

# Law – check cashing essay sample

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Any Kind Checks Cashed, Inc. was a holder in due course in its case v. Talcott. In this case an elderly gentleman John C. Talcott, who was defrauded the sum total of \$15,700 in the form of two checks, \$10,000 and \$5,700 respectively. Both checks were issued to D. J. Rivera and were later cashed at Any Kind Checks, Inc. by Salvatore Guarino. Talcott stopped payment on both checks after the initial check was an over payment and the second was discovered to be conceived by fraud. Both checks were returned to Any Kind Checks Cashed, Inc. Any Kind Checks, Inc. brought suit against Talcott and Salvatore Guarino (Twomey & Jennings, 594-597).

Any Kind Checks, Inc. claims that it was a holder in due course with both checks and because they knew nothing of the fraud associated with the issuance of the checks they should be able to collect the funds they held. Talcott contends that Any Kind Checks, Inc. attempted to contact him before cashing the first check and when they did not reach him they should not have cashed the check. By not gaining approval and quashing their suspicions that the check may be fraudulent they cannot claim that they acted in good faith with regards to this check. Further by cashing the subsequent check their bad faith was continued and Talcott should be returned all of his funds (Twomey & Jennings, 594-597).

In this case the judicial opinion was that Any Kind Checks, Inc. was not a holder in due course with respect to the first check, because in attempting to connecter the drawer of the check they showed suspicion with regard to the validity of the check. Since they could not successfully reach the drawer they should not have cashed the check. The second check was found to be

accepted in good faith because the check was verified by Any Kind Checks, Inc. via telephone with the drawer, Talcott (Twomey & Jennings, 594-597).

I do not think that the decision of the court made was fair with respect to Any Kind Checks, Inc. In Talcott's testimony he stated that he issued the \$10,000 check on January 10, for travel expenses related to an investment made with Rivera. When Rivera called Talcott the following day (January 11) and stated that he needed a smaller sum, \$5,700, there was no mention as to how the difference was to be returned to Talcott. Talcott immediately canceled the check and issued a new check for deposit. At the point that Rivera told Talcott that the \$10,000 check was not needed, he should have returned or destroyed the check. Further, Talcott should not have issued another check until he was assured that the first check would not be deposited.

Any Kind Checks, Inc. appears to have had an internal policy to verify the authenticity of checks over \$2,000. Further, since the check was being cashed by a third party, this demonstrates that Any Kind Checks, Inc. had even more reason to do their due diligence and verify. Their lack of verification makes them complicit in violating the 'good faith doctrine'. § 673.3021(1), Fla. Stat. (2001). Since Any Kind Check, Inc. was not a holder in due course they have no right to try and enforce Talcott's obligation to pay the draft. § 673.3051(1) & (2), Fla. Stat. (2001).

Any Kind Checks, Inc. was a holder in due course with respect to the second check issued by Talcott. In that portion of the case Any Kind Checks, Inc. did their due diligence in investigating whether or not the check should be cashed. After contacting Talcott by phone, it was determined that the check

was eligible to be cashed (*Seinfeld v. Commercial Bank & Trust Co.*, 405 So. 2d 1039, 1041 (Fla. 3d DCA 1981). The action fraud of Mr. Talcott with regard to the second check is strictly between Talcott and Guarino.

Some may believe that it is not fair to subject Any Kind Check, Inc. to a more stringent form of due diligence and good faith and that it will affect the business negatively. In 1992, the Florida legislature adopted a new definition of good faith. It states that honesty in fact must coincide with the reasonableness of commercial standards of fair dealing (*Maine Family Fed. Credit Union v. Sun Life Assurance Co. of Canada*, 727 A. 2d 335, 342 (Me. 1999). In other words, Any Kind Checks, should adopt or create their own standards of due diligence and apply those standards with all applicable transactions. I do not believe that this extra step by the business will be a hindrance to commerce and that in fact it better protects both the business and consumers from fraud.

This is a complex case in which a vulnerable person was taken advantage of by con men who effectively stole a large sum of money from him. The involvement of the check cashing facility can only be seen as a contributor to fraud but not a direct participant. In order to affectively follow the law, the check cashing company could have avoided any involvement by verifying the first check and refusing to cash it. With regard to the second check, all good faith and due diligence was applied and Any Kind Check, Inc. was a holder in due course.

## References

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§ 673. 3021(1), Fla. Stat. (2001)

§ 673. 3051(1) & (2), Fla. Stat. (2001).

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