breach within a reasonable time as Section 2-607(3) required, and also that there was insufficient evidence for the jury to determine the proper amount of damages. The measure of damages, it argued, should not have been the defendant's production losses but the difference between the value of the experimental chicks at the time and place of acceptance and the value they would have had if they had been as warranted, under Section 2-714(2). In affirming the refusal of the lower court to grant either motion, the court held, first, that the jury could have inferred that the plaintiff had received timely notice of the breach through the periodic reports submitted to it, and, second, that the nature of the warranty being what it was, that the experimental chicks would produce "as good or better" than certain others, the measure of damages was correct.

COMMENT

Under Section 2-714(2), the usual measure of damages for breach of warranty is the difference between the value of the goods at the time and place of acceptance and the value that they would have had if they had been as warranted. However, when "special circumstances" show damages in a different amount, such damages may be recovered. While it could be argued that the production losses suffered by the defendant in the present case should merely go to the value of the experimental chicks, there would seem to be nothing to commend this view. The court did not specifically allude to the "special circumstances" proviso of Section 2-714(2) but the holding is certainly explainable in terms of it.

S.L.P.

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-114. Date, Antedating, Postdating

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, infra.

SECTION 3-301. Rights of a Holder

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)

The payee of a check drawn by the defendant deposited the check in his account at the plaintiff-bank and was allowed to withdraw the full amount. When the check was later dishonored, the plaintiff brought the present action on the instrument, in its own name. The petition alleged, *inter alia*, that the check was executed, delivered and dated January 4, 1964; however, the attached copy of the check showed that it was actually dated January 4, 1963. The lower court overruled the defendant's general demurrer and the defendant appealed.

The defendant argued, first, that since the payee's indorsement had been supplied by the plaintiff, the plaintiff could not be a "holder" as defined by Section 1-201(20) and consequently could not enforce payment in its own name under Section 3-301. The defendant admitted that a depositary bank could in certain cases supply a customer's indorsement under Section 4-205(1). He argued, however, that according to the Official Comment to this section, the power to supply an indorsement could be exercised only when the depositor was a "non-bank depositor," *i.e.*, one depositing in something other than a bank. The court rejected this argument, construing the phrase to mean a depositor which is not a bank. It then held that since the indorsement supplied by the plaintiff was permitted by Sections 3-302(2) and 4-205(1), the plaintiff was in possession of an instrument "indorsed to [it]"; it was therefore a "holder" as defined by Section 1-201(20) and had the right to sue in its own name under Section 3-301.

The court further suggested that the check was "issued" to the plaintiff, though its reason for so holding is unclear.

Second, the defendant made the related argument that, since the plaintiff was presumed to be the payee's collection agent under Section 4-201(1), it could not sue in its own name but only in its capacity as agent. The court rejected this argument, stating that ownership of an item is irrelevant in determining the status of a holder and that the presumed agency status of the bank did not derogate from the bank's right to bring suit in its own name.

The court indicated that the plaintiff was allegedly a holder in due course as defined by Section 3-302(1). By crediting the payee's account in the face amount of the check and permitting the credit to be withdrawn, the plaintiff had given value for the instrument (Sections 4-209, 4-208(1) and 3-303), thus satisfying Section 3-302(1)(a). The plaintiff alleged that it had acted in good faith, thus satisfying Section 3-302(1)(b). Finally, the plaintiff's allegation that it did not have notice that the check was overdue was sufficient to satisfy Section 3-302(1)(c). The fact that the check was dated 1963 did not ipso facto give the plaintiff notice that it was overdue since parol evidence was admissible to overcome the Section 3-114(3) presumption that the date inscribed on the check was correct.

Finally, the court adverted to the liability of a drawer to pay the amount of his dishonored check, Section 3-413(2), and affirmed the lower court's overruling of the demurrer.

COMMENT

In its opinion the court suggested that the plaintiff was a holder not only because the check was indorsed to it but also because it was issued to it. This suggestion is erroneous. First delivery to the payee constituted issuance under Section 3-102(1)(a), while the transfer of the check from the payee to the plaintiff constituted negotiation.

Since mere production of an instrument is sufficient under Section 3-307(2) to entitle a holder to recover unless a defense is established, it would appear that the court's discussion of the plaintiff's status as a holder in due course was unnecessary. A general demurrer does not ipso facto establish a defense and apparently none was alleged in the pleadings, much less established by evidence.

J.F.O'L.

SECTION 3-302. Holder in Due Course

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, supra.

SECTION 3-303. Taking for Value

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, supra.

SECTION 3-304. Notice to Purchaser

NATIONAL CURRENCY EXCHANGE, INC. #3 v. PERKINS
201 N.E.2d 668 (Ill. App. Ct. 1964)

The defendant on May 14, 1960, drew a check payable to Stauropoulos and dated it May 16, 1960. Stauropoulos cashed the check on May 14 at the plaintiff's currency exchange. When the check was later dishonored, the plaintiff brought the present suit on the instrument. The trial court, finding that the plaintiff was a holder in due course, entered judgment for it. The defendant appealed, arguing that the postdating rendered the check irregular on its face, that it was thus impossible for the plaintiff to be a holder in due course, and that the plaintiff was therefore subject to any defenses which the defendant might have against the payee. The instant court, in affirming the decision below, conceded that Section 12 of the Uniform Negotiable Instruments Law was ambiguous on the point in issue but that, according to the majority of jurisdictions which had ruled on the question, mere negotiation of a postdated check prior to the date it bears does not of itself prevent a a transferee from becoming a holder in due course. In adhering to the majority view, the court looked to the policy favoring negotiability and to sound commercial practice and experience. Section 3-304(4)(a) of the Uniform Commercial Code, which became effective in Illinois after the check was drawn, negotiated and dishonored, evidenced that practice. That section specifically rejects those decisions which hold that a known antedating or postdating prevents a transferee from becoming a holder in due course.

J.F.O'L.

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

MEADOW BROOK NAT'L BANK v. ROGERS
253 N.Y.S.2d 501 (Nassau County Ct. 1964)

The defendant drew a check payable to the order of James Thomas who subsequently negotiated it to the plaintiff-bank. In the suit on the instrument, the defendant pleaded lack of consideration and fraud in the inducement, alleging that Thomas had made certain false representations to her. The court, applying Sections 54, 94 and 96 of the Negotiable Instruments Law, held that the defendant's personal defenses could not be pleaded against a holder in due course and granted the plaintiff's motion for summary judgment.

The court stated that if the transaction had occurred after September 27, 1964, the Uniform Commercial Code would have been applicable (Section 10-101), although the same result would have been dictated by Section 3-305.

J.F.O'L.

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

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, 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 Articles; Item Indorsed "Pay Any Bank"

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, supra.

SECTION 4-205. Supplying Missing Indorsement; No Notice from Prior Indorsement

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, supra.

SECTION 4-208. Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, supra.

SECTION 4-209. When Bank Gives Value for Purposes of Holder in Due Course

PAZOL v. CITIZENS NAT'L BANK
138 S.E.2d 442 (Ga. Ct. App. 1964)
Annotated under Section 3-301, supra.

SECTION 4-211. Media of Remittance; Provisional and Final Settlement in Remittance Cases

CITIZENS BANK v. NATIONAL BANK OF COMMERCE
334 F.2d 257 (10th Cir. 1964)
To be annotated in Volume 6, Issue 4.