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Bills and Notes: Finance Company as Holder in Due Course of Note and Conditional Sales Agreement

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Siegel: Bills and Notes: Finance Company as Holder in Due Course of Note

less liable in collisions in which the carrier is solely at fault. Such a modification of these acts not only would rectify this anomaly in the law of admiralty but would prevent the possibility of collusion between colliding vessels to defeat, through the assertion of sole negligence by the carrier, the right of a cargo owner to recover damages.

C. J. BUDZINSKI

BILLS AND NOTES: FINANCE COMPANY AS HOLDER IN DUE COURSE OF NOTE AND CONDITIONAL SALES AGREEMENT

Mutual Finance Co. v. Martin, 63 So.2d 649 (Fla. 1953)

A dealer fraudulently misrepresented a deep-freeze unit to defendant purchaser, who signed concurrently a note and conditional sales agreement. The plaintiff finance company, after investigating the purchaser's credit and approving the terms of the sale, furnished the necessary forms, with its name in bold type contained therein. Plaintiff unsuccessfully sought payment as a holder in due course, pleading immunity to the defenses of fraud or failure of consideration. On appeal, HELD, the finance company was not a holder in due course under the Florida Negotiable Instruments Law.[1] Judgment affirmed.

Finance companies, deriving a mammoth profit from the discounting of notes, have generally attempted to use the guise of a holder in due course to protect themselves in conditional sales agreements.[2] Florida has acknowledged the negotiability of notes executed concurrently with such agreements, or similar instruments,[3] but the

[1]FLA. STAT. §674.54 (1951): "A holder in due course is a holder who has taken the instrument under the following conditions: . . . (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it"; §674.58 (1951): "To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith."

[2]See 25 ST. JOHN'S L. REV. 107 (1950).

[3]Robertson v. Northern Motor Sec. Co., 105 Fla. 644, 142 So. 226 (1932); Fowler v. Industrial Acceptance Corp., 101 Fla. 259, 134 So. 60 (1931); Voges v. Ward, 98 Fla. 304, 123 So. 785 (1929).

question of the finance company's good faith has not heretofore confronted the Florida Court.[4]

Since the position of the company as a holder in due course depends upon the circumstances of each case, no general rule can be applied. Some courts have looked upon the dealings between the seller and the finance company in terms of principal and agent, and have refused to find a holder in due course when they thought such agency relationship existed.[5] Other courts have sought to protect the finance company, insisting that there was no bad faith even when the company supplied blank forms with its name printed on the back,[6] or financed all notes of the seller over a long period of time,[7] or supplied forms that were in the nature of loan applications to be filled out by the purchasers.[8]

The modern trend has been to protect the consumer whenever possible and to find the finance company "so closely connected"[9] with the seller that it cannot in good faith say that it was a holder in due course. This "intimate" relationship[10] has been found when the finance company counseled and aided the seller,[11] provided a rate chart for use in calculating the finance charges,[12] manufactured the product,[13] approved the sale through its credit department,[14] or took out insurance on the item sold.[15]

The Florida Supreme Court in the instant case admitted that its holding may "require some changes in business methods and will

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[4]At p. 652.

[5]Palmer v. Associates Discount Corp., 124 F.2d 225 (D.C. Cir. 1941); Bastian-Blessing Co. v. Stroope, 203 Ark. 116, 155 S.W.2d 892 (1941).

[6]Mayer v. American Fin. Corp., 172 Okla. 419, 45 P.2d 497 (1935).

[7]International Fin. Co. v. Magilansky, 105 Pa. Super. 309, 161 Atl. 613 (1932).

[8]Standard Motors Fin. Co. v. Yellow Bayou Gin and Planting Co., 1 La. App. 424 (1925).

[9]*See* Commercial Credit Co. v. Childs, 199 Ark. 1073, 1077, 137 S.W.2d 260, 262 (1940).

[10]See 57 YALE L.J. 1414, 1415 (1948).

[11]Commercial Credit Corp. v. Orange County Mach. Works, 34 Cal.2d 766, 214 P.2d 819 (1950).

[12]*See* C.I.T. Corp. v. Emmons, 197 So. 662, 663 (La. App. 1940).

[13]*See* Bastian-Blessing Co. v. Stroope, 203 Ark. 116, 118, 155 S.W.2d 892, 894 (1941).

[14]*See* Buffalo Ind. Bank v. De Marzio, 162 Misc. 742, 296 N.Y. Supp. 783, 784 (Buffalo City Ct. 1937).

[15]*See* Taylor v. Atlas Sec. Co., 213 Mo. App. 282, 284, 249 S.W. 746, 747 (1923).

impose a greater burden on the finance companies."[16] Although it has been argued that a finance company's unfair advantages should be corrected by the legislature rather than the judiciary,[17] the Florida Court has taken a firm and admirable step toward safeguarding the individual consumer by puncturing the finance companies' use of the Negotiable Instruments Law as a legal shield.

EDWARD SIEGEL

CRIMINAL LAW: SIMULTANEOUS CONVICTIONS AS OFFENSES UNDER FOURTH FELONY OFFENDER STATUTE

Reed v. Mayo, 61 So.2d 757 (Fla. 1952)

Petitioner was sentenced in 1935 as a fourth felony offender after having been convicted on the same day for the third and fourth offenses. In an original proceeding before the Supreme Court on his petition for a writ of habeas corpus, HELD, the sentence was improper. When convicted for the third and fourth felonies on the same day the offender may be sentenced on each conviction independently but cannot be sentenced to life imprisonment under the fourth felony offender statute, Section 775.10 of Florida Statutes 1951. Petitioner discharged from custody of respondent.

The Legislature of Florida first enacted the fourth felony offender law in 1927, and it remains today in its original form.[1] The statute provides for life imprisonment of any person who again suffers felonious conviction after having been three times convicted within this state of felonies or attempts to commit felonies. Conviction under the law of any other jurisdiction of a crime which if committed within this state would be a felony will be counted as a Florida conviction. A criminal may be prosecuted as a fourth felony offender even though sentence has been imposed previously for the fourth felony alone. Following proper trial the previous sentence may be vacated and the convict sentenced as a fourth felony offender.[2]

[16]At p. 653.

[17]*See, e.g.,* White System of New Orleans v. Hall, 219 La. 440, 449, 53 So.2d 227, 230 (1951); see 57 YALE L.J. 1414, 1419 (1948).

[1]FLA. STAT. §775.10 (1951), enacted as Fla. Laws 1927, c. 12022, §2.

[2]FLA. STAT. §775.11 (1951).