

were not in privity, its liability had been created by statute and a liability created by statute is controlled by a Washington two-year statute of limitations which would bar the plaintiffs' actions.

The Supreme Court of Washington affirmed the lower court's decision, but rejected both the plaintiffs' and the defendant's contentions. Instead, the court determined that, in Washington, claims based on written contracts are governed by a six-year statute of limitations and those based on oral contracts by a three-year statute of limitations. It thus held that the actions based on the written contracts were not barred by the statute of limitations, and since these claims by themselves totalled more than the amount of the bond, they were sufficient to raise the question of the defendant's liability.

The court noted in a footnote that had the Uniform Commercial Code been in effect, the four-year statute of limitations of Section 2-725 would have controlled this case. Since that section applies to actions brought on all contracts for the sale of goods, it would have governed actions based on both the oral and the written contracts.

M.L.G.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-301. Rights of a Holder

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, *infra*.

SECTION 3-302. Holder in Due Course

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N -

213 A.2d 315 (N.J. Super. Ct. 1965)

Plaintiff bank's depositor, Winter, entered into a contract for the sale of real estate with the defendant Amoroso, who requested the Fort Lee Savings and Loan Association, the co-defendant, to issue its check in the amount of \$3,100 to her for use as a deposit on the contract. Fort Lee Savings complied by drawing against its account with Fort Lee Trust Co. Before the deposit, Winter's account had a balance of \$225. Because of this deposit, plaintiff honored checks totaling \$1,290 drawn against Winter's account. Amoroso, in the meantime, had learned of a previous sale of the real estate and demanded the return of the check. She contended that Winter had admitted the fraud and promised to return the deposit. Before making any refund, however, Winter committed suicide. Amoroso then requested Fort Lee Savings to stop payment on the check. A written stop payment order was received by the drawee bank, Fort Lee Trust, prior to clearance of the check, and upon presentment, notice of non-payment was transmitted to the plaintiff which then commenced this suit to recover the amount it had advanced to Winter. The court granted plaintiff's motion for summary judgment and held that both Fort Lee Savings, as drawer of the check, and Amoroso, as indorser of the check, were liable under Sections 3-413(2) and -414(1) respectively.

In response to Fort Lee Savings' contention that its right to order stop payment under Section 4-403 of the Code excused its liability on the check, the court went to Comment 8 of that section which clearly states that even a stop payment order will not excuse the drawer's liability to a holder in due course. Accordingly, the central issue was "whether plaintiff bank . . . [was] a holder in due course since a holder in due course will prevail against those liable on the instrument in the absence of a real defense."

The court conceded that the plaintiff was acting as its depositor's agent for collection, but nevertheless found that this fact did not preclude it from being a holder of the check, as defined in Section 1-201(20), under Sections 4-201(1) and 3-301 of the Code. The court next ruled that the plaintiff's conduct in allowing its depositor to withdraw over \$1,000 against its uncollected funds neither evidenced bad faith under Section 1-201(19) nor constituted notice of an infirmity in the underlying transaction or instrument under Sections 1-201(25) and 3-304. Finally, under Sections 4-208 and -209, as well as under pre-Code case law, plaintiff was considered to have given value to the extent of the advances made to Winter. Since plaintiff was a holder who had taken the check for value, in good faith and without notice of any infirmity, the court held that it was a holder in due course under Section 3-302.

As a final defense, Amoroso raised the issue of the fraud allegedly committed by Winter. The court held that under Section 3-305 plaintiff was insulated from this defense because it was a personal defense, which would have been available against Winter, and not a real defense good against plaintiff.

J.F.B.

SECTION 3-304. Notice to Purchaser

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, *supra*.

SECTION 3-305. Rights of a Holder in Due Course

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, *supra*.

SECTION 3-405. Imposters; Signature in Name of Payee

PHILADELPHIA TITLE INS. CO. V. FIDELITY-PHILADELPHIA TRUST CO.

212 A.2d 222 (Pa. 1965)

Edmund Jezemski was administrator and sole heir of his mother's estate, which included certain real estate. Without his knowledge, his estranged wife arranged a mortgage on the realty. The mortgage was obtained for Mrs. Jezemski through Mc Allister, an attorney, and Di Benedetto, a real estate agent, and was insured by the plaintiff title insurance company. Before settlement, Mrs. Jezemski represented to Mc Allister and Di Benedetto that her

husband would be unable to attend the settlement. She and a man posing as Mr. Jezemski then met with Mc Allister and Di Benedetto and executed a deed and the mortgage. Shortly thereafter, Mc Allister and Di Benedetto, accompanied only by Mrs. Jezemski, attended the settlement. The signed mortgage and deed were produced; the mortgagee handed over the amount of the mortgage; and the plaintiff delivered its check drawn on the defendant bank and made payable to Mr. and Mrs. Jezemski individually and Mr. Jezemski as administrator of his mother's estate. Mrs. Jezemski cashed the check which bore the forged indorsement of her husband, and the defendant charged the amount of the check against the plaintiff's account. Edmund Jezemski, upon learning of its existence, had the mortgage set aside and the fund advanced by the mortgagee returned to him.

Plaintiff commenced this action in assumpsit to recover the sum of \$15,650 charged against its account, alleging that since one of the indorsements had been forged, defendant should not have paid the check. The trial court found for the defendant. The supreme court affirmed on the ground that since plaintiff was induced to issue the check to Mrs. Jezemski by an impostor, the forged indorsement was effective under Section 3-405(1)(a) of the Code. The plaintiff then argued that the instant case was not within Section 3-405(1)(a) since the imposter never faced the plaintiff and directly induced the issuance of the check. The court rejected this argument, interpreting Section 3-405(1)(a) as applicable whenever the impostor induced the issuance of the check in the name of the payee, whether by mail, face-to-face or "otherwise."

M.L.G.

SECTION 3-413. Contract of Maker, Drawer and Acceptor

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, *supra*.

SECTION 3-414. Contract of Indorser: Order of Liability

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, *supra*.

ARTICLE 4: BANK DEPOSITS AND COLLECTIONS

SECTION 4-201. Presumption and Duration of Agency Status of Collecting Banks and Provisional Status of Credits; Applicability of Article; Item Indorsed "Pay Any Bank"

CITIZENS NAT'L BANK V. FORT LEE SAV. & LOAN ASS'N

213 A.2d 315 (N.J. Super. Ct. 1965)

Annotated under Section 3-302, *supra*.