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Bills and Notes -- Statute of Limitations -- Forged Endorsements

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An action was brought by a depositor against his bank to recover for the wrongful payment of a check upon a forged endorsement. Defendant bank alleged that the applicable statute of limitations ran from the time the cancelled check was returned to the plaintiff and thus the action was barred. The lower court granted defendant's motion for summary judgment. Held, reversed, the statute of limitations does not begin to run until the depositor discovers the forgery or it is proven that he would have, had he exercised ordinary business care. "Edgerly v. Schuyler," 113 So. 2d 737 (Fla. App. 1959).

It is the duty of a drawee bank to determine the genuineness of endorsements on checks presented for payment. This duty is based upon an implied contract of the bank to pay the depositor's money on demand to whomsoever the depositor indicates. Similarly, a person by reason of a valid endorsement from the payee is also entitled to the implied contract of the bank to pay the depositor's money on demand.

to such payment. Payment by the bank upon a forged endorsement constitutes a breach of this implied contract which gives rise to an action by the depositor to have his account re-credited. Consequently, a bank acts at its peril when payment is made upon a forged endorsement.

The view taken by the majority of jurisdictions when a breach of this implied contract has occurred has been that the cause of action accrues when the depositor receives his bank statement and the cancelled checks. The rationale of this theory is that at that time the bank tends


8. Union Tool Co. v. Farmers' & Merchants' Nat'l Bank, 192 Cal. 40, 218 Pac. 424, 28 A.L.R. 1414 (1923); Kansas City Title & Trust Co. v. Fourth Nat'l Bank, 135 Kan. 414, 10 P.2d 896, 87 A.L.R. 334 (1934); Masonic Benefit Ass'n v. First State Bank, 99 Miss. 610, 55 So. 408 (1911); Bruce v. First Nat'l Bank, 180 Wash.
knowledge to the depositor of the amount owed him by the bank. The bank statement is considered a denial of the bank’s liability for any other amount. Therefore, a demand upon the bank by the depositor to have his account re-credited is not necessary to cause the statute of limitations to run.

New York is the only jurisdiction where the depositor’s cause of action has not been held to accrue upon delivery of the bank statement and the cancelled checks. The New York Supreme Court, in City of New York v. Fidelity Trust Co., ruled that the cause of action could not accrue until the depositor had made an actual demand upon the bank, such demand being predicated on actual knowledge of the forgery.

In the instant case, one of first impression in Florida, the court rejected the majority view and adopted a modification of the New York position. The court did not accept that portion of the New York proposition that demand must be made by the depositor in order for the cause of action to accrue, reasoning that to do so would be to give the depositor an unfair advantage by enabling him to withhold demand until such time as he desired to assert it. However, it did accept the New York theory that the cause of action commences when the depositor discovers the forgery and added, in the alternative, or when the depositor “reasonably should have” discovered it.

The position of the majority of jurisdictions, in effect, places a duty upon the depositor to discover the invalidity of the endorsements rather than relying upon the bank’s determination of the endorsements. The Florida court, on the other hand, has adhered to the proposition that the burden of detecting forged endorsements properly belongs upon the bank. It appears that the Florida decision has relieved the depositor from innocently suffering a penalty for the happening of a situation over which he has no control.

Marvin H. Gillman


10. Supra note 9.


14. Supra note 8.

15. Payment by the bank on an instrument bearing a forged endorsement with no subsequent appraisal to the depositor of the forged endorsement.