on the ground that the defendant had stopped payment. The plaintiff brought an action to recover the amount of the check and moved for summary judgment. In granting the motion, the court acknowledged that under Section 4-403(1) a customer may stop payment and that under Section 4-104(1)(e) a "customer" includes "a bank carrying an account with another bank." However, in this case the defendant could not stop payment because it "had no stake in the transaction whatsoever." The purpose in permitting payment to be stopped is to protect either an actual party to an underlying transaction (the depositor) or the bank on which the check is drawn. The defendant fell within neither class. Moreover, Section 3-802(1)(a) supported the holding. Under that section, the depositor's underlying obligation to the plaintiff was pro tanto discharged when the plaintiff took in satisfaction of that obligation a check drawn by a bank which did not contain a right of recourse against the underlying obligor. Consequently, if the defendant-bank were not liable, the plaintiff would have no enforceable rights under the Code. Such a result could not be tolerated since the Code was enacted to protect persons engaged in business transactions involving instruments for the payment of money.

COMMENT

The opinion does not state the reason why the bank stopped payment; however, it is reasonable to assume that it did so on instruction from its depositor, the car buyer. In this respect it should be noted that under Section 3-306(d) the bank could not, as a general rule, have successfully interposed a defense or claim belonging to its depositor. The only defenses belonging to its depositor which it could have interposed are (1) that the check was stolen, or (2) that payment or satisfaction would be inconsistent with a restrictive indorsement.

R.G.K

ARTICLE 7: DOCUMENTS OF TITLE

SECTION 7-203. Liability for Non-Receipt or Misdescription

National Dairy Prods. Corp. v. Lawrence Am. Field Warehousing Corp.

255 N.Y.S.2d 788 (App. Div. 1965)

The defendant (hereinafter Field) was a field warehouseman for Allied Crude Oil Refining Company. The plaintiffs are holders of non-negotiable warehouse receipts issued to them or their predecessors in interest by the defendant in conjunction with the deposit of large quantities of soybean oil. Four of the plaintiffs are holders of diverse security interests in the oil; the remaining two are direct shippers of the oil. Subsequent to the issuance of the receipts the defendant transferred its assets, including the oil, to a second bailee. The receipts were dishonored after this transfer when it was discovered that the oil had mysteriously disappeared. No explanation has been offered by either party of the loss of the oil.

The plaintiffs were awarded summary judgments at trial on the question of Field's liability. From this judgment Field appealed. The lower court limited the recovery of damages to the actual losses sustained by each of the plaintiffs. From this assessment of damages the plaintiffs cross-appealed.

At the outset the appellate court rejected the defendant's contention that by virtue of the plaintiffs' acquiescence in the transfer of assets to the second bailee a novation in the bailment contract was effected relieving the defendant of all liability. The court said that the implied consent of the plaintiffs to the transfer may have estopped them from contending that it constituted a conversion of the goods, but it did not relieve Field of its primary responsibility on the receipts issued by it absent a showing of intent by the plaintiffs to discharge Field. This intent, the court indicated, had to be established by more than a "simple act of delegation, notice to the bailor, failure of the obligee to object, and even acceptance of part performance from the new obligor."

Because the transactions occurred in New Jersey, that state's law was said to control. New Jersey law raises a presumption of negligence when the bailee is unable to deliver the bailed goods, and requires the bailee to come forward with evidence of due care. Pleading total ignorance, as the defendant in effect did, was insufficient, said the court. The defendant Field was therefore liable for the dishonor of the receipts.

With respect to the amount of damages, the court first had to determine what in fact happened to the oil. If the oil in question had never been delivered to the defendant, those relying on the receipts issued for it would be entitled under Section 7-203 to recover the amount of damages they actually sustained. On the other hand, if delivery had been made, a conversion would be deemed to have occurred, and under the general rule of *Einstein v. Dunn*, 61 App. Div. 195, 70 N.Y.S. 520 (1901), aff'd on opinion below, 171 N.Y. 648, 63 N.E. 1116 (1902), the bailee would be liable for the full value of the bailed goods. However, there were exceptions to this general rule, and under them, even if there were a conversion, the plaintiffs would be able to recover only the amount of damages actually sustained, not the face amount of the receipts. Two New York cases were cited as precedent for the exceptions. In addition, the court cited the inherent inequity in requiring the defendant to pay the face amounts of the receipts to the plaintiffs, who would then remit the difference between that and their actual losses to Allied, who the defendant insists was the perpetrator of the original fraud.

The two direct shippers were to recover the contract price of the oil minus marginal payments received from Allied. In no event was the recovery to exceed the market price of the oil on the date of dishonor or the date on which the plaintiffs learned of defendant's intention to dishonor. The remaining plaintiff's were allowed to recover the amount of indebtedness secured by the oil but, again, recovery could not exceed the value of the oil on the date of dishonor or the date the intention to dishonor was learned.

In the course of its opinion the court noted that if the receipts were negotiable and issued in part for nonexisting oil, then, under Section 7-207(2), the holders of the receipts would be owners of a pro rata share of existing oil and entitled to sue in conversion for the wrongful failure to deliver that share on demand. However, in the case at hand, the receipts were non-negotiable; hence the section was inapplicable.

COMMENT

1. Under Section 7-403 a bailee is, as a general rule, obligated to deliver bailed goods to the person entitled under the document to receive them. However, there are enumerated instances when this obligation does not exist, as, for example, when there has been

> damage to or delay, loss or destruction of the goods for which the bailee is not liable [but the burden of establishing in such cases is on the person entitled to the document]. . . . Section 7-403 (1)(b).

The bracketed language, which is optional, refers to the federal rule in interstate carrier cases. Under this rule, the burden of proving negligence is on the one claiming under the document but inability to deliver the goods raises a presumption of negligence requiring the bailee to come forward with evidence of due care. The New Jersey Code does not contain the optional language, but since New Jersey case law is consistent with the federal rule, its absence is irrelevant.

2. Under Section 7-203, if the bailee does not receive, or if he misdescribes, goods for which he issues a document of title, he is liable to a good faith purchaser relying thereon. The extent of his liability, as Section 7-203 makes clear, is the actual damages suffered by the purchaser. However, the extent of liability for *conversion* of bailed goods is nowhere set out in the Code, being left by implication to local law. In the instant case, the court noted that the general rule with respect to conversion, followed in New York, permits the person entitled under the document to recover the value of the goods represented by the document. The court held, however, that even assuming a conversion, the bailee would be liable only for the losses actually sustained by the plaintiffs. In reaching this conclusion the court was probably moved by a premise that in light of the peculiar circumstances surrounding Allied's operations, the defendant should not be made to suffer maximum liability. Indeed, the court's use of New York cases as precedent, and especially its reliance on *Davis v. Bliss* and *Parish v. Wheeler* as exceptions to the general rule that the value of the goods is the correct measure of damages, demonstrates the lengths to which it was willing to go in order to reach the desired result. *Davis v. Bliss*, 187 N.Y. 77, 79 N.E. 851 (1907) held that a mortgagee in a suit for conversion against the agent of the mortgagor could recover only the value of his interests, *i.e.*, the full value of the goods minus the mortgagor's equity therein. *Parish v. Wheeler*, 22 N.Y. 494, is an 1860 case holding that the vendor in a conditional sales contract can recover only the unpaid balance of the purchase price from the transferee of the vendee. This case, the

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