PUBLICATION UPDATE

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BRADY ON BANK CHECKS AND FUNDS TRANSFERS

Publication 4720 Release 30 May 2021

HIGHLIGHTS

- This release of Brady on Bank Checks and Funds Transfers contains updates and revisions to provide the current status of the law. These are some highlights from this release affecting Chapters 16 to 30.
- Chapter 16, Problems of Payment of Checks
- Chapter 17, Settlement for Payment and Problems of Bank Insolvency
- Chapter 18, Availability of Funds for Deposited Checks: Regulation CC
- Chapter 19, Overdrafts and Check-Kiting Problems
- Chapter 20, Funds Transfers Under Uniform Commercial Code Article 4A
- Chapter 21, Encoded Checks, Electronic Funds Transfers, and Check 21 Act
- Chapter 22, Dishonor and Wrongful Dishonor of Check
- Chapter 23, Notice of Dishonor and Protest of Unpaid Check
- Chapter 27, Altered Checks
- Chapter 28, Forged Checks
- Chapter 29, Forged Indorsements on Checks
- Chapter 30, Rights of Payee or Third Person Where Indorsement is Forged

Chapter 16—Problems of Payment of Checks

In a 2021 case, a California court held that even if the plaintiff's unrelated accounts sufficed to make it a depositor, a bank's duty to act with

reasonable care "is an implied term in the contract between the bank and its depositor," and "case law reflects the narrow scope of a bank's duties under the deposit agreement," namely a duty "to honor checks properly payable from the depositor's account," a duty "to dishonor checks lacking required signatures," and a duty "to render faithful and accurate accounts under the contract of deposit.

In an Ohio decision, the plaintiff argued that she had nothing to do with the attempt to cash the check after her wallet was stolen. The check at issue was stamped as "Alter/Fict," by issuing bank, which is banking nomenclature to classify a check as fictitious. Defendants subsequently sent a letter to Plaintiff to collect on the dishonored check, on behalf of a check chasing service. Plaintiff sued.

Chapter 17—Settlement for Payment and Problems of Bank Insolvency

A Texas court noted that "[a]s the Fifth Circuit Court of Appeals has observed, "[t]he UCC official commentary is an authoritative interpretation of the Code." "Barring a contrary interpretation from the Texas courts, we are guided by the official commentary."

Chapter 19: The Fifth Circuit heard an appeal and determined that bank was liable for letting a fiduciary to misappropriate the trust funds that were held in the bank to pay the trustee's personal debts.

Another Texas case involved an imposter who drained the account holder's bank account. The court remanded to the trial court to determine which account agreement was effective at the time of the underlying fraudulent activity.

A South Carolina found the facts of a 2020 case distinguishable from Williams v. United States, cited by Defendants, in which the Court held that a check itself "is not a factual assertion" and makes no "representation as to the state of [the signer's] bank balance."

Chapter 20—Funds Transfers Under Uniform Commercial Code Article 4A

A Georgia court held that the plaintiff did not allege that the bank acted in contravention to the dictates of Article 4A or that they otherwise acted improperly by its standards.

Chapter 22—Dishonor and Wrongful Dishonor of Check

Under Maryland UCC § 4-402, the status of the accounts at the time the checks were dishonored is determinative, as "[t]he obligation of a bank to pay a customer's checks, or its right to refuse payment, depends upon the state of the customer's account at the time of presentment.

A bankruptcy court in West Virginia opined that in the context of 'actual fraud,' the U.S. Supreme Court clarified the application of § 523(a)(2)(A) by concluding that the inclusion of 'actual fraud' within the provision indicates "a clear Congressional intent to except from discharge debts incurred through fraudulent actions distinct from false representa-

tions, including fraudulent conveyance schemes."

The Fourth Circuit held that an obligation to pay money arises out of an exchange of a dishonored check for goods or services, since there's been no payment in full.

To prove a false light invasion of privacy claim, a plaintiff must show that the defendant (1) publicized (2) false information about another that (3) would be highly offensive to the reasonable person and (4) either knew or acted in reckless disregard as to the falsity of the information.

Chapter 29—Forged Indorsements on Checks

California Revenue & Tax Code § 470 does not specify that the purported forgery harm the person or entity whose signature was forged. All that is required is: (1) an intent to defraud; (2) signing the name of another on a check; and (3) knowledge that one does not have the authority to sign that name.

California UCC § 4-406 provides particular rules governing the duties between a customer and a bank with regard to forged checks, displaces common-law rules governing the duties between those parties in that situation. The duty stated in 4-406(c) becomes operative only if the "bank sends or makes available a statement of account or items pursuant to subsection (a).

The court in Georgia stated that the payment of a check without the endorsement of all joint payees can support a non-endorsing payee's claim for conversion.

A California court analyzed the holding in Tedesco v. Crocker National Bank, 148 Cal. App. 3d 1211, 1215–1216, 196 Cal. Rptr. 534 (1983), which has been criticized for its failure to acknowledge the distinction drawn in California's Commercial Code between payees and drawees.

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