

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0293

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

HAYWARD COMMUNITY CREDIT UNION,

PLAINTIFF-APPELLANT,

V.

JOE ISHAM,

DEFENDANT,

BONNIE J. RUST,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Sawyer County:
NORMAN L. YACKEL, Judge. *Reversed and cause remanded.*

¶1 PETERSON, J.¹ Hayward Community Credit Union appeals a judgment dismissing its complaint against Bonnie Rust. Rust wrote a check to Joe Isham in December 1998 for \$1550 as partial payment for the purchase of cattle. The check was not supported by sufficient funds. Isham deposited the check at the credit union and withdrew most of its value. When the credit union discovered that the check had been returned, it notified Isham and froze his account. Isham then contacted Rust and persuaded Rust into writing him another check. Instead of delivering payment to the credit union, however, Isham cashed the second check at a different financial institution and lost the money gambling.

¶2 The credit union sued both Rust and Isham for the money it paid Isham for the first check.² Concluding that the equitable factors weighed in Rust's favor, the small claims court dismissed the credit union's complaint against her. Because the Uniform Commercial Code controls and renders Rust jointly and severally liable, however, the judgment is reversed and the cause is remanded.

¶3 In defense to the credit union's lawsuit, Rust argued that she had already paid for the cattle and that it would be unfair to make her pay again. The small claims court agreed with Rust and dismissed the suit, concluding that the credit union was in a position to prevent the initial overdraft by waiting to provide cash to Isham until after the check had cleared.

¶4 On appeal, the credit union claims that Rust's liability is established by WIS. STAT. ch. 403, the chapter of the U.C.C. governing negotiable

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All statutory references are to the 1997-98 edition.

² The Credit Union obtained a default judgment against Isham. He is not an appellant here.

instruments. The credit union asserts that the small claims court did not have the authority to fashion an equitable remedy when the transaction was controlled by statute. This court agrees.

¶5 WISCONSIN STAT. § 403.116 provides:

Joint and several liability; contribution. (1) Except as otherwise provided in the instrument, 2 or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees or anomalous endorsers are jointly and severally liable in the capacity in which they sign.

(2) Except as provided in s. 403.419 (5) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(3) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under sub. (2) of a party having the same joint and several liability to receive contribution from the party discharged.

Rust, the “maker” of the check, Isham, the “drawer” of the check, and the credit union, the “acceptor” of the check, are all jointly and severally liable. *See* WIS STAT. § 403.116(1). Subsection (2) provides that the credit union, the only party having joint and several liability that paid on the instrument, “is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.”

¶6 The credit union is also a holder in due course.³ A holder in due course has the right “to enforce the obligation of a party to pay the instrument” subject only to the defenses enumerated in WIS. STAT. § 403.305(1)(a).⁴ WIS. STAT. § 403.305(2). Rust does not claim that any of those defenses apply and none is apparent to this court. There is no indication that the credit union had any knowledge or reason to know that the Rust check was not supported by sufficient funds, or that Isham was planning on defrauding Rust. Accordingly, WIS. STAT. ch. 403 controls and requires judgment in favor of the credit union.

¶7 Rust argues that the small claims court had the authority to ignore WIS. STAT. ch. 403 and find in her favor based on equity. Although a court has considerable latitude in fashioning equitable remedies and even to contrive new ones adapted to new circumstances, the court must nonetheless follow statutes directly controlling an issue. *See Wynhoff v. Vogt*, 2000 WI App 57, ¶16, 608 N.W.2d 400. Rust has not identified any limiting provision in the statute that would allow the court to avoid the mandated result.

³ Rust does not dispute the credit union’s claim that it is a holder in due course and therefore concedes the claim has merit. *See State ex rel. Sahagian v. Young*, 141 Wis. 2d 495, 501, 415 N.W.2d 568 (Ct. App. 1987). It became a holder when Isham negotiated the check pursuant to WIS. STAT. § 403.201(1), and it is a holder in due course because all the requirements of WIS. STAT. § 403.302 are met.

⁴ WISCONSIN STAT. § 403.305(1)(a) provides defenses of the obligor for any of the following:

1. Infancy of the obligor to the extent that it is a defense to a simple contract.
2. Duress, lack of legal capacity or illegality of the transaction which, under other law, nullifies the obligation of the obligor.
3. Fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms.
4. Discharge of the obligor in insolvency proceedings.

¶8 The record does not indicate exactly how much of the deposit Isham was unable to withdraw before the credit union froze his account. This will be a relevant consideration on remand, as the credit union is not entitled to recover more than its loss under the law.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

