

Recent Decisions: Sales: Cash Sale Doctrine vs. Voidable Title Doctrine

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Repository Citation

Charles J. Hartzheim, *Recent Decisions: Sales: Cash Sale Doctrine vs. Voidable Title Doctrine*, 48 Marq. L. Rev. (1965).
Available at: <http://scholarship.law.marquette.edu/mulr/vol48/iss3/8>

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RECENT DECISIONS

Sales: Cash Sale Doctrine vs. Voidable Title Doctrine: The "cash sale" doctrine states that when the sale of goods is for cash, and a check in lieu of cash is accepted in payment for the goods sold, the title to the goods does not pass to the buyer until such time as the check is honored. The "voidable title" doctrine, in a similar check situation, holds that the buyer receives a voidable title to the goods, which title cannot be avoided once the check is honored. A judicial question occurs in the application of these two doctrines when an innocent third party purchases the goods from the original vendee in the time interval between the original seller's acceptance of the check and a later dishonoring of the check by the bank. The result of a judicial application of either of these two doctrines in a three party transaction has been the subject matter of numerous law review commentaries and texts, and has been annotated in detail.¹ Additional consideration is now given to this subject in light of the position which the Uniform Commercial Code has adopted.

In *Guckeen Farmers Elevator Co. v. Cargill, Inc.*,² a Minnesota case, the petitioner, a grain elevator company, sold and delivered the physical possession of a quantity of corn to a licensed grain dealer in return for a personal check. This dealer-vendee in turn sold the corn to the defendant. The dealer-vendee's check was dishonored due to insufficient funds, and the petitioner was allowed to recover from the defendant the value of the corn less an amount previously recovered on a dealer's bond.

The Minnesota Supreme Court, in affirming the decision, stated that

in this state it is well settled that, where a cash sale of goods is intended and a check in payment thereof is accepted, there is an implied representation that the check will be paid upon presentation at the bank upon which it is drawn; and that if not so paid title to the goods will remain in the seller who may recover the goods or their value from a third party who has purchased them from the seller's vendee.³

In a "voidable title" state the seller may avoid the sale and recover the goods as against the vendee who has issued a worthless check, but has no rights against a subsequent buyer who purchases the goods from the original buyer before the original seller has acted to avoid the sale. Thus, in the Wisconsin case of *Hudiburg Chevrolet, Inc. v. Ponce*,⁴ where an out-of-state auto dealer delivered an automobile into the vendee's possession on a conditional sales contract in return for a

¹ Corman, *Cash Sales, Worthless Checks and The Bona Fide Purchaser*, 10 VAND. L. REV. 55 nn. 1-3 (1956).

² 130 N.W.2d 69 (Minn. 1964).

³ *Id.* at 73.

⁴ 17 Wis.2d 281, 116 N.W.2d 252 (1962).

worthless check, the original seller could not recover from a subsequent purchaser since the seller had not acted to avoid the sale before the third party innocently purchased the automobile. In confirming Wisconsin's adherence to the "voidable title" doctrine, the court stated that "if the check is worthless, the seller has ordinarily been induced to act by fraud. The fraudulent buyer has a voidable title which becomes indefeasible upon a *bona fide* purchase for value from the fraudulent buyer."⁵

A court, in determining the merits of either the "cash sale" or the "voidable title" doctrine, must make a policy decision on a matter of business convenience.

Proponents of both the positions of the initial vendor and the bona fide purchaser allege that in transactions involving worthless checks their position will do more to encourage the free flow of trade. Those favoring the cash sale concept claim that if the risk of a worthless check were placed upon the original seller he would be reluctant to accept checks and would insist upon cash payment, thereby inconveniencing both buyer and seller in valid transfers. In contrast, Williston suggests that the application of the voidable title concept encourages a non-restrictive movement of goods in commerce.⁶ (Footnotes omitted.)

Attention has been directed to those situations involving the transfer of bare possession in exchange for a worthless check. The Minnesota court, in recognizing that the "cash sale" doctrine was not applicable where possession-plus was given to the original vendee, stated that

others have denied relief to the original seller as against a subsequent innocent purchaser from the seller's vendee, where the latter possessed not only the physical possession of the goods involved, but the *indicia of title* thereto as well; and where obviously questions of estoppel under the Uniform Sales Act were involved. Of course where the question of estoppel based on indicia of title or laches is involved, Minnesota is in accord with these latter decisions.⁷ (Footnotes omitted.)

The Uniform Commercial Code position, which is similar to the "voidable title" doctrine and which takes into consideration the cash aspects of all sales transactions, is as follows:

(1) A purchaser of goods acquires all the title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When

⁵ *Id.* at 285, 116 N.W.2d at 255.

⁶ Corman, *supra* note 1, at 75.

⁷ *Guckeen Farmers Elevator Co. v. Cargill, Inc.*, *supra* note 2, at 74. For a complete discussion of indicia of title, laches, and equitable estoppel, see Corman, *supra* note 1, at 62.

goods have been delivered under a transaction of purchase the purchaser has such power even though

- (a) the transferor was deceived as to the identity of the purchaser, or
- (b) the delivery was in exchange for a check which is later dishonored, or
- (c) it was agreed that the transaction was to be a 'cash sale.' . . .⁸

In the *Guckeen* case, the Minnesota court went on to say that their adherence to the "cash sale" doctrine was in accordance with the majority of case law in the United States. On the other hand, the primary objective of the Uniform Commercial Code is "uniformity in the laws of the various states regulating commercial transactions."⁹ The official comment following the Code's "voidable title" section states that the purpose of this particular section is "to gather together a series of prior uniform statutory provisions and the case-law thereunder and to state a unified and simplified policy on good faith purchase of goods."¹⁰ Thus, the "voidable title" section of the Code has been criticized as not bringing uniformity to the commercial field since it has promulgated a minority doctrine and, if adopted, it would work many reversals in the case-law area.

That such a criticism is valid seems rather doubtful. A majority case-law trend is often predicated on the frequency of controversy over a certain judicial doctrine. A review of the case-law under these two doctrines indicates that the "cash sale" doctrine is more susceptible to appellate court controversy; but it does not directly indicate that the "cash sale" doctrine is followed, as such, in a majority of the states.

The statutory law of a majority of states conforms to the Code's "voidable title" doctrine. Twenty-eight state legislatures, covering the years 1953 to 1963, have officially enacted the Uniform Commercial Code.¹¹ The "voidable title" doctrine in these state codes is an exact reproduction of the doctrine as announced in the official text of the Uniform Commercial Code. Of these twenty-eight states, the Code is effective in twenty-four states as of the date of this article. In the remaining four states, including Wisconsin, the effective date is 1965.¹²

The Uniform Commercial Code has, in its commercial paper section, further defined the rights of the original buyer to a "voidable title" in a check situation by stating:

⁸ UNIFORM COMMERCIAL CODE § 2-403 [all references are to the 1962 Official Text with Comments].

⁹ UNIFORM COMMERCIAL CODE, Report No. 1, at viii.

¹⁰ UNIFORM COMMERCIAL CODE § 2-403, comment at 126.

¹¹ Alaska, Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, West Virginia, Wisconsin, and Wyoming.

¹² WIS. STAT. § 402.403 (1954), effective July 1, 1965, by Wis. Laws 1963, ch. 158.

- (1) 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; and
 - (b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.¹³

In the field of conflicts between the "cash sale" and the "voidable title" doctrines, the Uniform Commercial Code has adopted and clarified the "voidable title" doctrine. The Code has taken scrambled and unreliable word formulas, and from these has promulgated several sections which should fit the needs of the commercial law dealing with good faith purchasers for value and with questions arising between the seller and buyer. The Code's desire to increase the marketability of goods in the open market is readily apparent.

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Wills: Effect of Provision Designating Attorney for Executor: In *Estate of Sieben*¹ the testator had designated both an executor and an attorney for the executor. After admission of the will to probate and issuance of letters testamentary to the executor, the executor having refused to retain the services of the named attorney, the latter initiated the instant proceeding in the lower court by affidavit and order to show cause why he should not be retained as attorney for the executor. The lower court upheld the designation and issued an order appointing the attorney, from which order the executor appealed. The Wisconsin Supreme Court, reversing the lower court, held that "in the absence of a statement of intent in the will that a named attorney be employed by the personal representative even at the cost of the resignation of the personal representative, an executor is not required to employ an attorney in opposition to the executor's own wishes."² Although the court did not uphold this testamentary designation of the attorney, the implication of the language quoted above is that where there was an adequate expression of an intention that the named attorney be retained even at the cost of the resignation of the executor, the designation would be upheld.³

¹³ UNIFORM COMMERCIAL CODE § 3-802.

¹ 24 Wis. 2d 166, 128 N.W. 2d 443 (1964).

² *Id.* at 170, 128 N.W. 2d at 445.

³ See ECKHARDT, WORKBOOK FOR WISCONSIN ESTATE PLANNERS § 3(D)(0.2) (1961), for a suggested clause conditioning appointment of the executor on his retaining the services of a designated attorney.