

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

126

International Shoe Company,)
)
Plaintiff,)
)
vs.)
)
Federal Reserve Bank of Minneapolis,)
)
Defendant.)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT

The above entitled cause was tried the 2nd day of April, 1928, before the court without a jury, a jury having been waived. Messrs. L. A. Reed and A. P. Reed appeared on behalf of the plaintiff and Messrs. Ueland & Ueland appeared on behalf of the defendant. The court having heard the evidence adduced and being fully advised in the premises -

FINDS AS FACTS:

1. That on October 6, 1923 plaintiff was the owner of a check drawn payable to its order by Schefter Clothing House, said check being in the sum of \$1376.23 and being drawn upon the Citizens State Bank of Langdon, North Dakota; that on the same date plaintiff duly endorsed said check by unrestricted endorsement to the First National Bank in St. Louis and deposited said check with said bank for credit to its account with said bank; that the pass book issued by said bank in which said deposit was entered contained the following provision, to-wit:

NOTICE TO CUSTOMERS.
The First National Bank in St. Louis
accepts business on the following
conditions only:

LIMITATION OF BANK'S LIABILITY FOR
COLLECTIONS OR CREDITS.

All items received for Collection or Credit are taken for depositor's accomodation and at his risk; and in no case shall this Bank be liable for more than ordinary care and diligence on its part with respect to such items; and it shall not be liable for the negligence or fraud of any person

or corporation to whom such items may be sent for payment, nor shall it be liable for returns on such items until such returns have been cashed. In case any item is lost through failure to collect, or failure of return to be paid, this Bank shall have the right to charge back such item to the depositor.

In the absence of written instructions to the contrary by the depositor in each case, items may be sent for payment to the Bank, Banker or Trust Company on which they are drawn, although a charge is made for such collection. This Bank will accept items for collection or credit only on the above terms and conditions and the delivery to this Bank of such items shall constitute an acceptance of such terms and conditions by the customer.

FIRST NATIONAL BANK in ST. LOUIS

Deposited by

That on the deposit slip by which said check was deposited was printed the following:

"First National Bank in St. Louis. Deposited by International Shoe Company. To depositors: Checks, drafts etc., are received and credited for the accommodation of Depositors. The bank declines responsibility for their collection and reserves the right to charge them back to the account if they, or the remittances received for them, are not paid. When instructions to the contrary are not given, items may be sent to the bank on which they are drawn, though a charge is made for the service, and when so sent, these conditions are not waived or suspended."

2. That on October 6, 1923 the said First National Bank in St. Louis did then and there credit the amount of said check at its face value to the checking or commercial account of plaintiff with said bank and did then and there endorse the same as follows:

"Pay to the order of any bank or banker. Prior endorsements guaranteed. First National Bank in St. Louis, C. L. Allen, Cashier, 4-5, 614 Oct. 6, 1923."

and it did then and there send the said check by mail to defendant with other items enclosed with a letter dated October 6, 1923 which bore the direction:

"Credit 4-4 Federal Reserve Bank of St. Louis 4-4 For account of First National Bank in St. Louis, Mo. 4-5. Protest of items over \$10 except those on the face of which appears this stamp 'no - pro 4-5' or similar authority that can be identified by the collecting bank as that of a preceding endorser. Telegraph nonpayment of items \$500 or over and quote the name of last preceding endorser."

which said letter and check were received by the defendant on October 8, 1923.

3. That thereafter and on October 8, 1923 the defendant endorsed the said check on the back thereof as follows:

"Pay to the order of any bank, banker or trust Co. All prior endorsements guaranteed October 8, 1923. Federal Reserve Bank 17-8 Minneapolis, Minn. 17-8."

and thereupon transmitted the said check direct to said Citizens State Bank of Langdon for payment. That said check for \$1376.23 was forwarded by defendant to said bank in Langdon on October 8, 1923 in a form letter bearing the following printed instructions:

"We enclose the following items for collection and returns. Do not hold items for any reason whatever. Wire non-payment of items of \$500 or over. Do not protest items of \$10 or over or those bearing stamp on the face -- no pro 17-8 -- or similar authority of a preceding bank endorser. Protest all other items. Return this letter with your draft."

That said letter contained items aggregating \$1812.31.

4. That said Citizens State Bank received the said letter and check and on October 10, 1923 issued for the said above described check and other checks its draft drawn on the Northwestern National Bank in Minneapolis in favor of defendant for the said sum of \$1812.31, stamped the said above described \$1376.23 check "paid", debited the account of the said Schefter Clothing House with the amount thereof and returned the said check to the said Schefter Clothing House. That on or after October 10, 1923 the said Citizens State Bank of Langdon transmitted said draft by mail to the defendant and that on October 18, 1923 the defendant received the same.

5. That on October 18, 1923 the defendant presented the said draft to the said drawee bank for payment and payment was refused and the same was dishonored, and defendant thereupon caused said draft to be protested for non-payment. That on October 19, 1923 the defendant charged the amount of said check to the Federal Reserve Bank of St. Louis for the account of the said First National Bank in St. Louis. That on October 23, 1923 the said First National Bank in St. Louis

notified plaintiff that the said check had not been collected and then and there charged the amount of the same to said plaintiff and on October 24, 1923 the said plaintiff duly repaid the amount of said check to the said First National Bank in St. Louis. That said check of \$1376.23 has never been returned by defendant or by any one else to said First National Bank in St. Louis or to plaintiff. That no demand has ever been made by defendant on the said Citizens State Bank of Langdon for the return of the said check subsequent to the dishonor of the said draft.

6. That said check for \$1376.23 was handled by defendant as a part of defendant's clearing house operations pursuant to Regulation J - Series 1920, promulgated by the Federal Reserve Board, and that said check was received by defendant direct from said First National Bank in St. Louis pursuant to an arrangement entered into between defendant, the Federal Reserve Bank of St. Louis and said First National Bank in St. Louis, whereby the privilege of routing checks direct to defendant was extended to said First National Bank and whereby it was understood and agreed that all checks so routed direct to defendant should be received and handled by it in all respects in the same manner and subject to the same terms and conditions that were prescribed by defendant from time to time for the handling of checks in its clearing house operations.

7. That Regulation J - Series of 1920, promulgated by the Federal Reserve Board as aforesaid, also provided in part as follows:

"In handling items for member *** banks a Federal Reserve Bank will act as agent only. The Board will require that each member *** bank authorize its Federal Reserve Bank to send checks for collection to banks on which checks are drawn, and, except for negligence, such Federal Reserve Bank will assume no liability. Any further requirements that the Board may deem necessary will be set forth by the Federal Reserve Bank in their letters of instruction to their member *** banks. Each Federal Reserve Bank will also promulgate rules and regulations governing the details of its operations as a clearing house, such rules and regulations to be binding upon all member and nonmember banks which are clearing through the Federal Reserve Bank."

8. That pursuant to and in accordance with said order and regulation of the Federal Reserve Board, defendant did promulgate rules and regulations governing the details of its operations as a clearing house under said Federal

Reserve Act; that said rules and regulations which were in force during all times mentioned in the complaint, insofar as the same are material to the issues here in controversy between plaintiff and defendant, provided as follows:

"GENERAL CONDITIONS. Every bank sending checks to this bank, or for its account to another Federal Reserve bank, will be understood to have agreed to the terms and conditions of this circular, and to have agreed that in receiving such items this bank will act only as the collecting agent of the sending bank, and as such authorized to send such items for payment in cash or bank draft direct to the bank on which they are drawn, or to forward them to another agent with authority to present or send them for payment in cash or bank draft direct to the bank on which they are drawn, and that this bank is authorized to charge back the amount of any item, whether returned or not, for which this bank has not actually received payment either in cash or in the proceeds of the bank draft."

9. That said rules and regulations of defendant were contained in a check clearing and collection circular of defendant known as defendant's circular No. 286; that said circular No. 286 was furnished to the Federal Reserve Bank of St. Louis long prior to October 8, 1923, but that no copy of said circular was ever furnished to or received by plaintiff and that plaintiff had no direct dealings either with defendant or the Federal Reserve Bank of St. Louis until long after October 8, 1923.

10. That on October 8, 1923 said Citizens State Bank of Langdon was in fact insolvent and was unable to pay the checks of its depositors as presented, and at no time on or after October 8, 1923 could said check for \$1376.23 have been collected in cash.

11. That the only loss in connection with the collection of said check for \$1376.23 was incurred from the fact that said Citizens State Bank of Langdon, on October 10, 1923, wrongfully treated said check as paid, as hereinbefore set forth, without having available funds to remit for said check to defendant, whereby the drawer of said check was discharged on October 10, 1923.

12. That defendant never agreed with plaintiff to act as the agent of plaintiff in the collection of said check for \$1376.23.

13. That the only terms and conditions under which defendant ever agreed to handle said check were those terms and conditions contained in Regulation J and defendants circular No. 286, as hereinbefore set forth.

14. That until October 18, 1923 defendant had no knowledge or notice of the insolvent condition of the Citizens State Bank of Langdon, and that defendant in handling said check for \$1376.23 for collection was not negligent in any particular.

AS CONCLUSIONS OF LAW the court finds that defendant is entitled to judgment of dismissal against plaintiff and for its costs and disbursements to be taxed by the clerk.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated January 12, 1929.

(S)

Harry A. Johnson
Judge of District Court.

Enter a stay of 40 days.

(S) Johnson, Judge.