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Commercial Transactions

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COMMERCIAL TRANSACTIONS

I. SALES

A. *Judicial Decisions*

In *GMAC v. Herlong*[1] the plaintiff was the assignee of a conditional sales contract. An acceleration clause gave GMAC the right to demand full payment in the event of default. A buffer provision in the contract further specified that GMAC's acceptance of late payments would not amount to a waiver of the right to demand specific performance. On numerous occasions GMAC accepted late and partial payments, and this, without the protective provision, would have amounted to waiver.[2] The Supreme Court of South Carolina held that the provision was applicable only in the event of the defendant's default subsequent to the plaintiff's acceptance of late payments. On August 3, GMAC accepted a late payment and two days later it invoked the acceleration clause. Due to the fact that the defendant had not defaulted after August 3, the non-waiver clause was held to be inapplicable.

The South Carolina Supreme Court in *Grain Dealers Mut. Ins. Co. v. Julian*[3] held that title to a motor vehicle can pass without compliance with the Title Certificate Law and reversed the lower court's ruling that a certificate of title was indispensable to ownership. The court found the certificate law merely regulatory in character and cited authority holding that although a certificate of title is prima facie evidence,[4] this presumption of ownership may be overcome.[5] This decision is in line with earlier cases holding that compliance is not a necessary requisite of ownership.[6]

The defendant in *South Carolina Tax Comm'n v. Schafer Distrib. Co.*[7] received an "emergency" request from Shaw Air

1. 248 S.C. 55, 149 S.E.2d 51 (1966).

2. Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 16 S.E.2d 816 (1941); Welch v. New York Ins. Co., 183 S.C. 9, 189 S.E. 809 (1937); Empire Buggy Co. v. Moss, 154 S.C. 424, 151 S.E. 788 (1930).

3. 247 S.C. 89, 145 S.E.2d 685 (1965).

4. S.C. CODE ANN. § 46-150.11 (1962).

5. Bankers Ins. Co. v. Griffin, 244 S.C. 552, 137 S.E.2d 785 (1964); Porter v. Hardee, 241 S.C. 474, 129 S.E.2d 131 (1963); *cf.* Lynch v. General Acc. Fire & Life Assur. Corp., 327 F.2d 328 (4th Cir. 1964).

6. Clanton's Auto Auction Sales v. Young, 239 S.C. 250, 122 S.E.2d 640 (1961).

7. 247 S.C. 491, 148 S.E.2d 156 (1966).

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Force Base for the delivery of beer. Upon delivery he was charged with violation of South Carolina law which prohibits the sale of beer on Sunday. The supreme court held that the sale took place at Shaw which is under the jurisdiction of the United States courts.

A sale is made where the acceptance of the offer takes place,[8] and here the court found from the intention of the parties that acceptance was conditional upon delivery. The court agreed with the lower court's dictum that if the beer had been destroyed before delivery to Shaw, the loss would have fallen on the seller. No authority was cited for the proposition, and it is doubtful that this would necessarily follow in a risk of loss question in all jurisdictions.

In South Carolina risk of loss passes when title passes.[9] The Uniform Commercial Code[10] clarifies the risk of loss issue by making delivery the key. Risk of loss generally will pass in the absence of a breach when the goods are delivered. Thus the Code significantly changes existing law.[11]

B. *Recent Legislation*

An amendment to section 46-150.27[12] of the South Carolina Certificate of Title Law, pertaining to scrapped, dismantled or otherwise destroyed motor vehicles, makes the existing law more specific and imposes a stringent sanction.

If the vehicle is less than five years old, the transferee of the vehicle, in most cases a salvage yard owner, is required to send the vehicle's certificate of title, license plates, registration card, and the manufacturer's serial plate to the Highway Department. This is to be done within fifteen days after purchasing or obtaining possession. The requirement also pertains to insurance companies who have acquired ownership of salvage vehicles through settlement of claims and to owners of such vehicles who scrap, dismantle, destroy or abandon them.

If the vehicle is more than five years old, owners who transfer the vehicle for wreckage or salvage, or who scrap, dismantle, destroy or abandon it must deliver only the certificate of

8. 77 C.J.S. *Sales* § 6 (1955).
9. John Frazier & Co. v. Hilliard, 2 Strob. 309 (S.C. 1848).
10. UNIFORM COMMERCIAL CODE § 2-509(3).
11. *Supra*, note 10 (S.C. Reporter's Comments).
12. S.C. CODE ANN. § 46-150.27 (1962), as amended.

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title to the Department. The penalty for non-compliance is imprisonment for not less than six months or a fine of not less than 500 dollars, or both. For a second violation, a fine of 1,000 dollars or imprisonment for one year, or both, is imposed.

II. CHATTEL SECURITY

A. *Judicial Decisions*

Embassy Men's Apparel, Inc. v. Lyman Printing & Finishing Co.[13] involved notice to the plaintiff of a pledge against his newly acquired cloth. The cloth purchased from Cottontex by the plaintiff was in the possession of the defendant who had previously contracted with Cottontex to finish it. In the agreement the defendant secured a pledge.

The defendant, in its answer to the plaintiff's claim for possession, argued that the plaintiff had notice because it knew, or should have known, of Cottontex's financial instability and its inabiliy to obtain credit. The lower court sustained a demurrer to this defense because it felt that to allow it any sufficiency in law "would require every purchaser of cloth to investigate the financial stability of the seller."[14] In reversing, the supreme court held: "Whether or not the circumstances . . . were such as to place the plaintiff upon inquiry as to any claims the defendant might have had against the property in its possession is . . . to be determined upon the trial of the case."[15]

B. *Recent Legislation*

A small loan act,[16] regulating loans of 7,500 dollars or less, repealed the 1962 South Carolina Small Loan Companies Act[17] which pertained to loans of 200 dollars or less. The act provides for licensing of persons engaged in making such loans by the State Board of Bank Control which is to investigate the books of the lenders at least once each year. If the board finds violations, petition to the circuit court may be made.

13. 247 S.C. 471, 148 S.E.2d 158 (1966).
14. Record, Embassy Men's Apparel, Inc. v. Lyman Printing & Finishing Co., 247 S.C. 471, 148 S.E.2d 158 (1966).
15. Embassy Men's Apparel, Inc. v. Lyman Printing & Finishing Co., 247 S.C. 471, 148 S.E.2d 158 (1966).
16. S.C. Acts & J. Res. (1966), p. 2391.
17. S.C. CODE ANN. § 8-701 (1962).

Section 14 states the maximum interest and charges in lieu of interest permitted, which are dependent upon the amount of the cash advance of the loan. The penalty for violation of the act remains the same as that imposed by the Small Loan Company Act—a fine of not more than 1,000 dollars and not less than 100 dollars.

An amendment to section 37-605[18] of the South Carolina Code exempts certain surety companies from the deposit of a 50,000 dollar surety bond required by the prior existing law. If the surety company has complied with the provisions required of insurance companies in the 1962 code, it is relieved of making the deposit.

III. Commercial Paper

The case of *Elliott v. Snyder*[19] presents two interesting questions: (1) What constitutes proper tender? and (2) What constitutes a worthless check?

The defendant gave the plaintiff a check on December 31, 1962, in payment of an installment due on a land contract. On that date the defendant did not have sufficient funds on deposit to cover the check. On January 3, he made a sufficient deposit by another check and his account was conditionally credited. The December 31 check reached the bank before the bank could clear the January 3 check and it was marked "drawn against uncollected funds." A bank employee said of this: "It means that . . . we are holding funds until we get collection on the check that he has deposited."[20]

Had the plaintiff attempted to cash the check on the day he received it, this would have been a case of improper tender because it would have been drawn against insufficient funds—a worthless check. The court held that offering the check was not improper tender because a check is accepted on the condition that it will be paid when presented to the bank.[21] Even though this check was not paid when presented to the bank the court felt that it was not worthless, holding that the check was

18. S.C. Code Ann. § 37-605 (1962), as amended.

19. 246 S.C. 186, 143 S.E.2d 374 (1965).

20. Record, Elliott v. Snyder, 246 S.C. 186, 143 S.E.2d 374 (1965), in holding 13 of Master's report.

21. The court cited Surety Indemn. Co. v. Estes, 243 S.C. 593, 135 S.E.2d 226 (1964); Burns v. Prudence Life Ins. Co., 243 S.C. 515, 134 S.E.2d 769 (1964); Atlantic Life Ins. Co. v. Barringer, 175 S.C. 145, 178 S.E. 505 (1935).

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sufficient compliance with the terms of the contract to prevent forfeiture. The notation, "drawn against uncollected funds," had the effect of placing the plaintiff on notice that before it declared forfeiture it had to either redeposit the check or make an attempt to collect from the defendant.

The court found the rule to be unusually flexible and held this check not worthless, even though it was worthless when received and was not paid when presented to the bank. But on the other hand the court certainly did not want to declare a forfeiture which is so disfavored that courts seize upon slight evidence to prevent it.[22] The court was faced with two opposing policy considerations: The policy against forfeiture and the policy favoring strict compliance with the law of commercial paper in order to protect commercial stability. The result in this case, though ambivalent, could be considered fair. However, under different commercial circumstances, *e.g.*, a 1,000,000 dollar check or the risk of drawer declaring bankruptcy, it is doubtful that the decision would have been the same.

South Carolina Nat'l Bank v. Lake City State Bank[23] is a sequal to *Singletary & Son, Inc. v. Lake City State Bank*[24] decided in 1963. The result in the *South Carolina Nat'l Bank* case was predicted by the survey article of that year on Commercial Transactions. For a full discussion of the fictitious payee situation under the Negotiable Instrument Law and the Uniform Commercial Code see 17 *South Carolina Law Review* 9 (1965).

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22. See Palmer v. Sovereign Camp W.O.W., 197 S.C. 379, 15 S.E.2d 655 (1941); Lane v. New York Life Ins. Co., 147 S.C. 333, 145 S.E. 196 (1928); Cope v. Jefferson Standard Life Ins. Co., 123 S.C. 532, 133 S.E. 440 (1926).

23. 246 S.C. 287, 143 S.E.2d 584 (1965).

24. 243 S.C. 180, 133 S.E.2d 118 (1963).