

Law For Laypersons

(Written by Charles C. Lewis, Assistant Professor of Law, Campbell College School of Law for the North Carolina Academy of Trial Lawyers and distributed as a public service)

When an employee of one company draws a check on his company's account to the order

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of a second company, forges that second company's signature on the back of the check and then cashes the check, taking the money for his own use, the Uniform Commercial Code provides that his company must bare the loss. The bank which paid over the forged endorsement does not bare the loss because the Uniform Commercial Code considers that the forged signature made by the company's employee is effective against that company.

Suppose an employee of X Corporation is not high enough in the company management to be able to draw a check for his own benefit. Instead, the employee cleverly fakes an invoice from Y Corporation showing that there has been a delivery of goods when, in fact, there has been no such delivery. The employee delivers the fake invoice to the treasurer of X Corporation who then draws a check in the amount set out on the fake invoice.

If the check were delivered to Y Corporation, it would of course know that the check was not payable and return it. Suppose, however, that the same employee who gave the fake invoice also stole this check before it was mailed to Y Corporation and then forged the endorsement of Y Corporation, cashing the check and using the money for his own benefit. Y Corporation would not miss the check because the money was not owed to it, and X Corporation's treasurer would probably never check to be sure the goods were actually delivered.

At some point, however, the employee's misdeed will be exposed, and the question of who should bare the loss must be raised. X Corporation, whose employee faked the invoice, might try to argue that its bank paid over a forged endorsement of Y Corporation when it charged its account and since payment was not proper, its bank should recredit its account as it would have to do when it paid over any forged endorsement. Ordinarily, such an argument might work, but in this particular situation when an employee of X Corporation has supplied his corporation with the name of Y Corporation, intending that a check be drawn in which Y Corporation would have no interest, the Uniform Commercial Code specifically provides that the forged endorsement of the Y Corporation made by the

employee will be effective against X Corporation. X Corporation therefore cannot complain that the check was not properly payable, and its bank will not have to recredit the account for the check which it paid.

All businesses, large or small, should set up procedures which will protect the company not only against employees like treasurers from writing checks for their own benefit but also procedures which will protect a treasurer from writing a check to pay for goods which will never be delivered. If such procedures are not set up and a company's bank pays over a forged endorsement made as a result, the company must bare the loss for its negligence in allowing its

employees to embezzle money in such a fashion.

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