

ARTICLE 3: COMMERCIAL PAPER

SECTION 3-203. Wrong or Misspelled Name

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

ANNOTATION

‡WATERTOWN FED. SAV. & LOAN ASS'N V. SPANKS
— Mass. —, 193 N.E.2d 333 (1963)

On June 24, 1959, the defendant maker executed a promissory note payable to "Greenlaw & Sons Roofing & Siding Co.," who were to apply new siding to the maker's house. The note was subsequently indorsed "Greenlaw & Sons by George M. Greenlaw" and delivered to Colony which indorsed it to the plaintiff bank. Upon default of the maker, the bank instituted an action to recover the balance due on the note. In his answer the maker denied the genuineness of his signature and those of the indorsers, and he counterclaimed to recover payments previously made to the bank on the note. The maker admitted signing the note and a completion certificate indicating that the work had been satisfactorily performed. The trial court denied, because irrelevant, a request for a ruling that Section 3-203 required the holder to prove the authenticity of the signatures on the note. Evidence offered by the maker tending to show a breach of warranty in the siding material was also excluded and judgment was entered for the bank on both claims.

On appeal, the court affirmed, holding that Section 3-203 gives only a holder for value the power to require indorsement in both names when the instrument is payable to a person under a misspelled name or one other than his own. It further held that since no evidence was introduced with respect to the genuineness of the indorsement, under Section 3-307(1)(b) the signature of Greenlaw was presumed to have been genuine or authorized. Without evidence to counter the presumption, the signature was established under Section 3-307(2).

COMMENT

Had the maker been able to prove a breach of warranty in the siding material, Section 3-307(3) would have required the bank to affirmatively prove the requirements of its being a holder in due course, as set out in Section 3-302(1). Successful proof would have permitted it, under Section 3-305(1), to take the note free from the claim of breach of warranty. In the absence of a defense, as in the instant case, Section 3-301 allows a holder, as defined in Section 1-201(20), to enforce the note.

C.K.B. JR.

‡ Based on 1962 Code.

SECTION 3-301. Rights of a Holder

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

CASES ANNOTATED UNDER OTHER SECTIONS

‡WATERTOWN FED. SAV. & LOAN ASS'N V. SPANKS

— Mass. —, 193 N.E.2d 333 (1963)

See the Annotation to Section 3-203, *supra*.

SECTION 3-302. Holder in Due Course

- (1) A holder in due course is a holder who takes the instrument
 - (a) for value; and
 - (b) in good faith; and
 - (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

CASES ANNOTATED UNDER OTHER SECTIONS

‡WATERTOWN FED. SAV. & LOAN ASS'N V. SPANKS

— Mass. —, 193 N.E.2d 333 (1963)

See the Annotation to Section 3-203, *supra*.

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

To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - (c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - (d) discharge in insolvency proceedings; and
 - (e) any other discharge of which the holder has notice when he takes the instrument.

ANNOTATIONS UNDER OTHER SECTIONS

‡WATERTOWN FED. SAV. & LOAN ASS'N V. SPANKS

— Mass. —, 193 N.E.2d 333 (1963)

See the Annotation to Section 3-203, *supra*.

‡ Based on 1962 Code.

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

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

CASES ANNOTATED UNDER OTHER SECTIONS

*HARTSOOK V. OWENS, — ARK. —,
370 S.W.2d 69 (1963)

See the Annotation to Section 4-404, *infra*.

‡WATERTOWN FED. SAV. & LOAN ASS'N V. SPANKS
— Mass. —, 193 N.E.2d 333 (1963)

See the Annotation to Section 3-203, *supra*.

SECTION 3-403. Signature by Authorized Representative

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established, the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

* Code construed but did not govern the case.

‡ Based on 1962 Code.

CASES ANNOTATED UNDER OTHER SECTIONS

IN THE MATTER OF LASKIN

316 F.2d 70 (3d Cir. 1963), reversing 204 F. Supp. 106 (E.D. Pa. 1963)

For a complete discussion and analysis of this case, see note *infra* p. —.

SECTION 3-508. Notice of Dishonor

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(4) Written notice is given when sent although it is not received.

CASES ANNOTATED UNDER OTHER SECTIONS

**†*A. & L. TRADING, INC. v. HERALD SQUARE BAKERS & CATERERS, INC.
40 Misc. 2d 72, 242 N.Y.S.2d 799 (Sup. Ct. 1963)

See the Annotation to Section 3-509, *supra*.

SECTION 3-509. Protest; Noting for Protest

(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

ANNOTATION

**†*A. & L. TRADING, INC. v. HERALD SQUARE BAKERS & CATERERS, INC.
40 Misc. 2d 72, 242 N.Y.S.2d 799 (Sup. Ct. 1963)

An indorser of a promissory note was discharged of liability on the note upon the holder's failure to prove that the notary public whom the holder had charged to mail the notice of dishonor, in the form of an unsealed protest, had personally done so. The notary had put the notice, properly

* Code construed but did not govern the case.

† Based on 1962 Code.

stamped and addressed, into the normal channels for mailing in the bank's procedure. The court stated that had the protest been made under seal, it would have been presumptive evidence of the mailing because of its contained statement that it had been mailed. This would have placed the burden of proving the non-receipt of the notice of dishonor on the indorser. Due to the lack of the seal, no presumption arose and the burden of proving the mailing of the notice of dishonor remained on the holder. It further pointed out that under the not yet effective, Uniform Commercial Code Section 3-509, a protest is still required to be made under the hand and seal of a notary public.

COMMENT

Under the Negotiable Instruments Law Section 105, a notice of dishonor is given when deposited in the post office, while under the Code, notice is "given when sent." Section 3-508(4). Official Comment 3 to Section 3-508 states that subsection 4 was intended to retain the substance of NIL Section 105. In light of this intent, sending, in order to meet the requirements of Section 3-508(4), should be interpreted as delivering for transmission by a usual means of communication. Section 1-201(38). In the instant case, had the Code been in effect and had the court followed the above interpretation, it should have found that the notary's putting the properly stamped and addressed notice into the ordinary process of bank mailing constituted a sufficient mailing to charge the indorser with having had received notice.

The Code would not have altered the burden of proving the mailing of the notice of dishonor since only a protest regular in form creates a presumption of dishonor, Section 3-510(a), and to be regular in form the protest must be made under seal. Section 3-509(1).

C.K.B. JR.

SECTION 3-510. Evidence of Dishonor and Notice of Dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

- (a) a document regular in form as provided in the preceding section which purports to be a protest.

CASES ANNOTATED UNDER OTHER SECTIONS

- *†A. & L. TRADING, INC. v. HERALD SQUARE BAKERS & CATERERS, INC.
40 Misc. 2d 72, 242 N.Y.S.2d 799 (Sup. Ct. 1963)
See the Annotation to Section 3-509, *supra*.

* Code construed but did not govern the case.

† Based on 1962 Code.