWA CODE ANN. § 541.57 (1950) N.D. CENT. CODE § 41-05-07 (1960) see UNIFORM COMMERCIAL CODE § 3-305.

3. IOWA CODE ANN. § 541.25 (1950) N.D. CENT. CODE § 41-03-02 (1960), see UNIFORM COMMERCIAL CODE § 3-303.

4. IOWA CODE ANN. § 541-26 (1950) N.D. CENT. CODE § 41-03-03 (1960), see UNIFORM COMMERCIAL CODE, *supra* note 3.

5. Sasner v. Ornsten, 93 Cal. App. 467, 209 P.2d 44 (1949) Kelso & Co. v. Ellis, 224 N.Y. 528, 121 N.E. 364 (1918).

6. J. I. Porter Lumber Co. v. Bonner, 172 Ark. 828, 290 S.W 606 (1927) State Bank of Halstad v. Bilstad, 162 Iowa 433, 136 N.W.204 (1912) Ahern v. Towle, 310 Mass. 695, 39 N.E.2d 561 (1942). The same rule applies to non-negotiable notes.

7. Atkinson v. Englewood State Bank, 141 Col. 425, 348 P.2d 702 (1960) Boston-Continental Nat'l Bank v. Hub Fruit Co., 285 Mass. 187, 189 N.E. 89 (1934) Bankers Trust Co. v. Nagler, 16 App. Div. 477, 229 N.Y.S.2d 142 (1962).

8. People's Fin. & Thrift Co. of Pomona Valley v. Matthews Fruit Co., 104 Cal. App. 630, 286 Pac. 710 (1930), Trevisol v. Fresno Fruit Growers' Co., 195

The problem is that while a creditor does not alter his position, but becomes a holder for value by taking a third party's note as additional security for a pre-existing debt, free from any defenses between prior parties, he may not receive and apply a check in the same manner and maintain the status of a holder for value.

It is not doubted that a check, when dishonored, becomes a promissory note and the maker is liable.[9] There is no presumption when a check is passed to a creditor in payment of a debt due that it is accepted as complete or partial extinguishment of the obligation;[10] only that it will become absolute on the honoring of the instrument.[11] The Uniform Negotiable Instruments Act does not specify under what circumstances an antecedent debt will constitute value,[12] nor does it make any provision for conditional credit.[13]

The principle case has reached back fifty-six years to re-vitalize a limited decision which does not appear to have been previously followed in the Iowa courts.[14] The Uniform Negotiable Instruments Act should be broad in scope, not limited to circumstances where the instrument is tendered for absolute credit.[15] The dissenting judge's opinion that the court should follow the "modern trend as to negotiable instruments",[16] is supported in cases from various jurisdictions.[17]

The Uniform Commercial Code appears to recognize the problem and give support to modern decisions by separating consideration from value, and expressing value as collateral

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Iowa 1377, 192 N.W 517 (1923) Franklin Washington Trust Co. v. Jaeger, 282 App. Div. 1067, 126 N.Y.S.2d 620 (1953).

9. Patterson v. Oakes, 191 Iowa 78, 181 N.W 787 (1921).

10. Fair Loans v. Wilkinson, 211 Md. 216, 126 A.2d 851 (1956).

11. 6 WILLISTON & THOMPSON, WILLISTON ON CONTRACTS § 1875F (Rev. Ed. 1958).

12. Commercial Nat'l Bank v. Citizens' State Bank, 132 Iowa 706, 109 N.W 198 (1908).

13. Atkinson v. Englewood State Bank, *supra* note 7.

14. *Supra* note 12.

15. Ahern v. Towle, *supra* note 6.

16. Peterson v. Modjeska, 125 N.W.2d 751, 757 (Iowa 1964).

17. Merced Sec. Sav. Bank v. Bent Bros., 279 P 765 (Cal. 1929) Ahern v. Towle, *supra* note 6 Fair Loans v. Wilkinson, *supra* note 10 Citrin v. Tansey, 107 N.J.L. 368, 153 Atl. 523 (1931).

security given for an antecedent debt requiring no concessions from the holder [18]

North Dakota, although having no case law on similar factual situations, appears to follow the majority view that conditional credit alone is insufficient for value.[19] "The law should be progressive; it should advance with changing conditions. It should also correct trends proceeding from unsound results."[20] By accepting the view of the principle case North Dakota courts would be providing justice to those persons who deal with checks daily and apply them as payments and credits.

HARLAN K. HOLLY

NEGLIGENCE—CARE AS TO TRESPASSERS—LIABILITY OF LANDOWNER FOR MERE PASSIVE NEGLIGENCE—The two and one-half year old plaintiff was severely injured in a fall from an apartment window enclosed by a defective screen. When injured he was living with the tenant contrary to the terms of the tenant's lease with the defendants. This arrangement was neither known to the defendants, nor in any way consented to by them. The lease required the defendants to make all repairs except those necessitated by damage caused by the tenants. The United States Court of Appeals, D.C. Cir., *held*, one judge dissenting, that although the plaintiff was a trespasser as a matter of law, and the defective screen was a static condition, the plaintiff was well within the range of foreseeability in terms of those persons to whom injury might result from an unsafe screen. The terms of the lease were not the outer limits of the defendants' vision. The dissenting judge held that under the circumstances, the defendants owed the plaintiff no duty with respect to the screens since he was plainly a trespasser *Gould v DeBeve*, 330 F.2d 826 (D C. Cir 1964)

This case represents a trend toward increasing a land-

18. UNIFORM COMMERCIAL CODE § 3-408.

19. See Dakota Transfer & Storage Co. v. Merchants Nat'l Bank & Trust Co., 86 N.W.2d 639 (N.D. 1957).

20. Phillips v. Foster, 252 Iowa 1076, 109 N.W.2d 604 (1961).