BILLS AND NOTES-DISCHARGE-INTENTIONAL DESTRUCTION DUE TO MISTAKE AS A DISCHARGE

Richard S. Weinstein S.Ed.
University of Michigan Law School

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Banking and Finance Law Commons, and the Bankruptcy Law Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol52/iss6/8
RECENT DECISIONS

BILLS AND NOTES—Discharge—Intentional Destruction Due to Mistake as a Discharge—The holder of sixteen bonds issued by defendant destroyed the bonds believing them to be worthless after they had been in default as to both principal and interest for six years. Ten years later the defendant went into bankruptcy for reorganization and the holder learned that under the plan of reorganization the bonds were exchangeable for $400 in cash and $600 in preferred stock. When defendant refused to recognize the indebtedness even though the holder tendered an indemnity bond against wrongful payment, the holder instituted suit to recover the value of the bonds. The lower court denied relief to the plaintiff. On appeal, held, affirmed.

Intentional destruction of a negotiable instrument is the highest evidence of an intention to discharge and cancel the debt represented by it. State Street Trust Co. v. Muskogee Electric Traction Co., (10th Cir. 1953) 204 F. (2d) 920.

One of the ways in which a negotiable instrument can be discharged, as set forth in subdivision 3 of section 119 of the Negotiable Instruments Law, is by the intentional cancellation thereof by the holder. This form of discharge cannot be read apart from section 123, which states that "a cancellation made unintentionally, or under mistake . . . is inoperative." It would seem that this limits section 119(3) to the extent that a cancellation might be made intentionally but under a mistake. The court in the principal case in applying the same provisions of the Negotiable Instruments Law reaches the conclusion that there was no mistake within the meaning of section 123 and that there was an intentional cancellation within the meaning of section 119(3). The court defined mistake as being some unintentional act arising from ignorance, surprise, imposition or misplaced confidence. But by defining mistake as an unintentional act the first part of section 123 can then have no meaning.

1 After the institution of the suit, the plaintiff was substituted as conservator of the holder's estate.


3 Okla. Stat. Ann. (1950) tit. 48, §§261(3), 265. For annotations of these two sections in other states see 5 U.L.A., part 2, pp. 476, 583 (1943). The proposed Uniform Commercial Code provides for cancellation and renunciation in §3-605: "(1) The holder of an instrument may even without consideration discharge any party (a) by intentionally cancelling the instrument or the party's signature . . . or by writing 'cancelled' or equivalent words across the instrument or against the signature; or (b) by renouncing his rights by a signed writing or by surrender of the instrument to the party to be discharged. (2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto." This is intended to encompass what was previously in NIL §§48, 119(3), 120(2), 122, 123. Except for the latter section, the other sections have been merely reworded and combined; §123 is omitted entirely. A.L.I. Uniform Commercial Code Official Draft, texts and comments ed., 423-424 (1952). It is doubtful that the changes in the Uniform Commercial Code with respect to §119(3) and the omission of §123 would affect the problem in the principal case. It still does not clarify the meaning of intentional cancellation, and the reason §123 was omitted is that it states a rule applicable to any discharge and the drafters therefore felt it unnecessary to state with special reference to cancellation. Id. at 424.

4 Principal case at 923, quoting from 27 Words and Phrases 365 (1940).
except to restate section 119(3). It would seem that the drafters of the Negotiable Instruments Law by specifically using the disjunctive "or" in section 123 had in mind two different acts: (1) unintentional cancellation and (2) intentional cancellation made under a mistake. Thus, if a note is cancelled in the belief that it is fully paid but as a matter of fact it is not fully paid, though the act of cancellation may be said to be intentional, the debtor is not released. If mistake means this much, then it would seem that it would include the mistaken belief in the principal case.

Historically, the destruction of a negotiable instrument by the owner not only extinguished the paper but the underlying debt and all other legal relations connected with it. From this it has been reasoned that in determining whether there has been an intentional cancellation, the purpose or intent of the holder beyond the intent to destroy is immaterial. But again section 119(3) must be read along with the latter part of section 123, which in effect says that a holder may rebut the inference of intentional cancellation by proving that it was done unintentionally. Thus, it can be said that an intentional destruction or mutilation of the instrument might very well set up a presumption of cancellation, but it is a rebuttable presumption which can be overcome by showing that the holder had a different state of mind. The usual state of mind that the courts look for in section 119(3) is an intention to forgive the indebtedness or to make a gift of the indebtedness to the principal debtor. Nevertheless, the court in the principal case expanded this meaning by holding that the intentional destruction by the holder evidenced an intention to forgive the obligation in the sense of forgetting it or wiping it out. It is not clear why the court felt the necessity to expand the usual meaning in order to bring the case within section 119(3). It cannot be because the defendant relied on the holder's action, for the defendant never knew of the bonds' destruction and had carried them on its books and included them in its reorganization plan. Nor can it be because of fear of loss to the defendant through a future claim in case the bonds were not really destroyed;
the holder had offered to indemnify the defendant against this possible liability. The court felt that in order to give meaning to the explicit words of the statute, the words "intentional cancellation (or destruction)" had to be interpreted to include an intention to forget or wipe out. But other courts have interpreted the meaning to be cancellation with intention to forgive or make a gift of the obligation. It is believed that the latter is the most natural meaning, since economic self-interest makes it unlikely that a holder will cancel with a mere intention to forget or wipe out a debt, whereas it is not unlikely that he may do so with a benevolent intent. By expanding the meaning of intentional cancellation in the principal case, the court has departed from the usual and most natural meaning of the words in a situation where such departure seems clearly unwarranted, thereby giving the defendant a windfall it would otherwise not have received.

Richard S. Weinstein, S.Ed.