

COMMENT

It seems that the Code also recognizes that a dishonor of a customer's checks in compliance with a restraining notice does not constitute a wrongful dishonor under Section 4-402. Section 4-303, while speaking negatively, specifically infers that a payor bank must respect any "legal process" seasonably served upon it. To this is added the positive statements of Comment 1 of this section that the payor bank "may have served on it an attachment of the account of the drawer . . ."; this event "affects the account of the drawer and may eliminate or freeze all or part of whatever balance is available to pay the item." Under Section 3-603, furthermore, the payor bank will not be discharged of its liability "to the extent of . . . [its] payment . . . to the holder" if prior to the payment, a person making a claim upon the amount of the account enjoins payment. See Section 3-603, Comment 3.

J.F.B.

**SECTION 4-403. Customer's Right to Stop Payment;
Burden of Proof of Loss**

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 9: SECURED TRANSACTIONS

SECTION 9-201. General Validity of Security Agreement

LYLES V. UNION PLANTERS NAT'L BANK
393 S.W.2d 867 (Ark. 1965)
Annotated under Section 1-105, *supra*.

**SECTION 9-203. Enforceability of Security Interest;
Proceeds, Formal Requisites**

CITIZEN & SOUTHERN NAT'L BANK V. CAPITAL CONSTR. CO.
144 S.E.2d 465 (Ga. Ct. App. 1965)

Defendant's creditor assigned an account due from the defendant to the plaintiff bank as security for a loan. A written notice of the assignment was sent by the creditor and was accepted by the defendant. Plaintiff commenced this suit to recover on the account. The lower court sustained defendant's demurrer to the plaintiff's complaint, but the appellate court reversed, holding that under Sections 9-203, -204 and -302(1)(e) of the Code, the plaintiff had stated a cause of action. The court reasoned that the letter sent to the defendant by the creditor and accepted by the defendant constituted an assignment of the account, thus creating a security interest under Section 9-204. The court then determined that plaintiff's interest, since it was based on "an assignment of an account not embracing alone or in conjunction with other assignments to the same assignee, a significant part of the outstanding accounts or contract rights of the assignor," was perfected without filing under

Section 9-302(1)(e). Finally, the court held that the security interest was in writing and therefore enforceable under Section 9-203.

M.L.G.

SECTION 9-204. When Security Interest Attaches; After-Acquired Property; Future Advances

CITIZEN & SOUTHERN NAT'L BANK V. CAPITAL CONSTR. CO.

144 S.E.2d 465 (Ga. Ct. App. 1965)

Annotated under Section 9-203, *supra*.

SECTION 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply

CITIZEN & SOUTHERN NAT'L BANK V. CAPITAL CONSTR. CO.

144 S.E.2d 465 (Ga. Ct. App. 1965)

Annotated under Section 9-203, *supra*.

SECTION 9-306. "Proceeds"; Secured Party's Rights on Disposition of Collateral

FIRST NAT'L BANK V. PADJEN

210 N.E.2d 332 (Ill. App. Ct. 1965)

Plaintiff bank was the holder of a duly recorded chattel mortgage on defendant's restaurant equipment. When defendant was adjudged a bankrupt, the plaintiff obtained from the receiver, on order from the federal court, all of the equipment except a glass chiller, which the defendant had returned to the seller, and two heat lamps, which had also been previously disposed of. Plaintiff then commenced this suit to recover damages for conversion of the chattels. The trial court sustained the defendant's defense of discharge in bankruptcy.

The appellate court reversed, holding that the disposition of the mortgaged property by the defendant without the plaintiff's consent or release was a willful and malicious conversion within the meaning of Section 17 of the Bankruptcy Act, and thus defendant's liability for this property was not discharged in bankruptcy. In reaching this conclusion, the court cited Section 9-306.01 of the Illinois Commercial Code, which makes it a criminal offense for a debtor to dispose of the collateral of a security agreement without paying the amount due, and determined that the plaintiff held a "protectable property" interest in the equipment. Disposition of this property without the plaintiff's permission amounted to a willful and malicious conversion to which Section 17 applied.

M.L.G.

SECTION 9-310. Priority of Certain Liens Arising by Operation of Law

COMMONWEALTH LOAN CO. V. DOWNTOWN LINCOLN MERCURY CO.

211 N.E.2d 57 (Ohio Ct. App. 1964)

Plaintiff, the holder of a duly recorded chattel mortgage on an automobile

on which the defendant also held an artisan's lien, brought an action for replevin of the automobile. The trial court found, as a matter of law, for the plaintiff. On appeal, the defendant argued that under Section 9-310 of the Ohio Commercial Code (Section 1309.29 of the Ohio Revised Code), an artisan's lien has priority over a perfected security interest. The plaintiff, in turn, argued that Section 4505.13 of the Ohio Revised Code makes a chattel mortgage, which is properly recorded on a motor vehicle's certificate of title, valid against all other lien holders. The court of appeals affirmed.

To resolve the conflict between Section 9-310 of the Code and Section 4505.13 of the Ohio Revised Code, the court of appeals interpreted Section 9-310 as though the use of the word "lien" in the "unless" clause meant "security interest." Reworded, Section 9-310 read:

When a person . . . furnishes services or materials with respect to goods subject to a security interest, a lien upon the goods . . . given by statute or rule of law takes priority over the security interest unless the *security interest* is statutory and the statute provides otherwise.

The court thus concluded that under Section 4505.13, plaintiff's security interest was superior to defendant's artisan's lien.

COMMENT

The Supreme Court of Ohio affirmed the result of this case, but did not accept the reasoning of the appellate court. Instead, it noted that there was a conflict between Section 4505.13 of the Ohio Revised Code and Section 9-310 of the Ohio Commercial Code and resolved the conflict in favor of Section 4505.13. *Commonwealth Loan Co. v. Berry*, 2 Ohio St. 2d 169, 207 N.E.2d 545 (1965), annot. 7 B.C. Ind. & Com. L. Rev. 119 (1965).

The problem in the case arose because the Ohio legislature failed to amend Section 9-310 so that an artisan's lien on a motor vehicle would have been expressly excluded from it.

J.F.B.