



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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E-177925

JUL 13 1973

The Honorable Ronana A. Baruelos
Treasurer of the United States
Treasury Department

Dear Mrs. Baruelos:

By letter dated August 17, 1972, file reference CC-VIP 4, Mrs. Rebecca H. Volkman, Special Assistant Treasurer, forwarded to us Army (Finance) check No. 11,003,439, drawn August 31, 1970, for \$634.69, over symbol 5073, to the order of Jimmy Rogers, and the related file, with a request for advice as to whether there is a legal basis for continuing reclamation action against the bank or whether the payee should be held liable for refund of the amount involved.

The file shows that after your office ascertained that the original check as well as the substitute check, which had been issued to the payee under current procedures, were both negotiated by the payee and paid, the Finance Office at Fort McPherson, Georgia, was requested on November 17, 1970, to effect collection of the amount of \$634.69 from the payee. Subsequently, in a letter dated November 23, 1970, the payee informed you that he did not receive the original check and that it does not bear his endorsement. He stated, however, that he received and cashed the substitute check. In his letter of November 24, 1970, he stated that he had in his office a rubber stamp bearing a facsimile of his signature and that the endorsement on the original check resembled the rubber-stamp imprint.

On March 4, 1971, the payee executed the prescribed form for making claim against the United States on account of the nonreceipt and nonnegotiation of the original check, but deleted the claim clause thereon inasmuch as he had negotiated the substitute check and received the proceeds thereof. He indicated on the form that he usually cashed his checks at the Farmers National Bank or First National Bank, Opelika, Alabama, whereas the subject check was cashed at the National Bank of Fort Banning, Fort Banning, Georgia.

The investigation by the United States Secret Service revealed that the check was negotiated on an endorsement made by the rubber-stamp imprint of the payee's name by a person whose identity could not

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QUERIED DECISION
By Comp. Gen.....

be established after it apparently had been removed from a post office box used by the payee and another military member in connection with activities for the U.S. Army Recruiting Service. It was also revealed that the rubber stamp was kept on the top of the payee's desk at all times and that it was not stolen. An opinion rendered by the Examiner of Questioned Documents is to the effect that the stamped impressions of the payee's signature contained in one of his letters for comparison purposes compared favorably with the rubber-stamped impression of the payee's name on the original check.

Reclamation proceedings were undertaken by your office and in response to the request for refund the second endorser, the National Bank of Fort Benning, declined refund on the contention that it is a holder in due course because it took the check for value and in good faith and without notice of any infirmity in the instrument or defect in the title. The bank also denied liability on an assertion that "the law concerning checks currently states that when one of two innocent persons must suffer by the act of a third person, he who puts it in the power of the third person to inflict the injury shall bear the loss." The bank further contends that the payee had an obligation to protect the rubber stamp of his signature from unauthorized use and that if he had performed this obligation the incident would not have taken place.

The Special Assistant Treasurer has furnished a resume of the facts and circumstances surrounding the negotiation of the check and advice of the position taken by the second endorser. In view of the related circumstances, she has requested advice as to whether her office has any legal basis for continuing reclamation action against the bank or whether the payee should be held liable for refund of the amount involved.

By Act No. 713, Laws of 1962, page 154, the Uniform Commercial Code was adopted by the State of Georgia, effective January 1, 1964. Section 109A-1-201 lists general definitions with subsection (43) reading as follows: "Unauthorized signature or endorsement means one made without actual, implied or apparent authority and includes a forgery." Section 109A-3-404, also applicable in this case, reads, in pertinent part, as follows:

Unauthorized signatures.—(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

There is nothing in the record to show that prior to the negotiation of the check the payee had authorized anyone to use the rubber-stamp impression of his signature to endorse and negotiate the check. While such endorsement on the check may not be considered a forgery it was without question an "unauthorized signature" within the meaning of the above quoted laws so as to preclude the passage of valid title to the second endorser, the National Bank of Fort Benning.

The subject check does not bear a handwritten first endorsement but a rubber-stamped endorsement which by itself should have placed the endorsing bank on notice that the presenter may not have had valid title to the check. Generally, it is common knowledge that while organizations, business firms, etc., utilize rubber stamps to endorse checks, only in rare instances does a person not acting in a business capacity use a rubber stamp to endorse a check. Inasmuch as the check was drawn to a payee whose address is shown on the face of the check as Opelika, Alabama--an out-of-state address insofar as the endorsing bank was concerned--and since the check did not bear a handwritten endorsement and was for a comparatively substantial amount, it is our view that the endorsing bank failed to exercise that degree of care which normally would be required under such circumstances for identification of the presenter of the check as the payee. Note in this connection that the check as all other Government checks bears the printed words on the left side of the face thereof "KNOW YOUR ENDORSER . . . REQUIRE IDENTIFICATION."

In other words, had the bank carefully and prudently made an effort to identify the presenter of the check it would have then ascertained that the presenter was not in fact the payee and, hence avoided an unauthorized and unlawful negotiation of a Government check.

We see no merit in the endorsing bank's contention that the payee had an obligation to protect the rubber stamp of his signature from unauthorized use. An unauthorized negotiation of one of his pay checks by means of that rubber stamp could not be anticipated under normal circumstances as he could not foresee the theft of such check from a post office box used jointly by the payee and another military member. Moreover, the fraudulent negotiation of the check was made possible by the endorsing bank's failure to properly identify the negotiator of the check rather than by an unauthorized endorsement being placed on the check. In this connection, we invite your attention to the decision of the Court of Appeals of Georgia in the case of Harper v. Georgia Power Company, 49 S.E. 2d 668 (1948), which involved a forged check which was cashed by a retail establishment for a presenter who produced an identification card in the payee's name and who was wearing a Georgia

Power Company uniform with a cap which had a number corresponding with the number shown on the check. In affirming the lower court's judgment, the court said, in pertinent part, that--

When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any part thereof, can be acquired through or under such signature unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. Code, § 14-223. There are no allegations in the petition of the plaintiff, and no evidence offered by the plaintiff, showing any reason why the defendant is precluded from setting up the alleged forgery of the indorsement on the check. Therefore, if such indorsement was a forgery, it was wholly inoperative, and no right to enforce payment of the check was acquired by the plaintiff. * * *

No issue on the question of forgery was made by the testimony in the case. The plaintiff merely showed that he made a reasonable effort to identify the person for whom he cashed the check, and that such effort apparently failed. The plaintiff did not testify that W. P. Dial, the payee of the check who was in the court, was the man for whom he cashed the check. On the other hand, Dial testified that he did not receive the check, and did not cash it, and did not know who got the check or how he got it, and that he was not in town on the day the check was cashed; and that the signature on the back of the check was not his, and that he did not give any one permission to get his check. (underscoring added.)

The rights and liabilities under the laws of Georgia of endorsers on irregularly negotiated checks are also discussed in Roswell Bank v. Citizens and Southern De Kalb Bank, 104 Ga. App. 291, 121 S.E. 2d 706 (1961), and Yatesville Banking Company v. Fourth National Bank, 10 Ga. App. 1, 72 S.E. 525 (1911).

We have found no Georgia cases involving a factual situation in which a rubber stamp endorsement was made on a check in the same manner and under similar circumstances as in this case. However, for guidance

there are other State cases which are relevant to the issue herein. In the case of Greghan State Bank v. O and K Construction Company, 370 P. 2d 726 (1962) which involved the unauthorized use of a rubber stamp impression for negotiation of a check the Court said, in pertinent part that--

It is argued that in supplying McKenna with a rubber stamp bearing the name and address of the construction company, he was provided with the means of endorsing paper and thus representing that he had authority to do so. This does not constitute the creation of an appearance of authority. Whatever appearance of authority arose from the use of the rubber stamp was not created by the O and K Construction Company; it was created by McKenna himself. Certainly the mere furnishing of a name and address stamp by the company for use in its office did not create an ostensible authority to endorse checks and receive payment for them. Stamps of this character are used in most offices; the supplying of them signals nothing with respect to the authority of those employed to use them. Where there are other facts from which third persons might reasonably infer that authority was granted the principal may be held liable. (Underlining added.)

There is also for consideration herein the case of Prattic-Berren Lumber Company v. United States Trust Company, 164 A. 580 (1933). The Court said, among other things, that--

Obviously, it cannot be held, in the absence of ratification or estoppel, that the plaintiff is bound by its manager's unauthorized act in surreptitiously taking customers' checks, affixing rubber stamp indorsements with no signatures appearing thereunder, and negotiating them over to the credit of his own corporation, in which the plaintiff had no stock, no control, or even knowledge of its existence. The very character of the rubber stamp impression of the plaintiff's name was sufficient evidence to put the defendant on notice and on guard when these checks were presented for payment. * * *

In effect there was forgery of an indorsement. It was made by a rubber stamp by one who had no right to affix the same and by means of which Schick

succeeded in obtaining from the appellant monies which it had collected for the plaintiff.

It seems to us there can be no substantial difference between an actual forging of a name to a check as an indorsement by a person not authorized to make the signature and the affixing of a name to a check as an indorsement by the use of a rubber stamp by a person not authorized to use it.

The appellant does not deny collecting the money on the indorsement. It was the appellant's duty to inquire as to the genuineness of the plaintiff's indorsement and the authority of Schick to divert to his own company, on a rubber stamp indorsement of plaintiff's name, funds belonging to plaintiff. The failure on the part of defendant to make such inquiry was a breach of duty that it owed plaintiff, and made it liable to the plaintiff for the amount of the checks for money received by the defendant to the use of the plaintiff.

Additionally, see Lucas Vista Oil Company v. Paris Bank of Los Angeles, 160 P. 12 (1919) which also involved an unauthorized use of a rubber stamp for the negotiation of a check. The Court said, among other things, that--

* * * Because of the unauthorized indorsement of the check by Kemper, plaintiff's title to the proceeds of said check did not pass to defendant when the latter collected the amount thereof from the drawer's bank; but, instead, it became liable to plaintiff for that much money had and received to and for the use of plaintiff. * * * As we view the evidence, and construe the law applicable to this case, there was not the slightest excuse for the act of the defendant bank in so accepting said check. As we have seen, there were no previous dealings because of which it might be misled. Kemper said nothing; no inquiry was made of him. Without any fault upon the part of plaintiff its property was taken and attempted to be disposed of by one having no authority so to do. Had the defendant bank performed its plain duty here, it would have been saved from its present predicament, and Kemper would have been thwarted in his unscrupulous scheme. * * *
(Underlining added.)

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On the basis of the above and since there is nothing of record to support a conclusion that the payee was at fault in the improper negotiation of the original check, it is our view that the National Bank of Fort Denning is legally liable under the Uniform Commercial Code as adopted by Georgia for the amount it had collected on that check. Accordingly, reclamation action against the bank on the original check should be continued.

The original check and photocopy of the substitute check together with the file are returned for your further action in the matter.

Sincerely yours,

Paul G. Deabling

Acting Comptroller General
of the United States