1953

Recent Cases: Bills and Notes — Separate Instruments Read as One and Affecting Status as Holder in Due Course and Negotiability of Promissory Note

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Recommended Citation
Robert E. Johnson, Recent Cases: Bills and Notes — Separate Instruments Read as One and Affecting Status as Holder in Due Course and Negotiability of Promissory Note, 33 Neb. L. Rev. 92 (1953)
Available at: https://digitalcommons.unl.edu/nlr/vol33/iss1/12

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Bills and Notes—Separate Instruments Read as One and Affecting Status as Holder in Due Course and Negotiability of Promissory Note

Plaintiff finance company followed a policy of refusing to take up negotiable notes from appliance dealers unless the notes were accompanied by a statement signed by the maker of the note that all merchandise had been installed. A dealer forged the signature of defendant maker on the certificate, warranting that all merchandise had been installed. Plaintiff finance company sued the maker on the note. Held: the finance company forfeited its status as a holder in due course by requiring the additional instrument as a condition precedent to acceptance of the note. The court reasoned that since the finance company required the certificate of installation, it was to be held as an original party not only to the certificate but also to the note which accompanied it, and would be subject to all defenses maker could set up on either instrument.¹

The instant case applies the rule that a note and another instrument executed contemporaneously must be read together, regardless of whether reference is made on the note to the other instrument. This is a well recognized rule for interpreting simple contracts,² and some courts have incorporated it into the negotiable instruments law, holding that the note is nonnegotiable regardless of the content of the contemporaneous instrument.³ Another view is that where the note does not refer to the extrinsic instrument, the note will remain negotiable unless something within the body of the extrinsic instrument would destroy negotiability if it were on the face of the note.⁴ This doctrine,

² 3 Williston, Contracts § 628 (Rev. ed. 1938).
⁴ The Nebraska court has adopted this theory, Consterdine v. Moore, 65
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however, applies only to original parties to the note and to those with notice that there is a contemporaneously executed instrument. But, the weight of authority looks only to the face of the note to determine negotiability, unless the note is expressly conditioned on the contemporaneous instrument.

Texas, the jurisdiction where the instant case arose, has consistently rejected the doctrine that contemporaneously written instruments should be read together, and has followed the general weight of authority. Contemporaneous agreements between persons not original parties to the note have been treated separately in determining the rights of the holder of the note, and have not affected the negotiability of the note.

The court in the instant case disregarded this past interpretation of the law, and not only attempted to apply the doctrine of contemporaneously written instruments, but extended it to a holder who is not an original party to the note. The court did not hold that requiring the certificate of installation was an indication of bad faith, but entered into the fiction that the holder was an original party to the note and, therefore, a party to a nonnegotiable instrument. This decision not only conflicts with earlier Texas authority, but is an application of law resulting in further impairment of free circulation of negotiable instruments, and seems contrary to the Negotiable Instruments Law.

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For a general criticism of the whole doctrine of contemporaneous instruments, see Aigler, Negotiable Instruments, 26 Mich. L. Rev. 471, 491 (1928); Bailey, Negotiable Instruments, 13 Texas L. Rev. 278 (1935); Note, 14 Texas L. Rev. 307 (1936).

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1 Powell & Powell v. Greenlief & Courrier, 104 Vt. 480, 162 Atl. 377 (1932); Perth Amboy Trust v. Moden School Ass'n, 9 N.J. Misc. 368, 154 Atl. 418 (Dist. Ct. 1931); Utah Lake Irrig. Co. v. Allen, 64 Utah 511, 231 Pac. 818 (1924); Continental Guaranty Corp. v. People's Bus Line, 1 Harr. 595, 117 Atl. 275 (Del. 1922); Equitable Trust Co. v. Warger, 258 Ill. 615, 102 N.E. 209 (1913); Uniform Negotiable Instruments Law § 3(2).


Although the court might have used this line of attack, the overwhelming weight of authority holds that knowledge of executory consideration is not bad faith, Uniform Negotiable Instruments Law § 56. Also see cases cited in Beutel's Brannan, Negotiable Instruments Law 788 (7th ed. 1948).

10 Supra note 7.