

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 23 1989

CLERK SUPREME COURT

FIRST NATIONAL BANK IN
LENOX, Lenox, Iowa,

Plaintiff,

vs.

CRESTON LIVESTOCK AUCTION
INC. and FIRST NATIONAL
BANK IN CRESTON,

Defendants.

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9-118
88-879

CRESTON LIVESTOCK AUCTION, INC.

Cross-Petitioner/
Plaintiff-Appellant,

vs.

FIRST NATIONAL BANK IN CRESTON

Cross-Petitioner/
Defendant-Appellee.

Appeal from the Iowa District Court for Union County
(CL 10340), Joel D. Novak, Judge.

Creston Livestock appeals a district court ruling
denying its cross-petition claim for contribution against
the First National Bank of Creston. **REVERSED AND REMANDED.**

Steven W. Guiter of Johnston, Hicks & Guiter,
Knoxville, for cross-petition plaintiff-appellant.

Jon P. Sullivan of Dickinson, Throckmorton, Parker,
Manheimer & Raife, Des Moines, for the cross-petition
defendant-appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

SACKETT, J.**122**

In this conversion action between Creston Livestock Auction, Inc., cross-petitioner/plaintiff-appellant and First National Bank in Creston, cross-petitioner/defendant-appellee, the question is whether a copayee of a check who endorses the check can be a holder in due course and be deemed to take the check free of the language of the endorsement. We hold under the facts of this case, it cannot be. We reverse the trial court.

The case was tried to the court on stipulated facts. The following events led to the controversy. One Parker, now bankrupt, sold livestock through defendant Creston Livestock Auction, Inc. Parker had given plaintiff First National Bank of Lenox a security interest in the livestock. Later Parker also gave a security interest in the livestock to defendant First National Bank in Creston. The Lenox bank's lien on the livestock was perfected and prior to the Creston bank's.

Creston Livestock was aware of the Lenox bank's lien and intended to make the check to Parker and the Lenox bank but by mistake made the check payable to Parker and the Creston bank. Parker endorsed the check and took it to the Creston bank. The Creston bank endorsed the check and applied it to Parker's loan with them. The Lenox bank learned of the transaction and sued Creston Livestock and the Creston bank for conversion. The Lenox bank ultimately

was paid by Creston Livestock who seeks recovery here against the Creston bank.

The trial court determined the Creston bank was a holder in due course and Creston Livestock had no recourse against them. We reverse and remand to the trial court to enter judgment for Creston Livestock for amounts claimed in their petition.

Creston Livestock first contends the trial court erred in holding the Creston bank was a holder in due course and consequently took the check free of the warranty of the endorsement. Creston Livestock contends when the Creston bank signed the endorsement it, together with Parker, warranted title to the livestock to Creston Livestock. The back of the check contained the following language:

This check is issued to the payee in payment of personal property, delivered to the Creston Livestock Auction of Creston, Iowa, and sold by the undersigned payee (said Creston Livestock Auction acting as agent only), and by endorsing this check the payee represents and warrants to the purchaser of said property that he is the sole owner thereof, and that said property is free and clear of all liens whatsoever. Endorser certifies that all animals sold were taken off all drugs and Stib. according to the Federal Food and Drug regulations in effect on date of this sale.

A holder in due course is defined in Iowa Code section 554.3302 as a holder of an instrument who it (a) for value; and (b) in good faith; and (c) without notice . . . of any defense against or claim to it on the part of any person. A payee can be a holder in due course. Iowa Code §

554.3302(2). It is not disputed the Creston bank took the instrument "for value." See Firth v. Farmers-Citizens Bank, 460 N.E.2d 191, 192 (Ind. App. 1984); Leiniger v. Anderson, 255 N.W.2d 22, 27 (Minn. 1977) (bank's acceptance and application of check to payment of note previously executed to the bank constitutes a taking of the check "for value").

The question is whether the Creston bank took in good faith and without notice. A purchaser of a negotiable instrument is chargeable with notice of every fact shown on the face or the back of the instrument. See Industrial Credit Co. v. Hargadon Equip. Co., 254 Iowa 757, 766-67, 119 N.W.2d 238, 244 (1963). So when paper discloses information so as to put a party on inquiry, the party is charged with that information the inquiry would have revealed. Id.

The Iowa Uniform Commercial Code under chapter 554 of the Iowa Code (1987) provides a person has "notice" of fact when they have received a notice or notification of it. Iowa Code § 554.1201(25)(b).

The Creston bank signed the instrument immediately below the language at issue. We determine the language of the endorsement put the Creston bank on notice the check was for livestock sold by Parker and the livestock Parker sold was warranted to be free of liens and encumbrances. The Creston bank, as a payee, had to endorse the check

before it could be negotiated. In endorsing the check as a payee the Creston bank made the same warranty as Parker.

We reverse and remand to the trial court with instructions to enter judgment for Creston Livestock and against the Creston bank for the amount of the check and interest from the date of the filing of the petition.

REVERSED AND REMANDED.

Schlegel, J., concurs; Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

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I would affirm the trial court.