Corporate Officers Beware—Your Signature on a Negotiable Instrument May Be Hazardous to Your Economic Health

TOM L. HOLLAND*

I. INTRODUCTION

Numerous business transactions are conducted each day by corporations. These business transactions are handled by corporate officers and employees. Many of the transactions require the use of negotiable instruments,[1] primarily checks[2] and promissory notes.[3] In almost all of the transactions involving the use of a negotiable instrument, the parties intend that the corporation will be liable on the instrument. Occasionally, the parties also intend that one or more corporate officers will be liable on the instrument.

To hold a corporation liable on an instrument, the signature of the corporation must appear on the instrument.[4] Corporate signatures are made by corporate officers who are authorized to sign negotiable instruments for their corporation.[5] When a corporate signature is properly made by authorized corporate officers, the corporation will be liable on the instrument.[6]

Without a proper corporate signature, a court may hold a corporate officer personally liable although one or more of the parties to the transaction intended only corporate liability. The Uniform Commercial Code (U.C.C.) contains a set of rules to be used for determining the circumstances under which a corporate officer will be personally liable on a negotiable instrument. Section 3-403 of the U.C.C. provides in part:

(2) An authorized representative who signs his own name to an instrument

---

*Acting Dean and Professor of Law, The University of Tulsa College of Law; B.A., 1961, Friends University; J.D., 1970, The University of Tulsa; LL.M., 1976, University of Illinois.

The author wishes to express his appreciation to Harold Brown, J.D. 1979, and Lillian Hamor, Class of 1981, for their assistance in the preparation of this Article.

[1]A negotiable instrument is a writing signed by the maker or drawer, containing an unconditional promise or order to pay a sum certain in money, which must be payable on demand or at a definite time and which must be payable to order or to bearer. U.C.C. § 3-104(1).

[2]A check is a draft drawn on a bank which is payable on demand. U.C.C. § 3-104(2)(b).

[3]A note is a promise other than a certificate of deposit. U.C.C. § 3-104(2)(d).

[4]*See* U.C.C. § 3-401(1).

[5]*See id.* § 3-403(1).

[6]*See id.* §§ 3-401(1), 3-403(1).

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

This Article will focus on the personal liability of corporate officers rather than corporate liability. The provisions of section 3-403 will be analyzed to determine when the signatures of authorized corporate officers may result in personal liability and when parol evidence may be admitted to deny personal liability. The corporate officer who fails to sign properly bears the burden of disproving personal liability, and the admission of parol evidence is often crucial to meeting this burden. Additional theories for holding the corporate officer personally liable, such as lack of authority[7] and estoppel,[8] are beyond the scope of this Article.

II. Corporation Not Named– Representative Capacity Not Shown

The corporate officer who signs a negotiable instrument that neither names the corporation nor shows representative capacity is personally liable under subsection 3-403(2)(a) and cannot introduce parol evidence to deny this liability. This subsection makes no distinction between the situation where personal liability of the corporate officer is being asserted by the payee of the instrument and the situation where personal liability is being asserted by a transferee of the instrument.

The rule of subsection 3-403(2)(a) is justified when a transferee seeks to hold the corporate officer to personal liability on the instrument. When the transferee took the instrument, the face of the instrument gave no indication that it was the obligation of any person other than the corporate officer whose signature appeared on the instrument. Requiring the transferee to go behind the face of

---

[7]*See id.* § 3-404(1).

[8]*See id.* § 3-404(1), Comment 4.

the instrument and perform an investigation to determine whether the instrument was a corporate obligation would place an unreasonable burden on the transferee, thus seriously impairing the negotiability of all instruments containing only individual signatures. Consequently, no cases have been found where a corporate officer has sought to avoid personal liability against a transferee when the instrument neither named the corporation nor showed that the corporate officer signed in a representative capacity.

When the rule of subsection 3-403(2)(a) is applied to impose personal liability on a corporate officer in favor of the payee of the instrument, however, the rule cannot be justified on the basis of an unreasonable investigative burden. The payee, unlike the transferee, is a party to the original agreement. When the payee and the authorized corporate officer agree that the instrument is only a corporate obligation, the payee is aware of the liability of the corporation without further investigation.

On the other hand, holding corporate officers individually liable to payees may be supported on the ground that corporate officers should realize that their unqualified signatures on an instrument indicate personal liability. Thus corporate officers who give an instrument to satisfy an obligation of the corporation without intending to incur personal liability should make sure that the corporation is named as a party to the instrument and that their representative capacity is designated. Using that justification for the rule, the rule then takes on the characteristics of a statute of frauds, prohibiting the corporate officer from establishing by parol evidence an obligation different from that shown on the face of the instrument.

A. The Admission of Parol Evidence Between Immediate Parties

Similarity to a statute of frauds cannot justify a strict application of subsection 3-403(2)(a) to every instrument failing to show the corporate name and representative capacity. In some actions brought by a payee, corporate officers should be permitted to use parol evidence to avoid personal liability. The payee, as an immediate party to the transaction, cannot take free of defenses.[9] If the payee transfers the instrument, however, the transferee takes free of almost all defenses.[10] Consequently, allowing the corporate officer to avoid personal liability against the payee will not impair

---

[9]*See id.* § 3-305(2).

[10]*Id.*

the negotiability of the instrument because the corporate officer will remain liable to a transferee.

First Bank & Trust Co. v. Post[11] presented a situation justifying the admission of parol evidence to avoid personal liability. The corporate note in *Post* had been signed by the individual defendants as makers, and the same individual defendants had made guaranty indorsements on the back of the note. The defendant corporation became bankrupt, and the plaintiff bank sought to recover against the individual defendants in their capacity as the makers of the note because they could not be held liable as guarantors.[12] The name of the corporation did not appear on the note, and the individual defendants did not indicate their representative capacity. The note, however, was signed in connection with a security agreement which did name the corporation immediately above the signatures of the individual defendants.

The signatures of the individual defendants as both makers and guarantors of the note and their signatures on the security agreement in conjunction with the name of the corporation created an ambiguity. The individual defendants and the bank officer who had negotiated the loan testified that only a corporate obligation had been intended, and the bank officer testified that his omission of the corporate name from the face of the note was an oversight. Every notation on the face of the note, except the signatures of the individual defendants, had been written by the bank officer, thereby supporting the bank officer's testimony that he was responsible for failing to include the name of the corporation. The *Post* court reasoned:

> The uncontradicted testimony of all parties to this instrument indicates that the note was understood and intended to be a corporate obligation and that due only to some oversight on the part of the plaintiff the form of the instrument signed did not reflect that understanding. The Uniform Commercial Code . . . was never intended to be used by courts to create a result that is contrary to the clearly understood intentions of the original parties.[13]

---

[11]10 Ill. App. 3d 127, 293 N.E.2d 907 (1973).

[12]The individual defendants, in their capacity as indorsers, were discharged from liability as guarantors because the bank had impaired the collateral by failing to perfect the security interest. *Id.* at 132, 293 N.E.2d at 910-11.

[13]*Id.* at 131, 293 N.E.2d at 910.

Another case presenting facts warranting the admission of parol evidence is *Weather-Rite, Inc. v. Southdale Pro-Bowl, Inc.*[14] "Southdale Pro-Bowl, Inc." had been typed on the first signature line of the note. On the second line was the signature of John Dorek followed by the designation "President." The signature of Frank Beutel appeared on the third signature line without designation. The note had been indorsed by both John Dorek and Frank Beutel. The signature of John Dorek in the indorsement contained the designation "President," but the signature of Beutel was again undesignated. The plaintiff payee brought an action against Beutel, alleging that Beutel was personally liable as indorser although conceding that he had signed as maker in a representative capacity. Plaintiff objected to the admission of parol evidence on the grounds that Beutel's indorsement neither named the corporation nor showed representative capacity. If the plaintiff had been a transferee, the Supreme Court of Minnesota would have disallowed parol evidence. Explaining that the indorsement was "ambiguous when viewed in its complete context."[15] the court quoted from an amicus curiae brief of the Permanent Editorial Board for the Uniform Commercial Code.

> 'In the present case, the form of the note itself raises doubt. If the payee wanted the individual liability of the two officers of Southdale, why did it accept the indorsement: "John H. Dorek, Pres."? On the other hand, if Buetel thought he was signing only as an officer of Southdale, why did he not add to his signatures something to show he was vice president? Anyone looking at the present note will have at least some shadow of doubt cross his mind, and since the plaintiff is the payee, all of the parties should be allowed to tell their stories. There is a factual question which should be resolved by a jury, or a judge sitting without a jury.'[16]

Dorek's indorsement in his representative capacity created a possibility that the parties had understood that Beutel was also signing in a representative capacity.[17] Thus the court permitted parol evidence to establish that Buetel had indorsed the note only in his capacity as an officer of the corporation.[18]

---

[14]301 Minn. 346, 222 N.W.2d 789 (1974).

[15]*Id.* at 349, 222 N.W.2d at 791.

[16]*Id.* at 349 n.2, 222 N.W.2d at 791 n.2.

[17]*Id.* at 350, 222 N.W.2d at 791.

[18]The court distinguished on the facts a similar case, *Central Trust Co. v. J. Gottermeier Dev. Co. See* note 37 *infra* and accompanying text.

Parol evidence was also admitted in *A.L. Jackson Chevrolet, Inc. v. Oxley*,[19] although no corporate name nor representative capacity appeared on the instrument. Jackson Chevrolet commenced an action to recover for the sales of merchandise and parts. Invoices showed that the sales had been made to "Guymon Motor Sales" rather than "Guymon Motor Sales, Inc.," the proper name of the corporation. Bill Oxley, the president of Guymon Motor Sales, Inc., had paid for these purchases with checks which were returned because of insufficient funds. Oxley had signed these checks, but had failed to name the corporate entity or indicate his representative capacity. The corporate account number was shown on the checks, but the Oklahoma Supreme Court reasoned that the account number was insufficient to name the corporation.[20] Thus, the situation appeared to fall under subsection 3-403(2)(a).

The court applied, however, a misquoted version of subsection 3-403(2)(b)[21] and was willing to permit parol evidence between the immediate parties although neither the corporation nor the representative capacity was indicated.[22] Oxley failed to produce evidence sufficient to establish an agreement of corporate liability or any other defense; consequently, the court held Oxley personally obligated on the checks.[23]

Although the opinion leaves some question about which subsection of 3-403 was applied in reaching the decision, the court arrived at the correct result. Assuming that the court decided the case under subsection 3-403(2)(a), the court did not base its decision on a blind adherence to the rule stated in that subsection. The court permitted Oxley to use parol evidence to establish that he was not personally obligated on the instrument.[24] Merely asserting an intention to sign as a corporate officer, however, is not sufficient to avoid personal liability.[25] Oxley had the burden of establishing an understanding between himself and Jackson Chevrolet that he was not to be personally obligated on the checks.[26] His evidence failed to satisfy this burden.[27]

---

[19]564 P.2d 633 (Okla. 1977).

[20]*Id.* at 636.

[21]In discussing the application of § 3-403, the court cited § 3-403(2)(b), but used the language of § 3-403(2)(a). The court added "except as otherwise established between the immediate parties," language which is not included in § 3-403(2)(a).

[22]564 P.2d at 635-36.

[23]*Id.* at 636.

[24]*Id.* at 634-35.

[25]*Id.* at 635.

[26]*Id.* at 635-36.

[27]*Id.* at 636.

Although the *Post*, *Weather-Rite*, and *Oxley* courts refused to apply a strict rule against parol evidence, many courts continue to follow subsection 3-403(2)(a) blindly. An illustration is the case of *United Burner Service, Inc. v. George Peters & Sons, Inc.*[28] A note was signed by corporate officers Eleanora L. Walter and Carrie A. Peters without disclosing representative capacity or the name of the corporation. The note was given for an obligation of the corporation. Defendant Peters alleged that the note had been signed only in a representative capacity. The New York Supreme Court summarily denied the admission of parol evidence to establish corporate liability, stating that the corporate officers would have no defense on the note "even assuming that plaintiff knew the individual defendants signed in a representative capacity."[29]

The inflexibility of the *United Burner* decision may produce harsh results. As the *Oxley*,[30] *Weather-Rite*, and *Post* courts decided, parol evidence between immediate parties may be justified. Parol evidence certainly should be admitted when all parties to the agreement testify that only a corporate obligation was intended, as in the *Post* opinion. Parol evidence is justified when the form of the note raises doubt about the obligation of a party, the situation in *Weather-Rite*. Permitting parol evidence against a plaintiff payee also appears fair when the instrument includes at least some indication of the corporation, such as the corporate account number in *Oxley*, from which to infer that the payee had been made aware of the corporation and had agreed to hold only it liable. Furthermore, in any case where a corporate officer denies personal liability in an action brought by the payee, the courts should seek some justification for refusing to permit parol evidence and for imposing personal liability on the corporate officer other than a strict adherence to the rule set out in subsection 3-403(2)(a).

B. Justifications For Refusing Parol Evidence

In *Bostwick Banking Co. v. Arnold*,[31] corporate officers signed a promissory note without any indication of representative capacity or the identity of the alleged corporate principal. At trial, the officers sought to introduce evidence that the payee bank knew that they were signing only as agents of the corporation and that the bank had agreed to insert "Sunshine Ford Sales Corporation, By:"on the note above the signatures of the corporate officers. The plaintiff

---

[28]5 U.C.C. REP. SERV. 383 (N.Y. App. Div. 1968).

[29]*Id.* at 384.

[30]Misquoting the U.C.C., however, detracts from the credibility of the *Oxley* rule; thus, its precedential value is uncertain. *See* note 21 *supra* and accompanying text.

[31]227 Ga. 18, 178 S.E.2d 890 (1970).

bank claimed that personal liability had been intended and denied that it had agreed to insert the corporate name above the signatures of the officers. The Georgia Supreme Court observed that the note lacked any space above the signatures of the corporate officers for the alleged insertion and that no corporate borrowing resolution had authorized this transaction.[32] The court also stated that the corporate officers could easily have written in the name of the corporation before signing the instrument if a corporate obligation had been intended.[33] Based on these factors, the court refused to permit parol evidence to support the claims of the officers.[34] The face of the note presented a substantial basis for refusing parol evidence, but it should be noted that the court relied in part on parol evidence—absence of a corporate borrowing resolution—to deny the corporate officers the chance to establish their claim by parol evidence.

Similarly, in *Barden & Robeson Corp. v. Ferrusi*,[35] the defendants claimed that they had sent a letter with the note stating that they had signed only as officers of the Garfield Development Co. The plaintiff claimed that it did not receive the letter and that it took the personal note of the officers in lieu of filing a mechanic's lien on property owned by Garfield. The New York Supreme Court refused to permit parol evidence to defeat personal liability on the part of the corporate officers.[36] This decision can be supported by logic: why would defendants send a letter stating that they were not personally liable rather than merely signing the note in a manner that clearly indicated corporate liability? The court, however, relied on subsection 3-403(2)(a), rather than logic, to refuse parol evidence.

The use of parol evidence was denied in the New York case of *Central Trust Co. v. J. Gottermeier Development Co.*[37] The maker of the note was the corporation; the corporate signature had been properly made by John B. Gottermeier as president. He had also indorsed the note under a printed guaranty agreement without indicating his representative capacity or naming the corporation. He claimed that the note had been indorsed only in a representative capacity. The court's refusal of parol evidence[38] was justified because personal liability is the only reasonable explanation for Gottermeier's indorsement.[39] The

---

[32]*Id.* at 21-22, 178 S.E.2d at 893.
[33]*Id.*
[34]*Id.* at 22-23, 178 S.E.2d at 893-94.
[35]52 A.D.2d 1061, 384 N.Y.S.2d 596 (1976).
[36]*Id.* at 1062, 384 N.Y.S.2d at 597-98.
[37]65 Misc. 2d 676, 319 N.Y.S.2d 25 (Sup. Ct. 1971).
[38]*Id.* at 677-78, 319 N.Y.S.2d at 26-27.
[39]AGFA Gevaert, Inc. v. Bueding, 11 U.C.C. REP. SERV. 794 (Md. D. Ct. 1972).

court, however, did not rely on this reasonable explanation but relied instead on subsection 3-403(2)(a) to prohibit parol evidence.

In *Coleman v. Heiple*,[40] corporate officers had signed without showing representative capacity on notes lacking the corporate name. The corporate officers were the sole shareholders of the corporation. The notes, stating "we promise to pay," had been given to secure obligations of the corporation, but the credit had been extended on terms more favorable than the terms previously granted to the corporation. Moreover, the notes had been given to induce the creditor to continue supplying goods on credit to the corporation. The Pennsylvania Court of Common Pleas refused to permit parol evidence to contradict the notes on the ground that the lack of corporate name and representative capacity established individual liability as a matter of law under subsection 3-403(2)(a).[41] The court's decision could have been justified if based on the language, "we promise to pay," but would have been bolstered by reliance on the parol evidence concerning the extension of credit to the corporate officers on more favorable terms to secure obligations of the corporation and to induce continued credit extensions to the corporation. The court's decision may have been influenced by this parol evidence.

In *Kaminsky v. Van Dusen*,[42] the note had been written on a personalized check form. The name of the bank and the account number had been crossed out, but the printed name of William R. Van Dusen and Betty Van Dusen had remained at the top of the form. The Van Dusens claimed to be only guarantors for Van Dusen Roofing Co., but they had not named the corporation on the instrument. The Van Dusens had also failed to show their representative capacity. Parol evidence was denied by the court relying on subsection 3-403(2)(a).[43] The court's decision could have been justified on the basis that leaving the printed individual names while striking the bank name and account number showed that the Van Dusens intended to be personally liable on the instrument.

In the cases previously discussed, some basis other than a blind adherence to the rule stated in subsection 3-403(2)(a) was available to the court for imposing personal liability on the corporate officers. In each of the cases except *Bostwick Banking Co. v. Arnold*, however, the court failed to rely on the other available grounds, electing to support its decision solely on subsection 3-403(2)(a).

---

[40] 18 U.C.C. REP. SERV. 445 (Pa. C.P. 1975).

[41] *Id.* at 447-48.

[42] 88 Misc. 2d 833, 390 N.Y.S.2d 544 (Sup. Ct. 1976).

[43] *Id.* at 834, 390 N.Y.S.2d at 545.

Subsection 3-403(2)(a), strictly applied, imposes personal liability on corporate officers by precluding the use of parol evidence to avoid personal liability. Although a few courts have permitted parol evidence between immediate parties, the majority of the courts that have decided cases under subsection 3-403(2)(a) have strictly followed its provisions. Moreover, the *Bostwick* court relied in part on parol evidence to preclude the use of parol evidence by corporate officers, and parol evidence may have influenced the *Coleman v. Heiple* court's decision to prohibit parol evidence by corporate officers. The use of some parol evidence to form the basis for refusing other parol evidence cannot be justified.

When applying the rule in subsection 3-403(2)(a), the courts should not follow the inflexible approach taken in the majority of the cases. Instead, when a corporate officer denies personal liability in an action between the immediate parties, the court should permit parol evidence unless some reasonable basis exists for refusing to permit parol evidence and for imposing personal liability on the officer. When a court decides to permit parol evidence, the burden of proving that personal liability was not intended should be placed on the corporate officer, as the *Oxley* opinion instructs.[44] Some may argue that the trier of fact will favor the corporate officer over the creditor payee if parol evidence is permitted, but that risk is preferrable to erroneously imposing liability on the corporate officer. Adherence to the rule against parol evidence set out in subsection 3-403(2)(a) can be justified only in situations involving a transferee or a reasonable basis for refusing parol evidence in an action between immediate parties.

III. Questionable Whether Corporation Named—Representative Capacity Not Shown

If an instrument names the corporation, the corporate officer may present parol evidence against the plaintiff payee to show corporate liability under subsection 3-403(2)(b). The defendant in *Southern Oxygen Supply Co. v. de Golian*,[45] however, unsuccessfully argued that the corporation was named. The opinion implied that the action was between the immediate parties to the instrument.[46] The note had been signed by the defendant de Golian on the lower right corner where the printed word "signatures" appeared. On the left side of the note in a space specified for an address, the name and address of "Golian Steel Co." appeared. The defendant claimed

---

[44]564 P.2d at 635-36.

[45]230 Ga. 405, 197 S.E.2d 374 (1973).

[46]*Id.* at 406, 197 S.E.2d at 375.

that he had signed only as president of "Golian Steel and Iron Co." The Georgia Supreme Court held that showing the name of a corporation similar to the name of the corporation claimed to be the principal obligor on the instrument was insufficient to constitute the naming of a person represented.[47] Thus, according to the court, subsection 3-403(2)(a) was the proper rule to determine liability in this case.[48] The court strictly applied the rule to impose personal liability on the defendant and reversed the decision of the Georgia Court of Appeals permitting parol evidence under subsection 3-403(2)(b).[49]

If the plaintiff in *de Golian* had been a transferee of the instrument, imposing personal liability on the defendant would have been reasonable. The instrument did not appear to be a corporate obligation because of the location of the corporate name on the instrument.[50] The names of obligors on promissory notes generally are shown in the lower right corner, not in the lower left corner.[51] A transferee could have logically concluded that the corporate name was shown merely to indicate the mailing address of the individual signer. *De Golian* was an action between immediate parties, however, and the uncertainty that would have been present for a transferee was not present for the plaintiff payee who had been a party to the original transaction. Moreover, a slight discrepancy in the corporate name should not be sufficient grounds for ruling that the corporation had not been named. Therefore, the Georgia Supreme Court should have ruled that the corporation was named and should have permitted the defendant to use parol evidence under subsection 3-403(2)(b) to avoid personal liability by showing that the parties had agreed that the individual defendant was not personally liable on the instrument. The burden of proof that personal liability was not intended, however, should be placed on the defendant.[52]

American Exchange Bank v. Cessna,[53] illustrates a proper denial of parol evidence against a transferee. The defendant Cessna had signed a check without indicating his representative capacity. The name "Cessna Ranch" appeared on the check in the lower left corner

---

[47]*Id.*

[48]*Id.*

[49]*Id.*

[50]The corporate name was printed in the lower left corner of the instrument as opposed to the lower right corner. *Id.*

[51]The court in *de Golian* noted that a court could take a judicial notice of this fact. *Id.* (citing Bostwick Banking Co. v. Arnold, 227 Ga. 18, 22, 178 S.E.2d 890, 893 (1970)).

[52]A.L. Jackson Chevrolet, Inc. v. Oxley, 564 P.2d 633, 635-36 (Okla. 1977). *See infra* notes 81-110.

[53]386 F. Supp. 494 (N.D. Okla. 1974).

with an address and a telephone number. Cessna Ranch was a California corporation, and the defendant claimed that he had signed as either president or general manager of the corporation.

Arguably, the words "Cessna Ranch" were sufficient to name the person represented. The United States District Court for the Northern District of Oklahoma did not decide whether the corporation was adequately named because the plaintiff was a transferee, not an immediate party. Consequently, under subsection 3-403(2)(b), parol evidence was not admissible to show that defendant had signed only as an officer of the corporation and was not personally liable on the instrument.[54]

The decision in *Cessna* is correct. Requiring the transferee to investigate whether Cessna Ranch was a corporate entity and whether the defendant was to be personally liable on the instrument would have placed an unreasonable burden on the transferee and seriously impaired the negotiability of the instrument.

IV. Instrument Shows Corporate Name–Representative Capacity Not Shown

Subsection 3-403(2)(b) applies to instruments which show either the corporate name or the representative capacity of the corporate officer. The vast majority of cases which fall under this subsection involve an instrument showing the corporate name but not the representative capacity.[55] Consequently, the following discussion will

---

[54]*Id.* at 496.

[55]Research has revealed two cases in which the representative capacity but not the corporate identity was shown. In Giacalone v. Bernstein, 348 So.2d 679 (Fla. Dist. Ct. App. 1977), the word "by" preceded the signature of the individual defendant. The court refused to consider the use of the word "by" sufficient to show representative capacity and precluded the use of extrinsic evidence in an action between immediate parties. The use of "by" should have been adequate to allow parol evidence under subsection 3-403(2)(b). Representative capacity was also shown in National Bank of Georgia v. Ament, 127 Ga. App. 838, 195 S.E.2d 202 (1973). "R. & A. Concrete" had been handwritten on the first signature line of the face of the promissory note. On a second signature line appeared the following signature, "By: Grover Roberts." "Grover Roberts" had been typed under his signature, partially covering a third signature line. On the reverse side, the defendant had indorsed the note "X John Ament Sec. & Tres." The corporate name had not been included with Ament's indorsement on the back of the note. The trial court dismissed the action against Ament, ruling that he was not personally liable because of the qualified signature. The Georgia Court of Appeals reversed, holding that Ament's signature had not been clearly made in a representative capacity; Ament might have signed on the back after deciding the face of the note lacked sufficient space for his signature. His signature, however, may have been intended to indicate personal liability. This conclusion is correct. Subsection 3-403(2)(b) permits the use of parol evidence to establish personal liability of a corporate officer even though the officer indicated representative capacity with his signature.

be limited to this recurring situation. Subsection 3-403(2)(b) sets out two separate rules for determining the liability of the corporate officer, depending upon whether the party seeking to establish liability is an immediate party to the instrument or a transferee. If the plaintiff is an immediate party, the defendant may introduce parol evidence to avoid personal liability, but if the plaintiff is a transferee, parol evidence is precluded under a strict interpretation of this subsection.[56]

A. Immediate Parties

Subsection 3-403(2)(b) authorizes the use of parol evidence between immediate parties. Parol evidence is most often used by corporate officers to avoid personal liability, but is occasionally used by payees to establish personal liability. If parol evidence is used to avoid personal liability, the defendant has the burden of proving that the parties intended only corporate liability.[57]

1. Parol Evidence to Avoid Personal Liability.—North Carolina Equipment Co. v. DeBruhl[58] is illustrative of the admissibility of parol evidence to avoid personal liability. The first signature line of the note in *DeBruhl* contained the name "LaFayette Transportation Service." The signature of "James L. DeBruhl" followed on the second signature line without any indication of DeBruhl's status as an officer of the corporation. The North Carolina Court of Appeals properly permitted the introduction of parol evidence to establish that DeBruhl had signed only in his capacity as president of the corporation.[59] The court explained: "When the plaintiff who sues the agent personally is one who dealt directly with the agent, and the signature either names the principal or indicates the representative capacity, section 3-403(2)(b) permits the agent to introduce parol evidence of his agency status to avoid personal liability."[60]

Instruments often contain language implying that the corporation and the officer are jointly liable. The decisions are less uniform in admitting parol evidence when the instrument uses joint liability language. *Rosedale State Bank & Trust Co. v. Stringer*[61] and *Wood*

---

[56]*See* J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE § 13-5 (2d ed. 1980) [hereinafter cited as WHITE & SUMMERS].

[57]*See*, notes 81-100 *infra* & accompanying text.

[58]28 N.C. App. 330, 220 S.E.2d 867 (1976); *accord*, Sullivan County Wholesalers, Inc. v. Sullivan County Dorms, 59 A.D.2d 628, 398 N.Y.S.2d 180 (1977); Medley Harwoods, Inc. v. Novy, 346 So. 2d 1224 (Fla. Dist. Ct. App. 1977).

[59]28 N.C. App. at 333, 220 S.E.2d at 869.

[60]*Id.* (citing J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE § 13-5, at 406 (lst ed. 1972)).

[61]2 Kan. App. 2d 331, 579 P.2d 158 (1978).

Press, Inc. v. Eisen[62] allowed parol evidence despite language of joint liability.

The note in *Stringer* had been preprinted with the words "the undersigned jointly and severally promise to pay." It had been signed as follows:

MAY PLASTICS, INC.
By: */s/William D. Jobe Secretary*
William D. Jobe
/s/William D. Jobe
William D. Jobe
/s/George L. Stringer
George L. Stringer[63]

The payee of the note brought an action against Stringer, the president of the corporation. The trial court excluded evidence showing the bank had agreed that Stringer was signing only as a corporate officer.[64] Reversing the trial court, the Court of Appeals of Kansas held that the parol evidence concerning the understanding of the parties should have been admitted.[65] The appellate court did not view the words "the undersigned jointly and severally promise to pay" as precluding Stringer from introducing parol evidence because these words were applicable to William D. Jobe who "unquestionably signed the promissory note in both a representative and individual capacity."[66]

The *Eisen* decision involved a series of notes, each stating "we promise to pay" and containing the stamped words "Home Fashions Guild" followed by the signature of the defendant Eisen who was president of Home Fashions Guild, Inc. An officer of the plaintiff payee testified that Eisen had promised to be personally liable on the note. Finding Eisen personally liable, the lower court relied strongly on a prior case brought by a holder in due course rather than by a payee as in *Eisen*.[67] On appeal, the New Jersey Superior Court remanded the case to the lower court with instructions to weigh the conflicting parol evidence despite the language indicating joint liability.[68]

---

[62]157 N.J. Super. 57, 384 A.2d 538 (1978).

[63]2 Kan. App. 2d at 334, 579 P.2d at 161.

[64]*Id.* at 331-32, 579 P.2d at 161.

[65]*Id.* at 339, 579 P.2d at 164.

[66]*Id.*

[67]157 N.J. Super. 57, 62, 384 A.2d 538, 540 (1978) (relying on O.P. Ganjo, Inc. v. Tri-Urban Realty Co., 108 N.J. Super. 517, 261 A.2d 722 (Law Div. 1969), holding the corporate officer liable as a matter of law).

[68]157 N.J. Super. at 62-63, 384 A.2d at 541.

Contrary to *Stringer* and *Eisen*, the Georgia Court of Appeals in *Colonial Film & Equipment Co. v. MacMillan Professional Magazines, Inc.*,[69] relied on joint liability language to deny parol evidence. The defendant officer in *Colonial Film* claimed that he had signed the nineteen promissory notes only as president of the corporation. Each note stated "[w]e promise to pay" and the waiver clause applied to "each of us." The signature block, located in the lower right corner of each note, appeared as follows:

> Given under the hand and seal of each party
> *Colonial Films* [*typewritten*] *L.S.*
> *Taylor Hoynes, Jr.* [*handwritten*] *L.S.*[70]

The defendant argued that the lower court should have allowed parol evidence to establish that he had not agreed to be personally liable. The Georgia Court of Appeals upheld the lower court's exclusion of parol evidence and ruled that Hoynes was personally liable: "Nothing on the face of the notes indicated Hoynes' status as agent of the corporation. To the contrary, each signed as individual maker."[71]

In denying parol evidence against the payee, the court in *Colonial Film* ignored the language of subsection 3-403(2)(b), which allows parol evidence between immediate parties. The court also relied on *de Golian*[72] despite the dissimilarity in situations.

In *de Golian* the corporate name appeared on the left side of the note in an address block and differed from the name of the alleged corporate principal. Based on these facts, the court in *de Golian* decided that the corporation was not named and that parol evidence was thus inadmissible under subsection 3-403(2)(a).[73] If the corporation had been named, however, the *de Golian* court implied that it would have permitted parol evidence under subsection 3-403(2)(b).[74] In *Colonial Film*, the corporate name appeared in the signature block immediately above the defendant's signature. Therefore, the corporation was named, and the court should have allowed parol evidence under subsection 3-403(2)(b).

The *Colonial Film* court also erred in relying on the language of joint liability. Language such as "[w]e promise to pay" is often preprinted on standard promissory notes, a fact which courts should

---

[69]148 Ga. App. 632, 252 S.E.2d 61 (1979).

[70]*Id.* at 632, 252 S.E.2d at 62.

[71]*Id.*

[72]*Id.* (applying Southern Oxygen Supply Co. v. De Golian, 230 Ga. 405, 197 S.E.2d 374 (1973)). *See* notes 45-52 *supra* and accompanying text.

[73]230 Ga. at 405-06, 197 S.E.2d at 375.

[74]*Id.*

consider before deciding that this language denotes personal or joint liability. As the *Stringer* and *Eisen* courts held, parol evidence should be admitted under subsection 3-403(2)(b) despite language implying joint liability.[75]

Corporate officers are entitled to present parol evidence to avoid personal liability in an action by the payee if the instrument names the corporation. Using language of joint liability in the note should not preclude the admission of parol evidence.

2. Parol Evidence to Establish Personal Liability.—Parol evidence can be used not only to avoid personal liability, but also to establish personal liability of corporate officers. In *Johnson v. Sams*,[76] the note provided that Queensmarble, Inc., promised to pay on demand to the order of the named payees who were plaintiffs in the case. "Queensmarble, Inc." appeared on the first signature line, followed in order by the signatures of the individual defendants: Edward J. O'Donnell, Kent A. Larson and Byron W. Sams. In the trial court, plaintiffs obtained a jury verdict assessing personal liability against the individual defendants. Because the note provided that "Queensmarble, Inc. promises to pay," the individual defendants argued on appeal that the plaintiffs were estopped to establish personal liability against them. At the time of the signing of the note, however, the corporation was not in existence, and the defendants were doing business as partners. Affirming the judgment of the trial court, the Supreme Court of Minnesota upheld the admission of parol evidence showing that the individual signers were personally liable on the note.[77]

In *Citibank Eastern, N.A. v. Minbiole*,[78] the court relied on parol evidence in establishing personal liability of the corporate officer. The name of the corporation appeared on the face of the note. Although the note had a space for a signature as a representative of the corporation, defendant signed without indicating his office in a blank designated "Co-Maker." The method of signing the note may have been sufficient to find personal liability, but the court also relied on a "Co-Maker's/Guarantor's Statement" signed by defendant "which clearly states that he is personally liable on the note."[79]

3. Burden of Proof.—A corporate officer is presumed personally liable on a negotiable instrument when he names the corporation, but fails to indicate his or her representative capacity.[80]

---

[75]Rosedale State Bank & Trust Co. v. Stringer, 2 Kan. App. 2d 331, 579 P.2d 158 (1978); Wood Press, Inc. v. Eisen, 157 N.J. Super. 57, 384 A.2d 538 (1978).

[76]296 Minn. 112, 206 N.W.2d 925 (1973).

[77]*Id.* at 115, 206 N.W.2d at 927.

[78]50 A.D.2d 1052, 377 N.Y.S.2d 727 (1975).

[79]377 N.Y.S.2d at 729-30.

The corporate officer has the burden of proof to overcome this presumption by affirmatively demonstrating that the "taker of the note knew or understood that the signer intended to execute the instrument in a representative status only."[81]

The New York Court of Appeals in *Rotuba Extruders, Inc. v. Ceppos*[82] discussed what a defendant must do to avoid summary judgment. "Kenbert Lighting Ind. Inc." had been handwritten on the first signature line of the promissory notes, followed by the signature "Kenneth Ceppos" in what appeared to be different handwriting without any indication of representative capacity. In a blank space for the insertion of a pronoun, the word "we" had been written so that the notes read "we promise." In response to the plaintiff's motion for summary judgment, Ceppos filed an affidavit stating that he had intended to sign only as a representative of the corporation. The *Ceppos* court ruled that the defendant's affidavit, merely stating an undisclosed intent to sign as a representative, was insufficient to withstand summary judgment.[83] The corporate officer has the burden of establishing "an agreement, understanding or course of dealing" that the officer had signed only as a representative of the corporation.[84] To avoid summary judgment, a defendant must show facts "creat[ing] a triable issue on whether [the plaintiff] knew or should have known that it was [the defendant's] intention to sign the notes in a representative capacity only."[85] Ceppos' affidavit could have stated, for example, the identity of the agent who had represented the plaintiff in accepting the notes and the disclosure of Ceppos' intent to sign only as a representative of the corporation.

Similarly in *Seale v. Nichols*,[86] uncommunicated intent to sign only as a representative of the corporation was insufficient to avoid personal liability. "The Fashion Beauty Salon" appeared on the first signature line of the promissory note. The name "Carl V. Nichols" had been typed on the second signature line, followed by the signature "Carl V. Nichols." On appeal from a summary judgment against Nichols in favor of the payee Seale, the Texas Supreme Court affirmed because Nichols had failed to state in his affidavit that he had disclosed his status as president of the corporation to

---

[80]Rosedale State Bank & Trust Co. v. Stringer, 2 Kan. App. 2d 331 579 P.2d 158 (1978).

[81]Rotuba Extruders, Inc. v. Ceppos, 46 N.Y.2d 223, 230, 385 N.E.2d 1068, 1071, 413 N.Y.S.2d 141, 144 (1978).

[82]46 N.Y.2d 223, 385 N.E.2d 1068, 413 N.Y.S.2d 141 (1978).

[83]*Id.* at 231, 385 N.E.2d at 1072, 413 N.Y.S.2d at 145.

[84]*Id.* at 230, 385 N.E.2d at 1071, 413 N.Y.S.2d at 144.

[85]*Id.*

[86]505 S.W.2d 251 (Tex. 1974).

Seale.[87] The court ruled that a corporate officer's affidavit should contain facts supporting representative capacity such as: an agreement that the officer signed only as a representative of the corporation; a prior course of dealing indicating that the payee had accepted the officer's signature as a representative of the corporation; or a disclosure of representative capacity to, and the acceptance of the note by, the payee.[88]

The Supreme Court of Arkansas in *Fanning v. Hembree Oil Co.*[89] considered the sufficiency of evidence necessary to support a verdict against a corporate officer who had signed a note containing the corporate name with no evidence of representative capacity. Roy Hembree, an officer of plaintiff payee, testified that he had demanded a personal note as a condition of doing further business with Razorback Asphalt Co. Under Hembree's version of the facts, Fanning had protested signing personally, but had signed the note stating "I will see to it that you get your money." Fanning, the defendant, testified that he had agreed to sign only as an officer of Razorback Asphalt Co. and had refused to undertake personal liability. The defendant's statements were corroborated by the testimony of two witnesses, Fanning's secretary and another officer of the corporation who had also signed the note. Ruling that substantial evidence supported the judgment, the court affirmed the trial court[90] and noted the following "significant circumstances: [a] note which bound only Razorback would have been of little value considering its financial condition; after the note was signed, Hembree extended substantial credit to Razorback; Hembree had little education and was not a good reader;"[91] Hembree did not know that the corporate name had been typed on the note by Fanning's secretary, and Fanning's secretary could have typed on the note Fanning's status as secretary of the corporation.

The sufficiency of evidence to avoid personal liability may be tested by a lower standard when corporate checks rather than promissory notes are involved. The *Ceppos* and *Seale* courts held that an affidavit showing only undisclosed intent to sign a promissory note as a representative failed to rebut the presumption of personal liability and to withstand summary judgment.[92] The Florida District Court of Appeals in *Speer v. Friedland*,[93] held that the defendant's

---

[87]*Id.* at 255.

[88]*Id.* at 254-55.

[89]245 Ark. 825, 434 S.W.2d 822 (1968).

[90]*Id.* at 829, 434 S.W.2d at 824.

[91]*Id.*

[92]Rotuba Extruders, Inc. v. Ceppos, 46 N.Y.2d 223, 385 N.E.2d 1068, 413 N.Y.S.2d 141 (1978); Seale v. Nichols, 505 S.W.2d 251 (Tex. 1974).

[93]276 So. 2d 84 (Fla. Dist. Ct. App. 1973).

testimony of her intent to sign a corporate check as a representative rebutted the presumption of personal liability and shifted the burden of proof to the plaintiff payee.[94] The signature block on the check in *Speer* appeared as follows:

> JIMMY SPEERS AUTO AUCTION
> *Bruce A. Ryals*
> *Ann Marie Speer*[95]

The signature "Ann Marie Speer" had been made with a check writing machine. The defendant Speer testified that she had signed the check as treasurer of the corporation. Reversing the lower court's judgment against Speer, the appellate court stated:

> Appellant testified that she never intended to sign the check in question in an individual capacity, but that she signed it in her representative capacity, which she had authority to do. Appellee produced no evidence to controvert this testimony. The presumption that she signed in a personal capacity was overcome by the manifest weight of the evidence. The burden then shifted to appellee to prove the issue by a preponderance of the evidence, unaided by the presumption, which he failed to do.[96]

The court in *Speer* distinguished between corporate checks and promissory notes in formulating a lenient procedure for overcoming the presumption of personal liability on a corporate check. Although corporate checks may justify a lesser standard of evidence than promissory notes, the *Speer* standard may be too minimal because it emasculates the presumption of personal liability. By simply stating that no personal liability was intended, the defendant too easily shifts the burden of proving personal liability to the plaintiff.

The Supreme Court of Texas in *Griffin v. Ellinger*[97] acknowledged a difference between checks and notes:

> We recognize that it is unusual to demand the individual obligation of a corporate officer on checks drawn on the corporate account, and that the more usual way of obtaining the personal obligation of an officer on such a check would be by endorsement. Business practice and usage are proper factors to be considered in construing the particular instrument under consideration.[98]

---

[94] *Id.* at 86.
[95] *Id.* at 85.
[96] *Id.* at 86.
[97] 538 S.W.2d 97 (Tex. 1976).
[98] *Id.* at 99.

Despite this statement, the *Griffin* court failed to lower the standard of proof in a corporate check situation from that in a promissory note situation.

The defendant in *Griffin* had signed checks imprinted with the corporate name without indicating his representative capacity and had given these checks for labor and material furnished by plaintiff Ellinger to the corporation for a construction project. Griffin argued that the check as a whole showed he was not personally liable. He pointed out that a corporation can act only by an agent and that a personal signature is always required on a corporate check. Despite the business practice of seldom requiring personal liability on a corporate check and the usual business practice of indicating personal liability on the check by indorsement when personal liability is required, the court ruled that Griffin's signatures on corporate checks drawn on a corporate account were not enough to show representative capacity.[99] The burden is on the corporate officer to disclose representative capacity.[100]

Parol evidence, however, is admissible to determine whether Griffin disclosed his representative capacity. "Ellinger was never told who owned the . . . project, who would pay him, or who would be responsible for the payments, nor did he inquire." Griffin had signed and delivered the checks without mentioning whether he was assuming personal liability on the checks. The Supreme Court of Texas also stated that "prior dealings between the parties are relevant in determining whether the parties understood the signature to be in a representative capacity."[101] Ellinger had previously accepted other checks from the corporation and had not sought the liability of the corporate officers who had signed them. Moreover, Ellinger had submitted bills for the project directly to the corporation. Ellinger testified that he had relied on the personal liability of Griffin, rather than the liability of the corporation. Despite an abundance of evidence favoring Griffin, the supreme court affirmed the trial court's judgment for Ellinger supported solely by Ellinger's own testimony.[102]

The Supreme Judicial Court of Massachusetts in *Commonwealth Bank & Trust Co. v. Plotkin*,[103] upheld summary judgment against a defendant who had indorsed a check which was later dishonored. The check was payable to Plotkin and contained a stamped indorsement "Creative Travel, Inc. for desposit only in 5-250" followed by

---

[99]*Id.* at 99-100.
[100]*Id.* at 100.
[101]*Id.*
[102]*Id.* at 101.
[103]371 Mass. 218, 355 N.E.2d 917 (1976).

the signature "Arthur Plotkin." Plotkin was the president and treasurer of Creative Travel, Inc. The check had been given to the corporation as a substitue for a check previously dishonored. Plotkin's affidavit stated that the bank had previously credited the corporation's account with similar checks. Plotkin further stated that a vice president of the bank "well knew" that the check was a substitute for a previously dishonored check and that its proceeds belonged to the corporation. The trial court entered summary judgment against Plotkin in favor of the bank.[104] Upholding the summary judgment, the Supreme Judical Court of Massachusetts ruled that Plotkin's affidavit was insufficient to show that the bank had agreed to take the check without Plotkin's personal indorsement.[105]

The affidavit in *Plotkin*, however, should have been sufficient to withstand summary judgment. Plotkin alleged a prior course of dealing indicating that the bank had understood his intention to act only in a representative capacity; thus, he created a triable issue of fact. In determining the agreement between the parties, the *Plotkin* court should have considered this prior course of dealing between the parties.

Placing the burden of disproving personal liability on the corporate officer is warranted because the corporate officer can easily avoid personal liability on an instrument by showing his or her corporate title with his or her signature.[106] The corporate officer who fails to take this simple step is justifiably required to prove that personal liability was not intended by the parties. The burden of proof, however, should be less stringent for the corporate officer who signs a corporate check than for the officer who signs a corporate note.[107] Payees of corporate checks rarely insist that the corporate signer assume personal liability.[108] When personal liability is required on a corporate check, the usual business practice is to indicate the personal liability by indorsement.[109] Professors White and Summers have argued for the lenient evaluation of parol evidence in corporate check situations:

> The payee of a corporate check with the corporate name imprinted on its face probably expects less from the individual drawer than the payee of a corporate note may, where both the corporate name and the maker's name may be either handwritten or typewritten. Further, it is common for

---

[104]*Id.* at 219, 355 N.E.2d at 918.
[105]*Id.* at 221-22, 355 N.E.2d at 919.
[106]*See* U.C.C. § 3-403(3).
[107]WHITE & SUMMERS, *supra* note 56, § 13-4 at 495.
[108]Griffin v. Ellinger, 538 S.W.2d at 99.
[109]*Id.*

> creditors to demand the individual promise of officers on corporate promissory notes, specially in the case of small corporations. Thus, we think a court should be more reluctant to fine [*sic*] an agent personally liable who has signed a corporate check than in the case of a similar indorsement of a corporate note. . . . [W]e hope that courts will be more concious of the differences in business practices with respect to different types of instruments when they evaluate the extrinsic evidence presented by the parties.[110]

B. Liability to Transferees

Although parol evidence between immediate parties is allowed, subsection 3-403(2)(b) generally precludes a corporate officer from using parol evidence to avoid personal liability when an instrument showing corporate name but not representative capacity is transferred to a third party.

The rule was applied to impose personal liability on the individual maker of a corporate promissory note in *O.P. Ganjo, Inc. v. Tri-Urban Realty Co.*[111] "Tri-Urban Realty Co., Inc." appeared on the first signature line of the note. On the second signature line was the signature "George Moskowitz." In addition, the note read "I promise to pay." The Superior Court of New Jersey held Moskowitz personally obligated to the transferee of the note as a matter of law because the note failed to show that his signature had been made as president of the corporation.[112]

Likewise the individual drawer of two corporate checks was held personally liable in *Financial Associates v. Impact Marketing, Inc.*[113] In that case a holder in due course brought an action to recover on two checks imprinted with the words "Impact Marketing, Inc." The checks had been signed "Marc Eliot" without any indication of a corporate office. Eliot claimed that he had drawn the checks within his authority as a corporate officer to pay for legal services provided to the corporation. Relying on subsection 3-403(2)(b), the New York City Civil Court refused to permit parol evidence to avoid personal liability and granted a motion for summary judgment against the defendant.[114] The court explained: "[S]ection [3-403(2)(b)] is clear. It prevents a drawer or maker, who fails to indicate

---

[110]WHITE & SUMMERS, *supra* note 56, § 13-4 at 495.

[111]108 N.J. Super. 517, 261 A.2d 722 (1969). *Accord*, Abby Fin. Corp. v. S.R.S. Second Ave. Theatre Corp., 11 U.C.C. REP. SERV. 1011 (N.Y. App. Div. 1972).

[112]108 N.J. Super. at 524, 261 A.2d at 725.

[113]90 Misc. 2d 545, 394 N.Y.S.2d 814 (Civ. Ct. 1977).

[114]394 N.Y.S.2d at 815-16.

his representative capacity on an instrument, to contest the question of his individual liability against a holder in due course."[115]

Although a corporate officer may easily avoid personal liability by showing his or her representative capacity, a blanket prohibition against parol evidence in actions brought by transferees under subsection 3-403(2)(b) seems unreasonable. Parol evidence should be admissible against transferees as well as immediate parties for several reasons. First, a corporation can act only through its agents, and transferees expect the signatures of corporate officers on corporate notes and checks. Thus, an instrument showing a corporate name and individual signatures without representative capacity is ambiguous on its face and puts a transferee on notice of a possible lack of personal liability. Second, when a corporate promissory note or check is transferred by indorsement, the transferee generally relies on the financial condition of the transferor-indorser rather than the corporate maker or drawer and will seek to hold the transferor-indorser liable if the instrument is dishonored when presented to the corporation for payment. In the rare situations in which a transferee refuses to take an instrument without the personal liability of a corporate officer, requiring the transferee to insist that the instrument clearly show the personal liability of the corporate officer is not an unreasonable burden. Third, corporate officers, particularly those of small corporations not represented by retained counsel, are usually unaware that failing to show their corporate offices will result in personal liablity. The number of reported opinions involving instruments signed by corporate officers who failed to show their offices support this contention.

Prior to the U.C.C., some jurisdictions permitted parol evidence against transferees based on the above reasoning. *Norman v. Beling*[116] illustrates this liberal pre-Code approach. The corporate name "Teal Corporation" had been typewritten on the first signature line of each note. The signature "J. Harold Semar" appeared on the second signature line followed by the signature "Christopher A. Beling" on the third signature line. Semar was the president and Beling was the treasurer of the Teal Corporation. The pronoun "we" had been inserted in each note so that it read "we promise to pay." In an action against Beling to recover on the notes, it was conceded that the plaintiff transferee had been unaware of the representative status of Semar and Beling. Plaintiff rested after introducing the notes into evidence. Beling offered evidence that he had signed only as a corporate officer in compliance with the bylaws of the corporation.

---

[115]394 N.Y.S.2d at 815.

[116]33 N.J. 237, 163 A.2d 129 (1960).

The New Jersey Supreme Court noted that "[c]orporations must act by means of agents, . . . and it is common to expect that a corporate name placed upon a negotiable instrument in order to bind the corporation as maker . . . will be accompanied on the instrument by the signature of the person or persons authorized by the by-laws to sign such instrument."[117] The court held that the signatures under the circumstances created an ambiguity justifying the admission of parol evidence to establish whether the individual signers had undertaken personal liability.[118] The *Beling* court reasoned:

> [W]e do not believe that the use of extrinsic evidence to clarify an ambiguity present on the face of the note should be forbidden because the person suing on the notes is an endorsee of the payee and was not a party to and is without knowledge of the circumstances under which the notes were delivered, in short, a holder in due course for all purposes except that the face of the note contains an ambiguity. When a defect by way of ambiguity is suggested by the *face* of the instrument the purchaser is put on inquiry because to permit the purchaser to ignore such a warning with impunity has no sound basis.[119]

After enactment of the U.C.C., the Pennsylvania Superior Court allowed parol evidence against transferees in *Pollin v. Mindy Mfg. Co.*[120] The defendant Apfelbaum had signed checks without indicating his corporate office. The name of the company had been printed at the top of each check and again immediately above the signature of Apfelbaum. Apfelbaum avoided personal liability although the plaintiffs were indorsees of the checks rather than immediate parties to the original transaction. The Pennsylvania Superior Court noted that a corporation can act only through its agents; thus one normally expects the signature of an agent on a corporate instrument. The court considered each check as a whole to determine whether Apfelbaum had signed as a representative of the corporation.[121] The checks had been drawn on a specific payroll account of the corporation and consequently could not have been drawn on Apfelbaum's personal account. Finding that each check revealed representative capacity, the court held that Apfelbaum was

---

[117]*Id.* at 243, 163 A.2d at 132.

[118]*Id.* at 244, 163 A.2d at 134.

[119]*Id.* at 245-46, 163 A.2d at 133.

[120]211 Pa. Super. Ct. 87, 236 A.2d 542 (1967), *followed in* Bennett v. McCann, 125 Ga. App. 393, 188 S.E.2d 165 (1972).

[121]211 Pa. Super. Ct. at 93, 236 A.2d at 545.

not personally liable.[122] Professors White and Summers have lauded "the *Pollin* court's emphasis on business expectations . . . [as] proper and entirely consistent with the spirit of 3-403."[123]

Unless the instrument clearly shows that the corporate officer signed in his or her individual capacity, courts should view an instrument naming the corporation as ambiguous. Parol evidence should be permitted against transferees as well as immediate parties to determine whether the corporate officer had signed only as a representative of the corporation. For reasons identical to those in actions by immediate parties, the corporate officer, in actions by transferees, should bear the burden of proof that the parties did not intend personal liability, but this burden should be lighter in corporate check situations than in promissory note situations.[124]

V. Both Corporate Name and Representative Capacity Shown

When the corporate name precedes or follows the name and office of the corporate officer, the instrument ususally binds only the corporation under subsection 3-403(3). An exception to subsection 3-403(3) permits parol evidence to establish the personal liability of the signing officer in addition to corporate liability.[125] Courts usually admit parol evidence under this subsection only if the instrument is ambiguous.[126]

A. Unambiguous Instruments

The decisions in *Karr v. Baumann*[127] and *Phoenix Air Conditioning Co. v. Pound*[128] illustrate unambiguous instruments justifying the preclusion of parol evidence. In *Karr*, the signature "Robert Bauman [*sic*] Pres." appeared on the first signature line, followed by "Central Coffee Shoppe Inc." on the second signature line. The form of the signature conclusively indicated corporate liability; consequently, the New York Supreme Court denied evidence of a personal obligation and held only the corporation liable on the instrument.[129]

---

[122]*Id.*

[123]White & Summers, *supra* note 56, § 13-4 at 494-95.

[124]*See* notes 106-10 *supra* and accompanying text.

[125]*See, e.g.*, Trenton Trust Co. v. Klausman, 222 Pa. Super. Ct. 400, 296 A.2d 275 (1972).

[126]*See* Havatampa Corp. v. Walton Drug Co., 354 So. 2d 1235, 1237 (Fla. Dist. Ct. App. 1978).

[127]3 U.C.C. Rep. Serv. 180 (N.Y. App. Div. 1966).

[128]123 Ga. App. 523, 181 S.E.2d 719 (1971).

[129]3 U.C.C. Rep. Serv. at 181.

Similarly, the Georgia Court of Appeals easily determined the issue of personal liability in *Pound*. The note was signed: "by E.C. Pound, Jr. President (seal) A.R. Kivette Secy. (seal)." Typed across the top of the note was the following: "This note constitutes payment in full of all sums due by Summit Productions, Inc. to Phoenix Conditioning Co., Inc."[130] The payee obtained a verdict against the corporate officers, but the trial judge granted the officers' motion for judgment notwithstanding the verdict.[131] Affirming the judgment, the appellate court observed that the note named the principal and had been signed in the officers' representative capacities.[132] The court decided that the note unambiguously represented a corporate obligation and thus refused to permit parol evidence to establish personal liability of the corporate officers.[133]

B. Ambiguous Instruments

As illustrated by *Havatampa Corp. v. Walton Drug Co.*,[134] an ambiguity may exist despite the presence of both the corporate name and representative capacity on the face of the instrument. The signature block of the note in *Havatampa* appeared as follows:

Walton Drug Co., Inc. d/b/a/ Touchton Drugs
and/or _____ (Seal)x
Bob Edrington, Owner
_____ (Seal)x[135]

The defendant Edrington had signed "Bob Edrington, President" on the second signature line. The trial court dismissed the action against Edrington although the plaintiff Havatampa Corporation offered parol evidence that it had demanded Edrington's personal liability when Edrington signed the note. The Florida District Court of Appeals reversed and remanded the case to permit parol evidence after finding a lack of "logical reference" between the corporate and individual signatures.[136] The court reasoned that the defendant officer would have been subjected to personal liability if the corporation had not been named and saw "no reason to vary this result merely because the name of the principal appears somewhere on the note but appears to have no intended effect upon the agent's signature which, standing alone, would subject the agent to personal

---

[130]123 Ga. App. at 523, 181 S.E.2d at 719.
[131]*Id.* at 524, 181 S.E.2d at 720.
[132]*Id.*
[133]*Id.*
[134]354 So. 2d 1235 (Fla. Dist. Ct. App. 1978).
[135]*Id.* at 1236.
[136]*Id.* at 1238.

liability."[137] In addition, the court noted that the following factors supported a finding of ambiguity warranting parol evidence: the insertion of the word "we" to read "we promise to pay;" the words "and/or" preceding Edrington's signature; and the discrepancy between the handwritten word "President" and the typewritten word "Owner."[138]

According to the *Havatampa* opinion, the formula for corporate officers seeking to avoid personal liability requires:

> 1) that the represented organization be named; 2) that the agent sign his name and office; and 3) that the name of the principal and signature and office of the agent be in reference to each other so that reasonable men dealing with the instrument would understand from the face of the note that the agent's signature was in a representative capacity only, and not in an individual capacity. . . .[139]

The defendant in *Havatampa* failed to indicate clearly only corporate liability. Signing his name on the second signature line was ambiguous in light of the other evidence of ambiguity, and the court correctly permitted parol evidence to explain the ambiguity.

The Pennsylvania Superior Court in *Trenton Trust Co. v. Klausman*[140] also allowed parol evidence to clarify an ambiguous instrument. The face of the note in *Klausman* had been signed:

> The Shoe Rack
> X Mark Klausman, Sec.
> X Lionel Klausman, Vice Pres.
> X Michael Klausman, Pres.[141]

The back of the note appeared as follows:

> X Mark Klausman, Sec.
> X Lionel Klausman, Vice Pres.
> X Michael Klausman, Pres.
> The Shoe Rack
> X Mark Klausman, Sec.[142]

The corporation was clearly liable on the note; therefore, the court discussed only whether the officers had added their personal liability by their indorsements: "The narrow issue presented to our Court is whether it was so clear as a matter of law that the

---

[137] *Id.*
[138] *Id.* at 1236.
[139] *Id.* at 1237.
[140] 222 Pa. Super. Ct. 400, 403-05, 296 A.2d 275, 278 (1972).
[141] *Id.* at 405, 296 A.2d at 278 (dissenting opinion).
[142] *Id.*

endorsements were given in a representative capacity that the appellant [payee] was correctly precluded from introducing evidence to the contrary."[143] The court considered, in addition to the language of the instrument, "the position, style and arrangement of the whole writing"[144] and decided that the note failed to explain why the corporate officers had signed in their representative capacity as both makers and indorsers or why the indorsement of Mark Klausman appeared twice.[145] The *Klausman* court correctly permitted the admission of parol evidence to explain the ambiguity.[146]

Parol evidence was improperly refused by the Georgia Court of Appeals in *First National Bank v. C. & S. Concrete Structures Inc.*,[147] The note had been signed "C. & S. Concrete Structures, Inc. by Vernon Crutcher, President, and G.E. Strickland, Secretary and Treasurer." The back of the note contained "under the portion entitled name 'C. & S. Concrete Structures, Inc.' and then followed under appropriate columns information with regard to the loan, such as interest, due date and amount; then under this information were the signatures 'Vernon Crutcher, President,' and 'G.E. Strickland, Secretary and Treasurer.'"[148] The payee argued that lack of continuity between the corporate name and the officers' signatures, and that signatures indicating corporate liability on both the front and back of the note created an ambiguity justifying parol evidence. The majority refused to permit parol evidence, holding that there was no ambiguity in the indorsements which had been made in compliance with subsection 3-403(3).[149]

The dissent in *C. & S. Concrete* would have permitted parol evidence to explain the ambiguity because signing as both maker and indorser is either a "nullity or an absurdity."[150] The dissent is correct because the instrument contained ambiguous signatures which could have been interpreted in two ways: as representing joint liability of the corporation and the individuals or as representing only corporate liability as both maker and indorser. Parol evidence could properly have been admitted under subsection 3-403(3); the language "[e]xcept as otherwise established" allows parol evidence to explain ambiguities.

Parol evidence should be denied under subsection 3-403(3) if the instrument unambiguously shows that the parties intended only

---

[143] *Id.* at 402, 296 A.2d at 276.

[144] *Id.*

[145] *Id.* at 402-03, 296 A.2d at 276-77.

[146] *Id.* at 405, 296 A.2d at 277.

[147] 128 Ga. App. 330, 196 S.E.2d 473 (1973).

[148] *Id.*.

[149] *Id.* at 331-32, 196 S.E.2d at 474.

[150] *Id.* at 333, 196 S.E.2d at 474 (Pannell, J., dissenting).

corporate liability. When an ambiguity exists, however, courts should permit parol evidence to determine the true intentions of the parties. The opinions have not considered the burden of proof issue when parol evidence is admitted under subsection 3-403(3), but that subsection appears to create a presumption in favor of corporate officers.

VI. Conclusion

Section 3-403 of the U.C.C. provides a set of rules for determining whether corporate officers are liable on corporate negotiable instruments. Subsection 3-403(2)(a) prohibits parol evidence when the corporate officer neither names the corporation nor shows representative capacity. Courts should not strictly follow this rule in actions between immediate parties. Under some circumstances, parol evidence should be permitted, but the corporate officer seeking to avoid personal liability should bear the burden of proof.

Subsection 3-403(2)(b) permits parol evidence against immediate parties but not against transferees when the instrument names the corporation without indicating representative capacity. Parol evidence should be admissible against transferees as well as immediate parties, however, because the instrument is ambiguous, putting transferees on notice of a possible lack of personal liability. The cases place the burden of proof on the officer to establish an agreement, understanding, or course of dealing that the officer was not to be personally liable. Placing this burden on the corporate officer is appropriate, but the burden should be less stringent for corporate checks than for corporate notes.

A corporate officer generally will not be personally liable under subsection 3-403(3) when the instrument shows both the name of the corporation and the title of the officer. When the instrument is ambiguous, however, courts permit parol evidence to establish that the parties intended personal liability of the corporate officer. Where the burden of proof is to be placed under this subsection is unclear.

The Code is biased toward holding the corporate officer personally liable. Subsection 3-403(2)(a) *forbids* the admission of parol evidence to *deny* personal liability when neither the corporation nor representative capacity is shown. Subsection 3-403(3), however, *allows* parol evidence to *establish* personal liability although both the corporation and representative capacity are shown. A corporate officer who wants to guarantee that he or she incurs no personal liability from signing negotiable instruments for the corporation should take the following steps: insure that the corporate name appears immediately above his or her signature; place the word "by"

in front of his or her signature; and show his or her corporate title immediately after his or her signature.[151] A lender who desires to insure the personal liability of corporate officers in a lending transaction should require the corporate officer to sign twice. The first signing should designate the corporate office; the second signing should show the word "individually" after the signature.[152]

When it is possible to advise corporate officers prior to execution of a negotiable instrument, potential problems can be avoided. The signing of a corporate negotiable instrument without legal advice, however, can be hazardous to the economic health of the corporate officer.

---

[151]*See* U.C.C. § 3-403, Comment 3.

[152]*See* Gramatan Co. v. MBM, Inc., 5 U.C.C. REP. SERV. (N.Y. App. Div. 1968); Abercia v. First Nat'l Bank, 500 S.W.2d 573 (Tex. Civ. App. 1973).