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# Negotiable Instruments

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## NEGOTIABLE INSTRUMENTS

### FORGERY OF PAYEE'S ENDORSEMENT—RIGHT OF COLLECTING BANK TO RECOVER FROM PRIOR ENDORSER BEFORE REIMBURSING DRAWEE

*Louisiana. Fidelity National Bank of Baton Rouge v. Vuci*[1] involved the question of a cashing bank's right to recover against a prior endorser before making actual reimbursement to the drawee bank for money received on checks bearing forged endorsements. The drawer made seven checks payable to a corporation, but the payee's endorsements were forged by one of its employees who cashed the checks with the defendant. Thereafter the defendant endorsed the checks to the plaintiff bank and received payment for them. The plaintiff bank, under its endorsements guaranteeing all prior endorsements, forwarded the checks to the several drawee banks, receiving the sums due thereon. Upon discovery of the forgeries the drawee banks credited the drawer's account and made demand on the plaintiff for reimbursement under its endorsement; but, at the time of the suit, the plaintiff had not made the reimbursement. However, the lower court allowed the plaintiff to maintain the suit and rendered judgment in its favor.

In affirming the decision of the lower court, the supreme court reasoned that since the plaintiff acquired possession after the forged endorsements of the payee, it could not be a "holder" within the meaning of that word in the Negotiable Instruments Law.[2] Therefore, it was not entitled to bring suit on the checks. However, the court ruled that the plaintiff did have a cause of action against the defendant based upon any one of several well established theories, viz., vendor's warranty,[3] endorser's warranty,[4] or money paid under mistake of fact.[5]

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[1] 224 La. 124, 68 So. 2d 781 (1953).
[2] 2 LA. REV. STAT. (West, 1951) §§ 7:1, 51, 66, 191.
[3] BRITTON, BILLS AND NOTES (1943) § 139.
[4] Main Street Bank v. Planters' Nat. Bank, 116 Va. 137, 81 S. E. 24 (1914).
[5] BRITTON, *op. cit. supra* note 3, § 139.

Of particular interest was the court's answer as to whether the cashing bank should be allowed to maintain an action without first reimbursing the drawees. In answering the question in the affirmative, the court reasoned that the plaintiff was "powerless" to resist the demands of the drawee banks for reimbursement. Inability to resist was considered tantamount to payment and had the effect of giving the plaintiff the interest necessary to maintain the action. The court rejected as being technical and dilatory the defendant's contention that until reimbursement was made, the collecting bank had suffered no loss and was not entitled to maintain the suit. Since a demand had already been made by the drawee banks and the checks surrendered to the collecting bank, the court concluded that under the facts of the case there was no question of the collecting bank's ultimate liability to the drawees.

If the checks did not discharge the drawer's debt to the payee, the court's decision and reasoning were surely correct. The court seemed to assume such a situation since there was no mention of authority on the part of the payee's employee who forged the payee's endorsement to receive the checks and to discharge the drawer's debt to the payee. This was the principal problem in the often criticized[6] Texas case of *Strickland Transportation Co. v. First State Bank.*[7] In that case it was considered that the payee had no cause of action in its own right against the drawee bank nor a cause of action as assignee of the drawer. It was considered that the drawer's obligation to the payee was discharged; hence, the drawer could show no damage from the drawee's payment of the check; therefore, the drawer had no cause of action against the drawee bank which it could assign. A logical conclusion, if the theory of the *Strickland* case is followed, would be that since the drawee is not liable to the drawer, the drawee would have no basis for recovery against the collecting bank and the latter bank

[6] See Notes, 4 Ark. L. Rev. 219 (1950), 1 Baylor L. Rev. 351 (1949), 21 Miss. L. J. 156 (1949), 3 Southw. L. J. 339 (1949), 27 Tex. L. Rev. 713 (1949); Corker, *Risk of Loss from Forged Indorsement,* 4 Stan. L. Rev. 29, 37 (1951).

[7] 147 Tex. 193, 214 S. W. 2d 934 (1948).

could not maintain a suit against a prior endorser.

Though it may be argued that in a particular case it is uncertain whether any loss will result to the collecting bank, it is submitted that under the facts of this case the decision lends a practical aspect to the law of negotiable instruments.

## NOTICE OF ACCOMMODATION CHARACTER OF CORPORATION NOTE

*Texas.* The principal issue in *Citizens Bridge Co. v. Guerra*[8] concerned the liability of the Bridge Company upon promissory notes executed in its name and delivered to Guerra for the sole purpose of satisfying personal debts owed Guerra by F. N. Garcia, president and a director of the Bridge Company. The notes in question were signed by Rafael Garcia, treasurer of the Bridge Company and son-in-law of F. N. Garcia, and by Santos, secretary of the Company, and were made payable to the Viguera Banking Company. The latter Company was unincorporated and owned solely by F. N. Garcia. Both the trial court and the court of civil appeals permitted Guerra to recover from the Bridge Company as holder of the notes.

The judgments of the lower courts on this issue were affirmed by the supreme court. The court recognized that the notes were executed solely for the accommodation of F. N. Garcia to be used to discharge his personal indebtedness and that the Company had no power to execute the notes for this purpose. The court stated that if Guerra had no knowledge of the accommodation character of the note, either actual or constructive, the Company would be liable.[9] The court then analyzed the fact situation in order to determine whether Guerra had notice.[10]

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[8] .....Tex.....,  258 S. W. 2d 64 (1953).

[9] The court observed that TEX. REV. CIV. STAT. (1948) art. 5933, § 29, which states that an accommodation party is liable even if the holder knows of the accommodation character of the instrument, is not applicable to a corporate accommodation party. 258 S. W. 2d at 68, 69.

[10] Only the highlights of the court's analysis are mentioned here. The entire opinion is well worth reading.

The court stated that there was no reason to disturb the finding that Guerra had no actual knowledge of infirmities in the notes or knowledge of such facts that his action in taking the notes amounted to bad faith. The court also concluded that the information on the face of the notes, standing alone, was not such as to charge Guerra with constructive knowledge of their accommodation nature. It held that the notes did not fit into any of the three categories of corporate commercial paper, otherwise regular on its face, which give a taker constructive notice of want of authority to negotiate them in settlement of a personal debt. [11]

The legal standards by which the mala fides of Guerra should be measured in determining whether his action in taking the notes amounted to bad faith as a matter of law were set forth, and it was concluded that Guerra was not guilty of bad faith as a matter of law. This portion of the case is a clear and composite review of the rules of law applicable in determining the existence or nonexistence of bad faith and is deserving of attention. It is not clear from the opinion whether the court arrived at its result on the theory that there was a third party introduced in the transaction (the Viguera Banking Company), which insulated Guerra so as to enable him to take without notice of the accommodation character of the note;[12] or whether the court was following the Massachusetts rule, codified in the Fiduciaries Act, [13] which holds that if a note is made directly to the creditor, there is notice, but if it is made

[11] The categories listed by the court were: (1) Where the paper is payable to the corporation, or to an officer or agent of the corporation as such, and is endorsed by the officer or agent and delivered in payment of his personal debt; (2) Where the instrument is drawn on or executed in the name of the corporation by the officer or agent and is delivered in satisfaction of the personal debt; and (3) where the paper is drawn on or executed in the name of the corporation by the officer or agent, payable to the officer or agent, and is delivered in satisfaction of the personal debt. 258 S. W. 2d 64, 69. See also BRITTON, BILLS AND NOTES (1943) §§ 115 and 116.

[12] BRITTON, BILLS AND NOTES (1943) § 116, p. 486.

[13] In Massachusetts a distinction has been drawn between the situation where the instrument is made payable by the defaulting fiduciary directly to his creditor, and the situation where the defaulting fiduciary first makes the instrument payable to his own order and then negotiates to his personal creditor. This is codified in §§ 5 and 6 of the Fiduciaries Act. 9A U.L.A. 19-23.

to an agent and then endorsed by him to the creditor, there is no notice. [14] It appears that the latter rule could have been the basis for the decision, for the Banking Company was in actuality the "alter ego" of Garcia.

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[14] BRITTON, BILLS AND NOTES (1943) § 116.