OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

TRANSCONTINENTAL HOLDING LTD, f/k/a Transcontinental Indemnity, Ltd.,	)	No. ED91469
	)	Appeal from the Circuit Court of St. Louis County
Plaintiff/Appellant,	)	
	)	Honorable Maura B. McShane
vs.	)	
FIRST BANKS, INC.,	)	
Defendant/Respondent.	)	Filed: September 1, 2009

This appeal presents the question of whether, under Missouri's Revised Uniform Commercial Code, a bank may refuse payment and assert its own defenses against liability on its cashier's check.

Ron Scharf, the owner of Transcontinental Holding Ltd., entered into a series of business transactions with Alexander Kogan. Over the course of these, Scharf loaned large sums of money to Kogan. In time, Scharf, who believed he was owed millions, learned that Kogan had money on deposit at First Bank. Scharf succeeded in having the bank transfer money from an account controlled by Kogan to a new account, over which Scharf had sole control. From this new account, Scharf then persuaded the bank to issue a cashier's check payable to Transcontinental. Scharf, however, was not honest with the bank. The bank, upon learning that Kogan disputed Scharf's authority to withdraw funds from the Kogan account, reversed the transfer of funds and refused to honor the cashier's check. The bank defended against payment of the check, claiming it received no consideration for the check. The bank maintained it was never paid for the cashier's check because once the transfer of funds was reversed, insufficient funds remained in the new account with which to pay the check Scharf wrote to the bank to purchase the cashier's check.

Transcontinental sued for payment, alleging the bank had violated Section 400.3-412 of Missouri's Revised Uniform Commercial Code when it refused to pay the cashier's check. The company argued that under this revised section, the bank could not raise its defense, but instead was obligated to pay the check. Transcontinental sought actual damages in the amount of the cashier's check and consequential damages under Section 400.3-411.

The trial court entered judgment in favor of the bank, finding the bank could refuse to pay its cashier's check and assert its own defense of lack of consideration. The trial court concluded the bank had a viable defense because it was never paid for the cashier's check. The court further concluded that Transcontinental was subject to this defense because it was not a holder in due course, because it did not take the check for value, in good faith, and without notice of the bank's defense. As a result, the trial court ruled the bank was not liable to Transcontinental for the amount of the cashier's check. Lastly, the trial court concluded the bank had reasonable grounds to believe it had a valid defense to the payment of the cashier's check, and therefore Transcontinental was not entitled to consequential damages under Section 400.3-411.

JUDGMENT AFFIRMED

DIVISION TWO HOLDS: First, a bank may refuse payment on its cashier's check and assert its defenses to payment of that check. Section 400.3-412 merely defines the obligations of the issuer of a note or cashier's check or other draft drawn on the drawer. The section does not address, and certainly does not preclude, defenses available to the issuer of a cashier's check.

Second, First Bank met its burden of proving lack of consideration. The transfer of funds into the newly-opened account was a provisional credit. The bank was entitled by its deposit agreement to reverse that provisional credit. Once reversed, insufficient funds remained in the account with which to pay the check Scharf wrote to First Bank to purchase the cashier's check. In the end, First Bank was never paid for the cashier's check and thus received no consideration for the cashier's check.

Third, Transcontinental failed to establish its status as a holder in due course. Transcontinental lacked good faith. Scharf and Transcontinental were not honest in fact in their business conduct with the bank. Scharf misled the bank by making a number of affirmative misrepresentations. Having failed to establish itself as a holder in due course, Transcontinental's right to enforce payment of the cashier's check is subject to the bank's lack-of-consideration defense. First Bank established that it received no consideration for its cashier's check and thus is not liable to Transcontinental for the amount of that instrument.

And lastly, the bank had reasonable ground to believe it had a valid defense to payment of the cashier's check. Accordingly, Transcontinental is not entitled to consequential damages under Section 400.3-411.

Opinion by Lawrence E. Mooney, J. Roy L. Richter, P.J., and George W. Draper, J. concur.

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Attorneys for Respondent: Michael W. Bartolacci and Matthew J. Landwehr

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