

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PINELLAS COUNTY
APPELLATE DIVISION

STANLEY LATEK
Appellant,

vs.

Appeal No.: 07-AP-000054-88A
UCN: 522007AP000054XXXXCV

McBRIDE ENTERPRISES, INC.,
A Florida Corporation,

Appellee,

_____ /
Opinion filed NOV 13, 08

Appeal from Final Judgment after Non-Jury Trial
Pinellas County Court

County Judge Walt Fullerton

Stanley Latek, Pro Se

Ian S. Gomez, Esquire
Attorney for the Appellee

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KEN BURKE
CLERK OF CIRCUIT COURT

ORDER AND OPINION

THIS CAUSE came before the Court on appeal, filed by Stanley Latek, from
the Trial Court's Final Judgment after a Non-Jury trial, entered July 25, 2007, in

KEN BURKE, CLERK OF COURT
PINELLAS COUNTY FLORIDA
INST# 2008312957 11/20/2008 at 01:14 PM
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favor of McBride Enterprises, Inc (McBride).¹ Upon Review of the briefs, the record and being otherwise fully advised, the Court reverses the trial court's ruling as set forth below.

The record shows the underlying proceedings began when McBride, filed a complaint on January, 9, 2003, in the County Court for Pinellas County, Florida. The complaint contained a single count alleging McBride took the check, executed by Mr. Latek, for value and in good faith, and was the holder in due course of the check. The check was executed by Mr. Latek as payment to the roofer, Mr. Ellis Nixon, for work on a condominium roof. The check was executed in the amount of \$9,500.00, payable to Mr. Nixon, who in turn endorsed the check to McBride, to have the check cashed at Ike's Liquor, which is a corporate fictitious name for McBride. It is alleged by McBride that they are in the business of cashing checks. As such on December 24, 1998, Mr. Nixon presented McBride with the check for cashing. McBride cashed the check, but later Mr. Latek stopped payment on the check, because Mr. Nixon failed to complete the work on the condominium roof as he had purportedly agreed to do.

Mr. Latek subsequently executed another check in the amount of \$2,000.00 as partial payment toward the balance of the contract price under the roofing contract. Again, the second check (check 2), was payable to Mr. Nixon, who in

¹ This Court finds that this order is final for appellate purposes, to which neither party disputes

turn cashed the check with McBride, but instead of keeping the monies, McBride gave the cash to Mr. Nixon. Then, on January 27, 1999, Mr. Latek executed yet another check (check 3) in the amount of \$3,000.00, as another partial payment towards the balance of the contract between Mr. Latek and Mr. Nixon, for the roofing work. Again, Mr. Nixon took check 3 and cashed it with McBride, and Mr. Nixon kept the monies. There was no attempt by McBride to recoup any of the \$9,500.00 it had earlier given to Mr. Nixon.

In the complaint, filed on January 9, 2003, McBride alleges it took the \$9,500.00 check for value and in good faith, and was therefore a holder in due course of the check. McBride alleges that it is owed from Mr. Latek, \$9,500.00 plus interest accumulating from December 23, 1998. The Trial Court found that McBride was a holder of the check in due course and entered Final Judgment in favor of McBride in the amount of \$17,100.00 (including interest), reserving judgment to entitlement of attorney's fees and costs.

It is interesting to note that Mr. Nixon never testified at the final hearing and apparently was never sued by McBride.

Appellant, Mr. Latek, filed a Motion for Rehearing and Reconsideration of Final Judgment, to which the Trial Court denied. This appeal was timely filed. Since the issue on appeal is one of statutory interpretation, the appropriate standard for review is *de novo*.

The sole issue before this Court is whether the Trial Court erred in finding McBride was the holder of the \$9,500.00 check in due course. Mr. Latek argues that the Trial Court's ruling is erroneous, because it found under Chapter 673 of the Florida Statutes, that McBride took the check in good faith and was a holder in due course, which resulted in denying Latek of the defenses he would have had against the original payee, Nixon. McBride in turn argues that the lower court's finding that it was the holder of the check in due course should be affirmed, because there is no question that McBride took the check at issue without notice of any potential defenses of Latek and the acts of McBride comported with the industry standards for a check cashing business.

As both parties agree, this case is governed by Florida's codification of the Uniform Commercial Code in Florida Statutes 673, specifically 673.3051, which indicates a person holds a check in due course, when the check is taken in good faith without notice of any potential defenses.² McBride had the burden to prove that it was the holder in due course by the preponderance of the evidence.³ If McBride is found to be the holder in due course then it would be entitled to enforce the check without regard to any defenses of Mr. Latek, such as, Mr. Nixon taking payment on the check without complying with the full terms of their contract.

² Fla. Stat. § 673.3051 (2005).

³ *Any Kind of Checks Cashed Inc., v. Talcott*, 830 So.2d 160 (Fla. 4th DCA 2002).

Therefore, the court below needed to determine whether McBride acted in “good faith” without notice of Latek’s potential defenses when the check was cashed.

To determine if McBride acted in good faith the court must look to § 673.1031(1)(d) which defines “good faith” as “honesty in fact and observance of reasonable commercial standards of fair dealing.” Both parties agree that the leading Florida case on point is *Any Kind Checks Cashed Inc., v. Talcott*, 830 So.2d 160 (Fla. 4th DCA 2002). Following what the 4th DCA set out in *Any Kind of Checks Cashed, Inc.*, “no longer may a holder of an instrument act with a pure heart and an empty head and still obtain holder in due course status; the subjective test of the ‘pure heart of the holder’ must now be accompanied by reasoning that assures, under an *objective* standard, conduct comporting with reasonable commercial standards of fair dealing.”⁴ *Any Kind of Check Cashed Inc.*, now stands for the proposition that whether a check cashing service has acted in good faith and is therefore deemed a holder in due course of a check, is to be determined by the trier of fact by finding: first, “whether the conduct of the holder [of the check] comported with industry or commercial standards” that apply to the underlying transaction, and second, “whether those standards are reasonable standards that are intended to result in fair dealing.”⁵ The fact finder must have found that both statements are satisfied, in order to determine McBride was the

⁴ *Any Kind of Checks Cashed, Inc., v. Talcott*, 830 So.2d 160, 165 (Fla. 4th DCA 2002).

⁵ *Id.* at 165.

holder in due course. Although, McBride argued it acted in good faith in observance of industry standards when it chased the \$9,500.00 check, this Court finds that it did not.

McBride failed to comport with reasonable commercial standards of fair dealing, thus it does not qualify as a holder of the check in due course. McBride is not entitled to enforce Mr. Latek's obligation after he stopped payment on the check, where McBride failed to employ check cashing industry procedures to authenticate the check with Mr. Latek before releasing funds to the endorser. The check at issue was a personal check issued by an out of state bank and was clearly not the typical check cashed at this check cashing location. Mr. McBride testified that most checks cashed at his place of business were government issued, for amounts not exceeding \$600.00. McBride failed to conduct any investigation whatsoever to verify the authenticity of the check. Had Mr. McBride simply contacted Mr. Latek prior to cashing the \$9,500.00 check he would have learned that the check was issued to Mr. Nixon on the express condition that the roof work be completed.

The facts in the present case are similar to those in *Any Kind Checks Cashed, Inc.*, where the check cashing business proceeded to cash a \$10,000.00 check, without following "any degree of caution in line with the commercial or industry

standards of the check cashing industry.”⁶ In that case, the check cashing business failed to engage in any type of verification of the check. The Court held the check cashing business was not the holder in due course because it cashed a personal check for \$10,000.00, that was not typical of its outlet, without utilizing some degree of caution. Similarly, McBride in its own discretion chose to release the funds, and failed to utilize a necessary degree of caution when cashing the check that was out of the ordinary. In this case there was no attempt to verify the authenticity of the check \$9,500.00.

Therefore, this Court finds that McBride was not the holder of the check in due course, the Final Judgment is reversed, and remanded with instructions to enter judgment in favor of Mr. Latek.

It is therefore,

ORDERED AND ADJUDGED that the Final Judgment is reversed.

DONE AND ORDERED in Chambers, at Clearwater, Pinellas County,

Florida this day 13 of November 2008.

Original opinion entered by Circuit Judges John A. Schaefer, George M. Jirotko, & George W. Greer.

⁶ *Id.* at 168.

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