

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-109. Definite Time

FERRI v. SYLVIA

214 A.2d 470 (R.I. 1965)

On May 25, 1963, the defendant delivered to the plaintiff a note for \$3,000 payable "within ten (10) years after date." Before two years had elapsed, plaintiff demanded payment in full, and when this was refused, she brought suit on the note. The trial court determined that the maturity date was uncertain and therefore admitted testimony with regard to the maturity date intended by the parties. The court awarded judgment to the plaintiff, holding "that she could call for and demand the full payment of any balance that may be due and owing her at the time of her demand."

The supreme court reversed, holding that, under Section 3-109 of the Code, a note payable "within" a certain period fixes the date at which the note matures: the note does not mature until the time fixed as the end of the period arrives. Since the note was complete upon its face, the court concluded that parol evidence was not admissible to alter the due date.

COMMENT

Since the issue presented was whether parol evidence should have been admitted to determine what was intended by the phrase "within ten (10) years after date," the court erred in applying Section 3-109, instead of Section 2-202. Section 3-109 deals with "definite time" only as it concerns the *negotiability* of a note; it is Section 2-202, on the other hand, which limits the admissibility of parol evidence to explain or supplement a written agreement.

It is submitted that under Section 2-202, the lower court was correct in admitting parol evidence: such evidence did not contradict "a writing intended by the parties," but was merely employed to explain what was intended by the phrase in question.

P.F.B.

SECTION 3-119. Other Writings Affecting Instruments

ELSBERRY EQUIP. CO. v. SHORT

211 N.E.2d 463 (Ill. Ct. App. 1965)

Defendants, owners of one-third of the shares in plaintiff corporation, agreed with plaintiff that they would purchase certain of the corporation's assets. The purchase price was to be paid—in cash and by note—at the time when the value of the assets had been determined and certain approval had been obtained. Simultaneously, all the shareholders of plaintiff entered into an agreement which provided for liquidation of the corporate assets and distribution of the proceeds. The agreement also provided that an amount of one-third of defendants' note to the corporation was to be set off against defendants' account upon liquidation.

Defendants executed the note forty-one days after the two agreements were reached. When the note became in default a year later, plaintiff brought suit to recover the balance due. Defendant answered, alleging failure of consideration and failure to give credit for one-third the amount of the note. At the trial, the two agreements, which were the basis of the transaction, were admitted into evidence over plaintiff's objection that they were not contemporaneous with the note. Judgment was rendered for defendants.

The appellate court reversed, but held that the two agreements were properly admitted in evidence, even though they operated to modify the terms of the note. It stated that on all the facts, *i.e.*, notice to the corporation and the time required for valuation and approval, the execution of the agreements and the note must be considered parts of the same transaction, and thus, under existing case law, each is explainable in terms of the other. The case was remanded for a determination of the amount due on the note, if jurisdiction were found, because the defense of partial failure of consideration had been raised.

Although the transaction took place prior to the effective date of the Code, the court indicated that the application of Section 3-119, as to modification of a note, and of Section 3-408, as to determination of partial liability on a note, would require the same result.

H.A.H.

SECTION 3-302. Holder in Due Course

DURACLEAN Co. v. HUNTER

211 N.E.2d 852 (Ohio Ct. App. 1965)

Annotated under Section 3-306, *infra*.

SECTION 3-306. Rights of One Not Holder in Due Course

DURACLEAN Co. v. HUNTER

211 N.E.2d 852 (Ohio Ct. App. 1965)

Duraclean Co. obtained a judgment by confession on a cognovit note against Hunter. Hunter moved to have the judgment set aside, claiming that no consideration had been given for the note. The lower court denied the motion, but the court of common pleas reversed. This court affirmed, holding first that Ohio procedure would not prevent Hunter from raising a defense notwithstanding the confession of judgment. The court added that under Section 3-306 of the Code, Duraclean, unless it had the rights of a holder in due course, took the instrument subject to Hunter's defense of failure of consideration, but that Duraclean, even though a payee, could be a holder in due course under Section 3-302. Under Ohio law, however, Hunter could raise the defense of failure of consideration since the note had been given directly to Duraclean, an original party to the instrument.

COMMENT

In reaching this decision, the court failed to cite Section 3-305(2) which states that "to the extent that a holder is a holder in due course he takes

the instrument free from . . . (2) all defenses of any party to the instrument with whom the holder *has not dealt* . . .” (Emphasis added.) Since Duraclean had dealt directly with Hunter, it could not have taken the note free of Hunter’s defense.

R.R.B.

SECTION 3-307. Burden of Establishing Signatures, Defenses and Due Course

UNITED SECURITIES CORP. v. BRUTON

213 A.2d 892 (D.C. Ct. App. 1965)

Defendant purchased two wigs from The Wig Shoppe, giving her promissory note in payment of the purchase price. Two days later, The Wig Shoppe sold the note to plaintiff. Shortly thereafter, defendant returned one wig to The Wig Shoppe claiming defective workmanship and refused to make further payments on the note toward the price of that wig. Plaintiff commenced an action for the balance of the note. Against the defense of defective workmanship raised by defendant, plaintiff sought to utilize a presumption created by a pre-Code statute that it, as a holder, was a holder in due course of the note. The trial court found for defendant on the ground that plaintiff had not carried its burden of proof on the issue of whether it was a holder in due course.

In affirming, the court of appeals held that the burden was indeed on plaintiff to establish that it was a holder in due course. It stated that the former statutory presumption by which a “holder is deemed *prima facie* to be a holder in due course . . .” had been superseded by Section 3-307(3) of the Code, which places the burden on that “person claiming the rights of a holder in due course . . . [to establish] that he . . . is in all respects a holder in due course” after a defense to the action has been shown to exist. Reasoning that since the matter of burden of proof was procedural and was thus controlled by the law existing at the date of trial, the court applied Section 3-307(3), notwithstanding the fact that the entire transaction which gave rise to the cause of action had occurred prior to the effective date of the Code. The former statutory presumption was not found to be a “right” included within the savings clause of the Code.

H.A.H.

SECTION 3-408. Consideration

ELSBERRY EQUIP. CO. v. SHORT

211 N.E.2d 463 (Ill. Ct. App. 1965)

Annotated under Section 3-119, *supra*.