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BILLS AND NOTES - EFFECT OF ENDORSEMENT "FOR DEPOSIT" - LIABILITY OF LATER INTERMEDDLERS

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BILLS AND NOTES — EFFECT OF ENDORSEMENT "FOR DEPOSIT" — LIABILITY OF LATER INTERMEDDLERS — Plaintiff's evidence indicated that as payee of a check she endorsed it "for deposit Lena Soma" and gave it to one Handrulis for safekeeping. On the pretense that the check was his, he gave it to Sarah Alkoff, who endorsed it in blank and deposited it at the Globe bank. The Globe bank in turn sent it through the Federal Reserve Bank for collection to the drawee bank, which paid the check. The amount of the check credited to Sarah Alkoff was paid out by the Globe bank on her checks to Handrulis. The suit for diversion of the check and its proceeds was dismissed as to Sarah Alkoff and the Federal Reserve Bank, and the Appellate Division affirmed the ruling.[1] *Held*, that if plaintiff's evidence was true, the defendants were liable for the amount of the check. *Soma v. Handrulis*, 277 N. Y. 223, 14 N. E. (2d) 46 (1938).

The Uniform Negotiable Instruments Law provides that a restrictive endorsement is one which either prohibits the further negotiation of the instrument; or constitutes the endorsee the agent of the endorser; or vests the title in the endorsee for or to the use of some other person.[2] Although endorsements "for deposit" have frequently been held not to be restrictive,[3] the court in the instant case was governed by a New York statute that an endorsement "for deposit" is to be so considered.[4] It is restrictive in that it constitutes the endorsee the agent of the restrictive endorser for collection and deposit of the proceeds to the credit of the endorser.[5] Had the endorsement in this case been considered a blank endorsement, the check would have been payable to bearer,[6] and sub-

[1] Soma v. Handrulis, 252 App. Div. 332, 299 N. Y. S. 850 (1937).

[2] Uniform Negotiable Instruments Law, § 36. The New York statute contains the same provision. 37 N. Y. Consol. Laws (McKinney, 1917), § 66.

[3] Where the endorser has an account at the bank, is given credit immediately, and can withdraw at once, an endorsement "for deposit" is not restrictive. Security Bank v. Northwestern Fuel Co., 58 Minn. 141, 59 N. W. 987 (1894); Nat. Commercial Bank v. Miller & Co., 77 Ala. 168 (1884); Ditch v. Western Nat. Bank of Baltimore, 79 Md. 192, 29 A. 72 (1894); but see Beal v. City of Somerville, 1 C. C. A. (1st) 598, 50 F. 647 (1892). See also 27 MICH. L. REV. 333 (1929), suggesting that "for deposit" is merely a direction to the bank not to pay the funds to the messenger or employee, and indicates no intention to restrict the check.

[4] "An indorsement of an item by the payee or other depositor 'for deposit' shall be deemed a restrictive indorsement and indicate that the indorsee bank is an agent for collection and not owner of the item." 37 N. Y. Consol. Laws (McKinney, Supp. 1938), § 350-c.

[5] WILLISTON, NEGOTIABLE INSTRUMENTS 86 (1931).

[6] Uniform Negotiable Instruments Law, § 34.

sequent holders from a thief would have been holders in due course.[7] Some courts have stated that where the endorsee is the agent of the restrictive endorser, the title remains in the endorser.[8] Then the endorsee gets title only for the purpose of receiving payment as agent, suing in his own name for the restrictive endorser, or transferring his interest in the instrument to others.[9] Although no case has been found in point, if the legal title stays in the restrictive endorser, it would seem he could sue for conversion later holders from a thief. These later holders have no title and, in addition, notice that title is in the endorser. The suit against such later holders would be similar to a suit by a payee against later intermeddlers who cashed his check on a forged endorsement.[10] The Federal Reserve Bank would be liable under this theory, as it participated in the conversion as agent of the cashing bank, unless the rules under which it operates would deny recovery.[11] But on the other hand some courts hold that a restrictive endorsement, such as the one in the instant case, does pass legal title; and the restrictive endorser merely keeps a beneficial interest in the check, of which all subsequent holders have notice.[12] Under this theory both Sarah Alkoff and the Globe bank would be liable in a suit of an equitable nature for diversion of trust funds. The direction "for deposit" notified them that they could not negotiate the check for their own use.[13] But under this second theory the Federal Reserve Bank would not be liable unless it had notice of the conversion of Handrulis, for it did not negotiate the check nor take the proceeds for its own use. The court held that a blank endorsement of an indi-

[7] Gruntal v. National Surety Co., 254 N. Y. 468, 173 N. E. 682 (1930).

[8] Atkins & Co. v. Cobb, 56 Ga. 86 (1876); White v. National Bank, 102 U. S. 658 (1880); Beal v. City of Somerville, 1 C. C. A. (1st) 598, 50 F. 647 (1892); Commercial Bank v. Armstrong, 148 U. S. 50, 13 S. Ct. 533 (1892); Smith v. Bayer, 46 Ore. 143, 79 P. 497 (1905); Nyssa-Arcadia Drainage Dist. v. First Nat. Bank of Vale, (D. C. Ore. 1925) 3 F. (2d) 648; Cairo Nat. Bank v. Blanton Co., (Mo. App. 1926) 287 S. W. 839.

[9] Cairo Nat. Bank v. Blanton Co., (Mo. App. 1926) 287 S. W. 839. The restrictive endorser can revoke the agency and intercept the proceeds as between subagents. First Nat. Bank of Sioux City v. John Morrell & Co., 53 S. D. 496, 221 N. W. 95 (1928). His endorsees take the instrument subject to the equities good against him. Smith v. Bayer, 46 Ore. 143, 79 P. 497 (1905). He has no personal liability to pay immediate or remote endorsees. First Nat. Bank of Sioux City v. John Morrell & Co., supra.

[10] The cases are collected in 31 A. L. R. 1068 (1924).

[11] It might possibly be held under the New York statute and the rules of the Federal Reserve Board that the collecting bank acting as agent for the cashing bank would not be liable. The New York statute provides, "An initial or subsequent agent collecting bank shall be liable for his own lack of exercise of ordinary care but shall not be liable for the neglect, misconduct, mistakes or defaults of any other agent bank or of the drawee or payor bank." 37 N. Y. Consol. Laws (McKinney, Supp. 1938), § 350-d. The Federal Reserve Board Regulation J, Series of 1930, § V (1), provides, "A Federal reserve bank will act only as agent of the bank from which it receives such check and will assume no liability except for its own negligence and its guaranty of prior endorsements," CCH BANK LAW FEDERAL SERVICE, 12th ed., 549 (1934).

[12] Haskell v. Avery, 181 Mass. 106, 63 N. E. 15 (1902).

[13] Ibid.

vidual following this restrictive endorsement was such notice.[14] It is submitted that the court reached a correct result in ordering a new trial against Sarah Alkoff, as she is liable under either of the two above theories. But it seems questionable that the Federal Reserve Bank had any real notice that the proceeds would never reach the restrictive endorser.

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[14] Such an endorsement following a restrictive endorsement like this would be very unusual, although it might indicate that the individual was the first agent of the restrictive endorser and had signed to pass that agency to the bank.