

GENUINENESS OF SIGNATURES UNDER THE NEGOTIABLE INSTRUMENTS LAW AND THE UNIFORM COMMERCIAL CODE

Credit Equipment Corporation v. Steiner
112 Ohio App. 293, 175 N.E.2d 842 (1959)

The plaintiff corporation sued on three trade acceptances, allegedly made by the defendants and endorsed by the payee to plaintiff. Defendants denied execution and delivery of the acceptances in their answer, and plaintiff established that it had bought the acceptances for value before the due dates appearing on the instruments. Introducing no evidence as to the genuineness of the signatures, plaintiff rested its case. Upon the close of plaintiff's evidence, defendant's motion for judgment was granted and this order was affirmed on appeal. The court of appeals, relying on the Negotiable Instruments Law, held that when the defendant denies execution of the instrument in his answer, the burden of proof falls upon the plaintiff to establish the validity of the defendant's signature.¹

Thus, under the rule of this case, the plaintiff must prove the validity of the defendant's signature if denied in the answer. If plaintiff introduces no evidence bearing on execution, a verdict may properly be directed for the defendant on this issue.² The NIL makes no express provision regarding the burden of proof as to signatures, but Ohio and the states which follow the NIL have uniformly held in the manner of the instant case.³ The current Ohio Revised Code provisions state that the plaintiff holds the burden of proof as to all matters bearing on successful recovery.⁴ He must overcome all defenses interposed including invalid execution which is a defense not frequently encountered.

The Uniform Commercial Code⁵ has been adopted in Ohio and will

¹ For cases in Ohio, following the NIL, see *Yates v. Bates*, 34 Ohio L. Abs. 378 (Ct. App., 1941); *Buck v. Coblenz*, 18 Ohio L. Abs. 1 (Ct. App., 1934); *Exchange National Bank v. Clark*, 12 Ohio App. 354 (1920); *Discount and Deposit State Bank v. Litt*, 5 Ohio App. 439, 26 Ohio C.C.R. (N.S.) 145 (1916); Ohio Rev. Code § 1301.25 (1953).

² In support of the instant case, see: *Yates v. Bates*, *supra* note 1; *Buck v. Coblenz*, *supra* note 1; *Exchange National Bank v. Clark*, *supra* note 1; *Discount and Deposit State Bank v. Litt*, *supra* note 1; *Carrara Paint Agency v. American National Bank of Barberton*, 9 Ohio C.C.R. (N.S.) 150 (1906).

³ *Hawkins v. Rieman*, 73 Ind. App. 127, 125 N.E. 410 (1919); *Farmington State Bank v. Delaney*, 167 Minn. 394, 209 N.W. 311 (1926); *Wight v. Citizens Bank*, 71 N.M. 171 (1912); *Murphy v. Skinner*, 160 Wis. 554, 152 N.W. 172; *Beutel's Brannan*, *Negotiable Instruments Law* 466-467 (1948); *Britton*, *Bills and Notes* 344 (1961).

⁴ *Applebaum v. Smith*, 99 Ohio App. 93, 58 Ohio Op. 195 (1954); *Citizens National Bank v. Tabor*, 24 Ohio L. Abs. 52 (Ct. App., 1936); *Exchange National Bank v. Clark*, *supra* note 1; *Regan v. Sherman*, 1 Ohio App. 273 (1913); Ohio Rev. Code § 1301.54 (1953).

⁵ *American Law Institute Uniform Commercial Code, Text and Comments Ed.* 280-282 (1957).

go into effect as of July 1, 1962.⁶ The UCC will change the law with respect to the instant case and the procedure as to proof of signatures because it provides that:

(1) Unless specifically denied in the pleadings, each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(b) the signature is *presumed to be genuine or authorized* except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.⁷ [Emphasis supplied.]

Thus, the UCC effects a procedural change on the manner of proving valid execution. It will no longer be necessary for the party claiming under the signature to introduce evidence bearing on its validity if the defendant has merely denied execution in his answer. The signature is presumed to be genuine, and the defendant *must* introduce evidence if he is to prevail with his contention that the signature is not genuine. The evidence must justify a finding in the defendant's favor, and when this is accomplished, the defendant has overcome the presumption. Once such evidence is introduced by the defendant, the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff.⁸

The reasoning behind the UCC provision stresses the positions of the parties in relation to execution of the instrument. Evidence bearing on this matter would be within the defendant's control or, at least, more accessible to him than the plaintiff.⁹ This assumption establishes a more reasonable procedure than that of the present law. Since the defendant is the originator of the instrument in the typical situation he is more likely to know the form that it took when made, the path that it followed, and the parties that handled it. The plaintiff, on the other hand, would have less information as to the execution of the instrument since he is typically a remote party and was not involved in the original transaction. Thus, proof of the execution and its surrounding circumstances could be handled more easily by the defendant, and it would seem sensible that the ultimate

⁶ Amended Senate Bill No. 5 (1961).

⁷ American Law Institute Uniform Commercial Code, Text and Comments Ed. § 3-307(1)(b) (1957).

⁸ American Law Institute Uniform Commercial Code, Text and Comments Ed. (1957) states the following (at pp. 281-282):

The burden is on the party claiming under the signature, but he is aided by the presumption that it is genuine or authorized stated in paragraph (b). It means that until some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff is not required to prove that it is authentic.

⁹ American Law Institute Uniform Commercial Code, Text and Comments Ed., 251-282 (1957) also provides that: "The presumption rests upon the fact that in ordinary experience forged or unauthorized signatures are very uncommon." Also see "Why a Commercial Code?" 22 Tenn. L. R. 779, at 822; Report of the Virginia Code Commission on The Uniform Commercial Code 97.

burden should rest on the defendant to show the forgery and not on the plaintiff to establish genuineness.

Whereas the defendant could deny execution and prevail under the present Ohio law without proof, the UCC requires that he proceed to bolster his denial with substantial evidence. The new Revised Code sections do not include the comments to the UCC which explain how section 3-307(1)(b) is to work in practice.¹⁰ It is reasonable to assume that the Ohio courts will adopt the philosophy of the comments, since UCC section 1-201(31)¹¹ has been incorporated into Revised Code 1301.01(EE):

“Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

Compliance with this definition and its application to Ohio Revised Code section 1303.36(A)(2) would bring about the procedural change contemplated by the UCC.

The instant case reflects the majority viewpoint at the present time. The doctrine works a hardship on the plaintiff because he is not an original party to the instrument and is yet required to prove its execution. The defendant, on the other hand, is an immediate party to the instrument and may not have to account for its execution at all. Under a comparable set of facts, the UCC will require the defendant to account for execution of the note if he is to prevail. As one of the changes which will appear with the UCC, this procedural advantage given to the plaintiff seems an improvement over the existing law.

¹⁰ Ohio Rev. Code § 1303.36(A)(2) (1962).

¹¹ American Law Institute Uniform Commercial Code, Text and Comments Ed. (1957).