Marquette Law Review

Volume 29
Issue 1 *Summer 1945*

Article 8

1945

Banks and Banking - Bank as Owner of Draft or as Mere Agent for Collection

Cordula M. Schommer

RECENT DECISIONS

Banks and Banking—Bank as Owner of Draft or as Mere Agent for Collection.—In *Blatz Brewing Company* v. *Richardson & Richardson Inc. et al (Marshall & Ilsley Bank, Garnishee)* 245 Wis. 567, 15 N.W. (2d) 819 (1944); Richardson & Richardson Inc. of San Francisco sold a carload of hops to the Blatz Brewing Co. of Milwaukee. To the bill of lading it attached a sight draft on the Blatz Co. for the net invoice price, payable to the Bank of California, National Association of San Francisco. The Richardson Co. entered the amount of draft and notation "for discount & collection" on the usual deposit slip of the bank; received credit for it; and withdrew that amount. The California bank sent the draft to its Chicago correspondent who forwarded the item for collection to the Marshall & Ilsley Bank at Milwaukee, Wisconsin. The draft was paid by the Blatz Co. which on the same day began a garnishment suit and attached the proceeds of the draft held by the Marshall & Ilsley Bank.

The sole question was whether the deposit by the Richardson Co. passed title to the draft so as to preclude the Blatz Company's recovery of the proceeds. The Court held title passed, applying the principle that in the absence of a contrary agreement determined by intention of the parties as indicated by the significant factors present, a deposit of a draft by a customer who receives credit on his account as cash with the immediate right to draw establishes a debtor-creditor relationship between him and the bank rather than one of principal and agent for collection. The decision is in accord with the majority rule that the presumption is, in giving customer right to draw against a deposit, that title passes to the bank. This is not conclusive but yields to rebuttal by evidence showing a contrary intention.

The Court's decision is grounded on *Thomas* v. *Citizens' Nat. Bank,* 157 Wis. 635, 147 N.W. 1005 (1914) and *Aebi* v. *Bank of Evansville,* 124 Wis. 73, 102 N.W. 329 (1905). In the *Thomas* case a complete sale and transfer to the bank was found where a drawer indorsed a sight draft for deposit and received credit for it in a bank which had previously obtained a guaranty of payment of the draft. In the *Aebi* case it was held that where a check on another bank is indorsed by the payee and deposited in the bank in which he keeps an account, the latter accepting and crediting it as cash to the depositor's account to be checked against as he sees fit, indicate, prima facie, the completed transfer of the check by which the bank accepting it becomes the owner and not mere agent to collect.[1]

---

[1] Union State Bank of Lancaster v. People's State Bank of Lancaster, 192 Wis. 28, 211 N.W. 931 (1933); Schwenker v. Parry, 204 Wis. 590, 236 N.W. 652 (1931); Burton v. United States, 196 U.S. 283, 25 S.Ct. 243, 49 L.Ed. 482 (1905).

The view was advanced in the principal case that the majority rule above stated and followed in California where the transactions occurred was changed by the Bank Act of that State,[2] providing that allowance of credit for any check drawn on or payable at the bank of deposit shall be only provisional;[3] and that the California statute was a declaration of public policy which could only be changed by agreement in writing. The Court refused to sustain this view. Circumstances, it held, constituted as high an order of evidence as any agreement in writing.[4]

It was further contended in the principal case that the prima facie presumption of title from the extension of credit was rebutted by the following circumstances showing a mere collection transaction: the taking of the draft by the bank with the notation "for discount & collection" on deposit slip; the deposit slip having printed on it that the bank acts only as depositor collecting agent and assumes no responsibility beyond ordinary care and items being subject to final payment in cash or solvent credits; the bank not charging interest until the draft was honored; the notation on passbook cover that credit allowed was only provisional until proceeds received; the fact that the bill of lading and invoice were attached to the draft from which it was to be inferred that the bank took the draft for collection and not as a purchase, since it knew the hops must meet specifications to honor the draft and bank would not risk purchase of draft but take it only for collection.

The Court rejected Appellant's contention saying that the right of charge back was merely expressive of bank's right to compel repayment by drawer in case of dishonor and that the notation "for discount & collection" was ambiguous and could not govern the question of intention since a draft can not be for discount and for collection both.

The decisive facts were that the draft was not listed in a section of the passbook in which items "for collection" were listed and the evidence of the cashier handling the draft that he dealt only with discount transaction and if the draft in issue had been one for collection, it would not have gone through his hands; and the form used was one used for discount transaction.

The inescapable conclusion from these facts, the court reasoned, is that the intention of the Richardson Company and the California Bank

---

[2] Stat. Cal. (1925), Sec. 16c, Chap. 312; Deering's General Laws (1937), Act 652, p. 223.

[3] Bromfield v. Cochran, 86 Colo. 486, 283 p. 45, 68 A.L.R. 722 (1929) held that where deposit slip contained provision that bank was mere agen to collect but when it extended credit, sale of check was consumated.

[4] Davies & Vincent v. Bank of Commerce, 27 Ariz. 276, 232, p. 880 (1925), held that intention that bank act only as collecting agent can be inferred from the circumstances which in this case was shown by Davies' employing attorneys to collect draft which conduct was incident to ownership of the draft.

at the time of the original transaction was that title was to vest in the Bank of California, National Association when credit with right to withdraw was given to Richardson and Richardson.

CORDULA M. SCHOMMER.

Fraud—No Constructive Notice in Fraud Cases.—*Schoedel* v. *State Bank of Newburg,* 245 Wis. 74, 13 N. W. (2d) 534 (1944), was an action commenced on May 10, 1937, by the plaintiff against the defendant bank to recover damages arising out of the alleged false and fraudulent representation by defendant that a certain mortgage sold to plaintiff by defendant on March 16, 1931, was a first mortgage on the real estate therein described.

According to the allegations of the complaint the mortgage sold was in fact a second mortgage junior to a first mortgage recorded April 15, 1929, but the plaintiff knew nothing of this first mortgage until May 10, 1937, when the summons and complaint in a suit to foreclose the first mortgage was served upon him. The defendant demurred to the complaint on the ground that the action was not commenced within six years of accrual of the cause of action under Section 330.19 (7) of the Wisconsin Statutes, providing that in an action for relief on ground of fraud, the cause of action is not deemed to have accrued until the discovery, by the aggrieved party, of facts constituting the fraud. The trial court overruled the demurrer and the defendant appealed contending that the plaintiff as assignee of the mortgage, was charged with notice of the recorded facts establishing the legal position of his mortgage and that the plaintiff, having constructive notice of matters of record which disclosed the falsity of the representations, must be deemed to have discovered the fraud at the time when he purchased the mortgage on March 16, 1931, and that therefore his present action was too late.

The Supreme Court affirmed the holding that under the above statute plaintiff's cause of action did not accrue until actual discovery of the fraud on May 10, 1937, and that the doctrine of constructive notice was inapplicable under the statute.

The decision is an application of the general doctrine of justifiable reliance in business transactions upon representation of fact to recorded facts. The matter is well put in the Restatement of Torts:[1] "The recipient in a business transaction of a fraudulent misrepresentation of fact is justified in relying upon its truth, although he might have ascertained the falsity of the representation had he made an investigation."

---

[1] Restatement of Torts, Sec. 540.