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Erratum

On page 194, footnote 16 should have given as primary authority: N.Y. U.C.C. § 4-303(1)(a). On page 196, lines 6-7 which read: The Uniform Commercial Code implies that . . . Should have read: The Uniform Commercial Code expressly states that . . .

RECENT CASES

may be able to obtain relief by removal to, and change of venue in the Federal courts.¹²¹ The specter of remaining due process restrictions should not be too quickly invoked to make the plaintiff's task unreasonably difficult or expensive.¹²² It must be remembered that there is a point at which the denial of a nearby forum to the injured plaintiff is offensive to "traditional concepts of fair play and substantial justice."¹²³

DOUGLAS C. DODGE

COMMERCIAL LAW—UNIFORM COMMERCIAL CODE—DRAWER-BANK OF TELLER'S CHECK CANNOT STOP PAYMENT WHEN NOT PARTY TO UNDERLYING TRANSACTION

Carole Kuebler purchased a teller's check from the drawer Savings Bank. The check was in the sum of \$450 payable to the order of payee Malphrus and drawn on the Commercial Bank. Payee Malphrus received the check in part payment for an automobile delivered to Miss Kuebler. Drawer Savings Bank stopped payment on its teller's check upon the request of Miss Kuebler. When payee Malphrus presented the check to the Commercial Bank, payment was refused due to drawer Savings Bank's stop order. Payee Malphrus sued the drawer Savings Bank for the amount of the check. The court *held* that where a bank issued a teller's check payable to a seller and received consideration for the check from the buyer, the check was considered a certified check and payment could not be stopped by the bank. *Malphrus v. Home Savings Bank*, 44 Misc. 2d 705, 254 N.Y.S.2d 980 (Albany County Ct. 1965).

Generally, an ordinary check is taken as conditional payment of an underlying obligation.¹ It does not operate as an assignment of funds in the hands of a drawee bank available for its payment, and the drawee bank is not liable on a check until accepted.² A drawer of a check is not discharged on an underlying debt until a seller or creditor presents a check to a drawee bank and the check is accepted³ or paid.⁴ Since delivery of an ordinary check does not constitute absolute payment nor discharge of a drawer, a drawer may stop payment on the check.⁵ Payment may be stopped for any valid reason⁶ if timely notice is given

121. Assuming requisite jurisdictional amount is involved; see 28 U.S.C.A. §§ 1441, 1404(a), 1406(a). In light of the typical injuries in the cases involved herein, this assumption seems warranted.

122. See Jesmer, *Recent Decisions Affecting* § 17, 48 Ill. Bar Jour. 132 (1959).

123. *Milliken v. Meyer*, 311 U.S. 457, 463 (1940); quoted with approval in *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

1. See *Carroll v. Sweet*, 128 N.Y. 19, 27 N.E. 763 (1891); *Burkhalter v. Second Nat'l Bank*, 42 N.Y. 538 (1870); 1 Paton, *Digest of Legal Opinions* 1091 (1940).

2. N.Y. Uniform Commercial Code (hereafter referred to as U.C.C.) § 3-409(1).

3. "Acceptance is the drawee's signed engagement to honor the draft as presented." N.Y. U.C.C. § 3-410(1).

4. See N.Y. U.C.C. § 4-213(1) for determination of when an item is finally paid.

5. *Florence Mining Co. v. Brown*, 124 U.S. 385, 391 (1888); see *Glennan v. Rochester Trust & Safe Deposit Co.*, 209 N.Y. 12, 16, 102 N.E. 537, 539 (1913).

6. Generally, payment is stopped because of fraud or failure of consideration in the

to the drawee bank.⁷ Until an ordinary check is accepted or paid, payment is conditional and can be stopped.

A teller's check represents an exception to this general rule of conditional payment, it being likened to a certified or cashier's check.⁸ A cashier's check is a bill of exchange drawn by a bank on itself and accepted in advance by the act of its issuance.⁹ The bank acts as both drawer and drawee and becomes absolutely liable for payment at the time of its issuance.¹⁰ It is generally stated that payment cannot be stopped on a cashier's check.¹¹ Under the common law, payment could be stopped on an ordinary check certified at the request of a drawer as against the payee.¹² Payment could not be stopped, however, on a check certified at the request of the payee or holder.¹³ This distinction was nullified in 1944 when an addition to the New York Negotiable Instruments Law¹⁴ made null and void any attempt to stop payment of certified checks. As of September 27, 1964 the New York Negotiable Instruments Law was repealed by the Uniform Commercial Code.¹⁵ Nevertheless, the Code continues the rule of no stop payment with respect to certified checks.¹⁶

The instant case represents one of the first New York cases to be governed by the Uniform Commercial Code. The Code is not explicit on the issue of stop payment, but the court employs section 3-802 of the Code to support a policy conclusion. Relying first on sections 4-403(1)¹⁷ and 4-104(1)(e)¹⁸ the court concludes that a bank as drawer may stop payment on a check. A teller's check, however, presents a legal distinction. The court declares that unlike an

transaction in which the check was given, or because the instrument itself is lost, strayed, or stolen. See 20 U. Chi. L. Rev. 667, 668 (1953).

7. N.Y. U.C.C. § 4-403(1).

8. See *Hannon v. Alleghany Bellevue Land Co.*, 44 Pa. Super. 266, 273 (1910), where a teller's check is defined: "For all practical purposes in modern mercantile transactions a teller's check is but a substitute for a certified check and much more closely resembles it than it does a bill of exchange, strictly speaking, and . . . it is none the less a check because drawn by an executive officer of the bank upon the institution he serves." In the instant case the teller's check is not drawn on the drawer Savings Bank because savings banks in New York State are not permitted to draw checks on themselves. (See N.Y. Banking Law § 234 as to the general powers of savings banks and N.Y. Banking Law § 238(3) as to regulations and restrictions on repayment of deposits.) For all other purposes, a teller's check in New York is similar to a certified or cashier's check.

9. In the *Matter of Bank of United States*, 243 App. Div. 287, 291, 277 N.Y. Supp. 96, 100 (1st Dep't 1935); *accord*, *Kohler v. First Nat'l Bank*, 157 Wash. 417, 289 Pac. 47 (1930); *Walker v. Sellers*, 201 Ala. 189, 77 So. 715 (1918).

10. See in the *Matter of Bank of United States*, *supra* note 9.

11. *Bobrick v. Second Nat'l Bank*, 175 App. Div. 550, 553, 162 N.Y. Supp. 147, 149 (1st Dep't 1916).

12. See *Welch v. Bank of the Manhattan Co.*, 264 App. Div. 906, 35 N.Y.S.2d 894 (2d Dep't 1942).

13. See *Carnegie Trust Co. v. First Nat'l Bank*, 213 N.Y. 301, 305, 107 N.E. 693, 694 (1915).

14. N.Y. Sess. Laws 1944, ch. 537, § 1.

15. N.Y. U.C.C. § 10-102(1).

16. See N.Y. U.C.C. § 4-403, official comment 5 which refers to U.C.C. §§ 3-411 and 4-303 as authority for the statement that there is no right to stop payment after certification.

17. "A customer may by order to his bank stop payment of any item payable for his account. . . ."

18. "'Customer' means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank."

ordinary check situation the drawer (Savings Bank) here is not a party to the underlying transaction.¹⁹ It states that certified checks bear a similar characteristic. The court relies on section 3-802(1) of the Code²⁰ as support for the legal consequences of this similarity. Under section 3-802(1) the underlying obligor (Miss Kuebler) is discharged on her underlying obligation. Then if the drawer Savings Bank is not liable on the check, the court reasons that the payee would have no recourse. The policy of the Uniform Commercial Code is to protect persons (payees) engaged in business transactions involving instruments for the payment of money including checks.²¹ In order to satisfy this policy, the teller's check is considered a certified check with the drawer Savings Bank having no concern in the underlying transaction and thus having no right to stop payment.

A teller's check is a device used here to insure performance of the buyer's payment obligation. As the court suggests the drawer Savings Bank assumes a primary obligation on the instrument and the underlying obligor of the sales transaction is discharged.²² If the buyer is discharged on the underlying obligation, does her reason for wanting to stop payment inure to the drawer Savings Bank? The court concludes that where the drawer (Savings Bank) is not a party to the underlying sales transaction it cannot claim a defense to that transaction by stopping payment on its teller's check. The Savings Bank's primary obligation to pay the instrument is similar to a typical commercial letter of credit situation. An issuer of a letter of credit is not permitted to go beyond its contract to pay the "beneficiary" of the credit.²³ It has no concern with an underlying sales transaction completed between "customer" and "beneficiary." The policy in both situations is to protect persons involved in business transactions where a payment obligation has been assumed by a third party.

The court is correct in its decision but an explanation of the workings and legal import of a teller's or certified check would be in order. Drawer Savings Bank is more than a drawer of the teller's check. It issued a teller's check payable to the payee in payment of an obligation it owed to the buyer Miss Kuebler. Miss Kuebler performed her part of the contract with the Savings Bank by permitting the Savings Bank to withdraw \$450 from her account. Under section 3-802 of the Code, Miss Kuebler is discharged on her underlying obligation to the payee, she not having drawn nor indorsed the teller's check. The drawer Savings Bank sets aside funds immediately available for payment at the time of issuing the check. In other words, the drawer Savings Bank has accepted the duty to pay the check at the time of issuance. Payee and drawer Savings Bank also have an implied contractual relationship: payee has a duty to present the

19. Instant case at 707, 254 N.Y.S.2d at 983.

20. "Unless otherwise agreed where an instrument is taken for an underlying obligation (a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor."

21. Instant case at 707, 254 N.Y.S.2d at 983.

22. See N.Y. U.C.C. § 3-802(1), *supra* note 20.

23. Maurice O'Meara Co. v. National Park Bank, 239 N.Y. 386, 395, 146 N.E. 636, 639 (1925).

check and the right to receive payment, while drawer Savings Bank has a duty to pay the check upon presentment. Neither of the contractual relationships concerns the underlying sales contract concluded between Miss Kuebler and the payee. Certified checks bear a similar characteristic: the bank becomes a party to the certification with the drawer, payee, or holder,²⁴ but not a party to the underlying transaction between drawer and payee. The Uniform Commercial Code implies that there is no right to stop payment on a check that has been certified.²⁵ However, neither the Code nor the common law explicitly states that there is no stop payment on a teller's check. In the instant case, stop payment on the teller's check was not permitted because the drawer Savings Bank accepted the check when issued and thereby acquired a sole primary obligation without regard to any underlying sales transaction. Moreover, since a check is a draft drawn on a bank,²⁶ section 3-118(a) of the Code further supports a primary obligation theory. ". . . A draft drawn on the drawer is effective as a note."²⁷ The drawer Savings Bank has accepted the check (draft) at the time of issuance. Hence, the teller's check is constructively drawn on the drawer Savings Bank,²⁸ and the teller's check is effective as a note. Drawer Savings Bank as maker of a note has a primary liability on the instrument.²⁹ The court should have based its decision more on the true nature of a teller's check and a primary obligation theory than on a policy standpoint of protecting payees.

MARSHALL L. COHEN

CONSTITUTIONAL LAW—LOCAL LAW SETTING RESIDENCE REQUIREMENTS FOR LOCAL POLICE OFFICERS INVALID AS CONFLICTING WITH VALID STATE STATUTE

The New York Public Officers Law states that all policemen in New York State are exempt from local residence requirements if they were appointed prior to July 1, 1961, and live in the county in which they work, provided that the police force of which the officer is a member consists of less than two hundred full-time members.¹ In October of 1964, the City of Peekskill passed a local law requiring all police officers employed within that city to live within the city limits.² The City of Peekskill contains less than two hundred full-time policemen. Three policemen in the City of Peekskill, who were appointed prior to July 1,

24. See *Carnegie Trust Co. v. First Nat'l Bank*, 213 N.Y. 307, 107 N.E. 695 (1915).

25. See *supra* note 16.

26. N.Y. U.C.C. § 3-104(2)(b).

27. N.Y. U.C.C. § 3-118(a).

28. The teller's check would have been drawn on the drawer Savings Bank except for the fact that savings banks in New York are not permitted to maintain checking accounts. See *supra* note 8.

29. See 1 *Hawkland, Transactional Guide to the Uniform Commercial Code* 478 (1964).

1. N.Y. Pub. Officers Law § 30 (Supp. 1965).

2. City of Peekskill, Local Law No. 3 (1964).