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Drawers:. Check for Missing Endorsements on Joint Payee Checks

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NOTES

Drawers: Check for Missing Endorsements on Joint Payee Checks

In *Trust Company Bank v. Atlanta IBM Employees Federal Credit Union*,[1] the Georgia Supreme Court held that a missing endorsement is equivalent to an unauthorized endorsement for purposes of Georgia Code Ann. section 109A-4-406(4).[2] This section limits a bank customer to a one year period in which to discover and report unauthorized endorsements on checks.

The sequence of events giving rise to *IBM* began on February 2, 1976, when plaintiff Credit Union approved a $5,000 loan to Linnie Norton for the purchase of a used car.[3] Norton executed a promissory note and conveyed a purchase money security interest in the car to Credit Union. In return, Credit Union drew a check on its account with defendant First National Bank of Atlanta (First National) made payable to Norton and Stewart Avenue Chrysler-Plymouth (Stewart Avenue) as joint payees. On February 3, 1976, Norton endorsed and deposited the check in his checking account at defendant Trust Company Bank (Trust Company), without the endorsement of Stewart Avenue. Trust Company credited Norton's account and transferred the check to First National, which debited Credit Union's account and subsequently returned the cancelled check to Credit Union in its monthly statement.[4] Norton stopped making regular payments on the loan in March, 1977. In July, 1977, Credit Union declared the loan in default and prepared to repossess the car. At this point, Credit Union discovered that Norton's file did not contain a certificate of

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1. 245 Ga. 262, 264 S.E.2d 202 (1980).

2. *Id.* at 263, 264 S.E.2d at 203. GA. CODE ANN. § 109A-4-406(4) (1979), is Georgia' enactment of U.C.C. § 4-406(4) and is quoted at text accompanying note 17 *infra*.

3. Unless otherwise stated, all facts are from the court of appeals opinion, Atlanta IBM Employees Fed'l Credit Union v. Trust Co. Bank, 150 Ga. App. 253, 253, 257 S.E.2d 346, 347 (1979).

4. 245 Ga. at 262, 264 S.E.2d at 203.

title for the car and that the endorsement of Stewart Avenue was not on the cancelled check. Credit Union immediately notified First National and made demand for the $5000, less the payments received from Norton. First National then made demand upon Trust Company. Both banks denied liability.

The trial court recognized that the check had been improperly paid by both banks since Stewart Avenue's endorsement was missing,[5] but held that Credit Union was precluded from bringing suit because it had failed to notify First National within a reasonable time after it should have learned of the missing endorsement.[6] The court of appeals reversed and held that under section 109A-4-406, "a bank customer has a duty to discover and report an unauthorized signature or alteration and notify the bank promptly after such a discovery, but a customer is not required to check for missing endorsements."[7] Because Credit Union had notified First National the day after it discovered the missing endorsement, the

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5. The liability of a drawee bank to its customer derives from GA. CODE ANN. § 109-A-4-401(1) (1979): "As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft." "[B]y negative implication, [this section] denies the drawee bank the right to charge amounts not properly payable." J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE 585 (2d ed. 1980) [hereinafter cited as WHITE & SUMMERS]. GA. CODE ANN. § 109A-3-116 (1979) states: "An instrument payable to . . . two or more persons . . . if not in the alternative is payable to all of them and *may be negotiated, discharged or enforced only by all of them." Id.* (emphasis added). It follows that a check is not "properly payable" when the endorsement of a co-payee is lacking. *See* Trust Co. v. Refrigeration Supplies, Inc., 241 Ga. 406, 408, 246 S.E.2d 282, 284 (1978), and text accompanying notes 59-61 *infra*.

The liability of a collecting bank for paying a check over a missing endorsement is for breach of warranty under GA. CODE ANN. § 109A-4-207(1) (1979):

> Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that (a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; . . . .

In Insurance Co. of N. America v. Atlas Supply Co., 121 Ga. App. 1, 172 S.E.2d 632 (1970), the court of appeals held that this warranty extends not only to the payor-drawee bank, but also to the drawer of a check payable to joint payees when a collecting bank accepted and deposited the drawer's check without the endorsement of both payees. *Id.* at 5, 172 S.E.2d at 636.

6. 245 Ga. at 262, 264 S.E.2d at 203. GA. CODE ANN. § 109A-4-207(4) (1979) states: "Unless a claim for breach of warranty under this section is made *within a reasonable time* after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim." *Id.* (emphasis added). Apparently the trial court felt that this section included the time when Credit Union "could have or should have learned of the breach." 150 Ga. App. at 254, 257 S.E.2d at 347.

7. 150 Ga. App. at 254, 257 S.E.2d at 347-48.

court stated it had satisfied the "reasonable time" requirement.[8] The defendant banks appealed.

On appeal, the supreme court agreed that "the banks were liable in the first instance for the wrongful payment of the checks. . . ."[9] Therefore, the court dealt only with the issue of whether a missing endorsement is equivalent to an unauthorized endorsement under Georgia Code Ann. section 109A-4-406(4)(b).[10] The court noted that this was a case of first impression in Georgia[11] and that there is a split of authority in other jurisdictions.[12] But it reversed the court of appeals and held that "a missing endorsement is equivalent to an unauthorized endorsement under [section 109A-4-406]."[13] Because Credit Union failed to discover and report the "unauthorized" endorsement "within one year from the time the statement and items [were] made available,"[14] it was precluded from asserting its claims against the banks.[15]

Given that a drawee bank may be liable for improper payment under section 109A-4-401(1),[16] one of the available defenses is the time limitations in section 109A-4-406, which provides in relevant part:

> (1) When a bank sends to its customer a statement . . . or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.
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> . . .
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> (4) Without regard to care or lack of care of either customer or the bank
> (a) a customer who does not within 60 days from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face of the item is precluded from asserting against the bank such unauthorized signature or alteration; and
> (b) a customer who does not within one year from the time the statement and items are made available to the customer (subsection (1)) discover and report any alteration on the back of the item or any unauthorized

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8. *Id.* at 254, 257 S.E.2d at 348. This requirement is found in GA. CODE ANN. § 109A-4-207(4) (1979), which is quoted at note 6 *supra*.

9. 245 Ga. at 263, 264 S.E.2d at 203. *See* note 5 *supra*.

10. 245 Ga. at 263, 264 S.E.2d at 203. GA. CODE ANN. § 109A-4-406(4)(b) (1979), is quoted at text accompanying note 17 *infra*.

11. 245 Ga. at 263, 264 S.E.2d at 203.

12. *Id.* at 264, 264 S.E.2d at 204.

13. *Id.* at 263, 264 S.E.2d at 203.

14. GA. CODE ANN. § 109A-4-406(4)(b) (1979), quoted in full at text accompanying note 17 *infra*.

15. 245 Ga. at 265, 264 S.E.2d at 204.

16. *See* note 5 *supra*.

> indorsement is precluded from asserting against the bank such alteration or unauthorized indorsement.[17]

The drafters of the U.C.C. made no mention of a customer's duty to discover and report *missing* endorsements, hence the issue of whether drawee banks may rely on the subsection 4 time limitations to bar claims for improper payment.[18]

The threshold question is whether a missing signature or endorsement is equivalent to an "unauthorized" signature or endorsement.[19] Most of the reported cases concern missing signatures, and there is a split of authority in this area.[20] Those missing signature cases allowing defendant banks to assert the time limitation in U.C.C. section 4-406(4) have concerned bank customers[21] who were entities.[22] For example, in *Pine Bluff*

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17. GA. CODE ANN. § 109A-4-406(1), (4) (1979). The Georgia version of the U.C.C. shortened the subsection 4 time limitations of U.C.C. § 4-406, which states:

> Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer . . . discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

U.C.C. § 4-406(4).

18. If a drawer may bring a direct action against a collecting bank under GA. CODE ANN. § 109A-4-207, as in Insurance Co. of N. America v. Atlas Supply Co., 121 Ga. App. 1, 172 S.E.2d 632 (1970) (discussed at note 5 *supra*), the drawee's defenses should be available to the collecting bank. *See* Sun 'n Sand, Inc. v. United Cal. Bank, 21 Cal. 3d 671, _, 582 P.2d 920, 929, 148 Cal. Rptr. 329, 338 (1978). In *IBM*, the Georgia Supreme Court assumed without discussion that the subsection 4 time limitation was an available defense to collecting banks in a breach of warranty action under section 109A-4-207. Extending the section 109A-4-207(1) warranty to the drawer has been criticized because it is difficult for the collecting bank "to assert the defenses which the Code establishes for drawee banks." Murray, *Joint Payee Checks—Forged and Missing Indorsements*, 78 COM. L.J. 393, 397 (Nov. 1973). *See also* WHITE & SUMMERS, *supra* note 5, at 602-03. On the other hand, one commentator has said that *Atlas Supply* "reduces the necessity for a number of law suits to settle the problem; rather than the drawer suing the drawee-payor bank and it, in turn, suing an intermediate collecting bank which in turn sues the depository bank, the drawer simply sues the depository bank." Murray, *supra*, at 408.

19. " 'Unauthorized' signature or indorsement means one made without actual, implied or apparent authority and includes a forgery." GA. CODE ANN. § 109A-1-201(43) (1979).

20. *See* text accompanying notes 21-40 *infra*. Until *IBM*, however, there was no split among courts deciding whether a missing *endorsement* is unauthorized. *See* text accompanying notes 41-42 *infra*.

21. U.C.C. § 4-104(1)(e) defines "customer" as "any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank."

" 'Person' includes an individual or an organization." U.C.C. § 1-201(30).

" 'Organization' includes a corporation, . . . business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or

National Bank v. Kesterson,[23] Pine Bluff Memorial Park Cemetery Permanent Maintenance Fund (Trust Fund) had opened a checking account with Pine Bluff National Bank (the Bank).[24] The signature cards for the checking account required the signatures of Trust Fund's three trustees—Kesterson, Norton and Harris. Between December, 1966, and October, 1967, the Bank paid checks on Trust Fund's account that were signed only by Harris. The other two trustees learned of these irregularities in March, 1970, and, shortly thereafter, brought suit against Harris and Pine Bluff.[25] The trial court found no evidence of wrongdoing on the part of Kesterson and Norton but found that $5,260.77 had been misappropriated by Harris, and rendered judgment against the Bank. The Bank appealed, contending that the claim against it for improper payment was barred by the Arkansas version of U.C.C. section 4-406.[26] The Arkansas Supreme Court held that "[t]he authorized signature of Trust Fund required the joint signatures of three trustees. Any purported signature of Trust Fund with fewer signatures was an unauthorized signature."[27] Because the one year time limitation in which to report unauthorized signatures under section 4-406(4) had passed, the action against the Bank was barred.[28]

The reasoning in *Pine Bluff* was expanded upon in *King of All Manufacturing, Inc. v. Genesee Merchants Bank & Trust Co.*,[29] in which a drawee bank paid checks on a company's account without the two signatures required under the company's agreement with the bank.[30] The bank

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commercial entity." U.C.C. § 1-201(28). The language of the corresponding Ga. Code Ann. sections does not differ.

22. Pine Bluff Nat'l Bank v. Kesterson, 257 Ark. 813, 520 S.W.2d 253 (1975) (trust fund); King of All Mfg., Inc. v. Genesee Merchants Bank & Trust Co., 69 Mich. App. 490, 245 N.W.2d 104 (1976) (sole proprietorship, later incorporated); Rascar, Inc. v. Bank of Or., 87 Wis. 446, 275 N.W.2d 108 (Ct. App. 1978) (corporation).

23. 257 Ark. 813, 520 S.W.2d 253 (1975).

24. All facts are from the court's opinion, 257 Ark. at _, 520 S.W.2d at 254-57.

25. The receiver of the Trust Fund intervened, alleging that Kesterson and Norton were guilty of breaches of trust, and also seeking recovery from Pine Bluff for permitting Harris to make withdrawals from Trust Fund's account solely on his signature. 257 Ark. at _, 520 S.W.2d at 254-55.

26. *Id.* ARK. STAT. ANN. § 85-4-406(4) (1961) is identical to the U.C.C. provision quoted at note 17 *supra*.

27. 257 Ark. at _, 520 S.W.2d at 258.

28. 257 Ark. at _, 520 S.W.2d at 259. The court cited the U.C.C. definitions of "unauthorized signature," "person" and "organization" to reach this result. *See* definitions at notes 19 and 21 *supra*.

29. 69 Mich. App. 490, 245 N.W.2d 104 (1976).

30. 69 Mich. App. at _, 245 N.W.2d at 105. The improper payments occurred between April, 1970 and August, 1972. The plaintiff corporation acquired the company's causes of action in October, 1973, and brought suit against the bank in February, 1974. *Id.*

asserted the one year time limitation of section 4-406(4).[31] Noting that "the [unauthorized] signature referred to in section 4-406(4) is the signature of the *customer* who alleges that his account has been improperly debited,"[32] the appellate court held that the section precluded plaintiff's action.[33] It reasoned that since *two* signatures were necessary to make the authorized signature of the company, a check with only one signature was the unauthorized signature of the bank's customer, the company.[34]

There is also a line of missing signature cases which have not allowed the section 4-406(4) time limitation to bar plaintiffs' claims.[35] In *Madison Park Bank v. Field*,[36] an account with Madison Park Bank (the Bank) required two partners' signatures on checks over $500.[37] In February, 1974, the Bank paid a $9000 check drawn on the partnership account and signed by only one partner, who converted the proceeds to his personal use. In May, 1975, this improper payment was discovered, and the other partners sought recovery from the Bank for breach of the contract of deposit. The court held that the Bank could not use section 4-406(4)[38] as a defense in the case of a missing signature.[39] The court reasoned:

> Had this statute been intended to include protection to a bank where there is an absence of a signature such could have been written into the law. That such a provision is not in the law is readily understandable since an unauthorized, altered or forged signature would be more readily discoverable by a depositor, however, discovering a missing signature places no undue onus on a bank. All that would be necessary on the part of the bank to check the correct number of signatures on a check would be a quick perusal of the signature card in the bank's possession. Should the bank be relieved of this responsibility, such relief should come from the legislature and not by judicial fiat.[40]

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31. MICH. COMP. LAWS ANN. § 440.4406(4) (1967) is identical to the U.C.C. provision quoted at note 17 *supra*.

32. 69 Mich. App. at _, 245 N.W.2d at 105 (emphasis added).

33. *Id., citing* MICH. COMP. LAWS ANN. §§ 440.4104(1)(e), .1201(28), (30) (1967). *See* note 21 *supra* for identical U.C.C. provisions.

34. 69 Mich. App. at _, 245 N.W.2d at 105. The reasoning in *King of All Mfg.* was followed by Rascar, Inc. v. Bank of Or., 87 Wis. 2d 446, ___, 275 N.W.2d 108, 110-11 (Ct. App. 1978).

35. G & R Corp. v. American Security & Trust Co., 523 F.2d 1164 (D.C. Cir. 1975) (joint venture); Madison Park Bank v. Field, 64 Ill. App. 3d 838, 381 N.E.2d 1030 (1978) (partnership); Wolfe v. University Nat'l Bank, 270 Md. 70, 310 A.2d 558 (Ct. App. 1973) (partnership). *See also* Nagle v. LaSalle Nat'l Bank, 472 F. Supp. 1185 (N.D. Ill. 1979).

36. 64 Ill. App. 3d 838, 381 N.E.2d 1030 (1978).

37. All facts are from the court's opinion, 64 Ill. App. 3d at _, 381 N.E.2d at 1031.

38. ILL. ANN. STAT. ch. 26, § 4-406(4) (Smith-Hurd 1963) is identical to the U.C.C. provision quoted at note 17 *supra*.

39. 64 Ill. App. 3d at _, 381 N.E.2d at 1032.

40. *Id. See also* G & R Corp. v. American Security & Trust Co., 523 F.2d 1164, 1170

Unlike the missing signature cases,[41] the missing endorsement cases prior to the noted case have uniformly held that U.C.C. section 4-406 is inapplicable.[42] The first reported decision was *Ford Motor Credit Co. v. United Services Automobile Association.*[43] Lawrence Thompson had purchased a car from plaintiff Ford Motor Credit Company's (Ford) assignor under a contract which required maintenance of an insurance policy to protect the purchaser and seller.[44] Defendant United Services Automobile Association (United Services) issued a policy to Thompson naming Ford as a loss payee. A total loss of the car was subsequently sustained and on June 15, 1966, United Services issued a settlement check payable to both Thompson and Ford and delivered the check to Thompson. Thompson alone endorsed the check and presented it to a bank in England. The check was forwarded for collection through Chemical Bank New York Trust Company (Chemical), which endorsed and forwarded it to the drawee, Chase Manhattan Bank (Chase), which paid the check and charged United Service's account. Ford later[45] sued United Services on the insurance policy. United Services impleaded Chase as a third party defendant, and Chase impleaded Chemical. Both banks defended on the time limitation in U.C.C. section 4-406(4).[46] The court refused to equate a missing endorsement with an unauthorized endorsement, stating:

> That a required endorsement is missing . . . is apparent for all to see,

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(D.C. Cir. 1975) ("Placing this responsibility for discovery [of missing signatures] on the customer makes far less sense, however, where the bank may protect itself merely by consulting its signature card to determine the required signatures."). *Cf.* Wolfe v. University Nat'l Bank, 270 Md. 70, _, 310 A.2d 558, 561 (Ct. App. 1973) ("The infirmity lay not in the presence of an unauthorized signature on the check, but in the absence of a second authorized signature . . .").

41. *See* text accompanying notes 24-40 *supra.*

42. *But cf.* Continental Bank & Trust Co. v. People's Nat'l Bank & Trust Co., 217 Pa. Super. Ct. 371, 274 A.2d 549 (1970) (per curiam) (an action by a drawee bank against a collecting bank for breach of warranty under the Pennsylvania codification of U.C.C. § 4-207, (quoted at text accompanying note 5 *supra.*))In a concurring opinion, Judge Hoffman stated that plaintiff's claim was not barred through passage of time, as "the three year limitation is applicable, if any part of § 4-406(4) applies to the instant case." 217 Pa. Super. Ct. at _, 274 A.2d at 551 n.1. It is not clear whether the court questioned the availability of section 4-406(4) as a defense to the breach of warranty action, or whether the court chose not to discuss whether the missing endorsement was an unauthorized endorsement for purposes of section 4-406(4).

43. 11 U.C.C. Rep. 361 (N.Y.C. Civ. Ct. 1972).

44. All facts are from the court's opinion, 11 U.C.C. Rep. at 362.

45. The court did not give the exact date, but it is assumed that United Services notified Chase of the missing endorsement more than three years after the statement and items were made available to it. *See* U.C.C. § 4-406(4), quoted at note 17 *supra.*

46. N.Y. U.C.C. LAW § 4-406(4) (McKinney 1964) is identical to U.C.C. § 4-406(4), quoted at note 17 *supra.*

> if they would but look. Here both Chase and Chemical were palpably negligent in honoring the check in the face of the missing endorsement. As to Chase, there is no "notice" United Services could have given at any time that would have been superior to that derived from even a cursory examination of the instrument by Chase's employes [sic]. It is not this court's understanding of the purpose and intent of § 4-406 that it should stand as an impediment to the redress of so patent a breach of the bank's contractual obligation to its depositor.[47]

United Services was found liable to Ford, Chase was held liable to United Services, and Chemical was held liable to Chase for the proceeds of the check.[48]

A New Jersey court had occasion to address the missing endorsement issue in *Phoenix Assurance Co. v. Davis*.[49] *Phoenix* concerned a missing endorsement on two drafts "payable through" a collecting bank.[50] Plaintiff Phoenix issued the drafts payable through Fidelity Union Trust Company (Fidelity) in settlement of two claims under an insurance policy insuring the mortgagor and mortgagee of certain property against fire loss and vandalism.[51] The mortgagor deposited the drafts in First National State Bank (National) without the endorsement of the co-payee mortgagee, and National transferred the drafts to Fidelity. Pursuant to Fidelity's agreement with plaintiff, Fidelity endorsed the drafts and presented them for acceptance and authorization of payment. Plaintiff reviewed, accepted and authorized payment of both drafts. Fidelity issued final settlement of the first draft to National on January 14, 1969, and of the second on April 7, 1969. The first notice the banks had of the missing endorsements was the commencement of suit on July 16, 1969, although the mortgagee had notified plaintiff on May 2, 1969, that it had not been paid and plaintiff had issued replacement drafts to the mortgagee in June.

The court noted that plaintiff was the drawer, drawee and acceptor of both drafts,[52] that by obtaining payment from plaintiff for the drafts Fidelity had warranted good title,[53] and that when National obtained payment from Fidelity it had made the same warranty.[54] In analyzing

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47. 11 U.C.C. Rep. at 364.

48. *Id.* at 364-65.

49. 126 N.J. Super. 379, 314 A.2d 615 (Super Ct. Law Div. 1974).

50. U.C.C. § 3-120, and the New Jersey codification, N.J. STAT. ANN. § 12A:3-120 (West 1962) states: "An instrument which states that it is 'payable through' a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument."

51. All facts are from the court's opinion, 126 N.J. Super. at _, 314 A.2d at 617-19.

52. 126 N.J. Super. at _; 314 A.2d at 620.

53. N.J. STAT. ANN. § 12A:4-207(1) (West 1962) is identical to the Georgia provisions quoted at note 5 *supra*.

54. 126 N.J. Super. at _, 314 A.2d at 619-20.

whether plaintiff had any duty to check for endorsements,[55] the court held that plaintiff had no duty to give Fidelity notice of the missing endorsement under section 4-406(1).[56] "Traditionally, the drawer of a check has not been responsible for payments on forged or missing endorsements; the drawee bank has been."[57]

Apparently, the Georgia Supreme Court in *IBM* is only the third court to address the issue of whether a missing endorsement is equivalent to an "unauthorized" endorsement, and it has created a split of authority on that issue.[58] The court's holding was based upon previous Georgia cases and the policy behind section 109A-4-406(4).

The court cited *Trust Company v. Refrigeration Supplies, Inc.*,[59] which held that a nonsigning joint payee had an action in conversion against a drawee bank which paid a check without the joint payee's endorsement.[60] "The situation is analogous to payment of the check on a forged endorsement,. . . ."[61] From this, the *IBM* court reasoned that since a missing endorsement is analogous to a forged endorsement, and a

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55. The time limitation in N.J. STAT. ANN. § 12A:4-406(4) (West 1962) was not asserted as a defense. Rather, Fidelity contended that plaintiff had a duty to check for missing endorsements under N.J. STAT. ANN. § 12A:4-406(1) (West 1962) which is identical to GA. CODE ANN. § 109A-4-406(1) (1979), quoted at text accompanying note 17 *supra*.

56. 126 N.J. Super. at _, 314 A.2d at 620. *See* note 55 *supra*.

57. *Id.* Because plaintiff had learned of the breach of warranty May 2, 1969, and did not give Fidelity notice of the breach until July 16, 1969, the court went on to hold that this ten week delay was unreasonable under section 12A:4-207(4), which is identical to GA. CODE ANN. § 4-207(4) (1979), quoted at note 6 *supra*. The court set the loss due to plaintiff's delay at $200, thus reducing plaintiff's recovery. 126 N.J. Super. at _, 314 A.2d at 622-23.

58. Although the court in *IBM* stated that there was a split of authority, 245 Ga. at 264, 264 S.E.2d at 204, the split is apparent only in the missing signature cases, discussed at text accompanying notes 21-40 *supra*.

59. 241 Ga. 406, 246 S.E.2d 282 (1978). *Refrigeration Supplies* was an action by a materialman against collecting the drawee banks for accepting and paying checks which named the plaintiff materialman as joint payee but which were paid without its endorsement. There was no agreement between the parties that the drawer-general contractor would pay the materialman, so the checks upon which suit was brought were unenforceable by the plaintiff against the drawer. The issue was whether the checks were also unenforceable against the banks by the co-payee. The supreme court held that the inclusion of the materialman as joint payee gave it a right to possession of the check and stated,

> "Payment of the check without the endorsement of a joint payee is an exercise of dominion and control over the check inconsistent with the nonsigning payee's rights amounting to a conversion. . . . The situation is analogous to payment of the check on a forged endorsement, which Code Ann. § 109A-3-419(1)(c) [1979] acknowledges to be a conversion."

241 Ga. at 408, 246 S.E.2d at 284. Thus, the drawee bank was liable to the nonsigning co-payee, and the collecting bank was liable to the drawee bank for breach of the section 109A-4-207(1) warranty. *See* note 5 *supra*.

60. 241 Ga. at 409, 246 S.E.2d at 284.

61. *Id.* at 408, 246 S.E.2d at 284.

customer has a duty to discover and report forged endorsements,[62] a customer has a duty to discover and report missing endorsements within the time limitation as well.[63]

This logic has appeal when it is put in the context of the policy behind section 109A-4-406(4), also discussed by the *IBM* court. The court quoted from the official comments to U.C.C. section 4-406, which state that the section evidences "a public policy in favor of imposing on customers the duty of prompt examination of their bank statements and the notification of banks of forgeries and alterations and in favor of reasonable time limitations on the responsibility of banks. . . ."[64] As the supreme court stated, section 109A-4-406(4) is "not unakin to a statute of limitation."[65] The court reasoned that narrowly construing the statute so as not to include missing endorsements would circumvent the policy of limiting a bank's liability to a specific time span.[66] "[W]e believe that the language of subsection (4) of § 4-406 speaks for itself. . . . [It] renders any breach immaterial and places a definite duration on the ability to proceed against the bank for its breach of duty."[67] The court stated that the customer should share responsibility with the bank for safeguarding its interests, and that "even a cursory glance at the back of the check, by either the bank or the customer, would bring the mistake to light."[68]

As additional support for its decision, the court quoted from the U.C.C. definition of an unauthorized endorsement, which reads: " 'Unauthorized' . . . indorsement means one made without actual, implied or apparent authority and includes a forgery."[69] "This definition centers on the exercise of authority. . . ."[70] Because a joint payee lacks authority to endorse a check alone,[71] the court in *IBM* concluded that an incomplete endorsement is an "unauthorized" one.[72] Since banks are liable for paying checks over unauthorized endorsements,[73] the 109-A-4-406(4) defense should be available.

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62. GA. CODE ANN. § 109A-1-201(43) (1979), quoted at note 19 *supra*, includes a forgery in the definition of an unauthorized endorsement. Thus, for purposes of section 109A-4-406(4), a customer has a duty to discover forged endorsements.

63. 245 Ga. at 265, 264 S.E.2d at 204.

64. 245 Ga. at 264, 264 S.E.2d at 203, *quoting* U.C.C. § 4-406, Comment 7.

65. *Id.* at 264, 264 S.E.2d at 203.

66. *Id.* at 264, 264 S.E.2d at 204.

67. *Id.*

68. *Id.*

69. GA. CODE ANN. § 109A-1-201(43) (1979).

70. 245 Ga. at 265, 264 S.E.2d at 204.

71. *See* Insurance Co. of N. America v. Atlas Supply Co., 121 Ga. App. 1, 172 S.E.2d 632 (1970), discussed at note 5 *supra*.

72. 245 Ga. at 265, 264 S.E.2d at 204.

73. *See* note 5 *supra*.

Although the court in *IBM* is the first to hold that a missing endorsement is equivalent to an "unauthorized" endorsement,[74] the court is not simply allowing banks to "hide behind a bank protection clause written by bankers."[75] The rationale of the missing signature cases which held that section 4-406(4) is applicable extends to missing endorsement cases. Those missing signature cases reasoned that the authorized signature of the customer is comprised of the joint signatures required under the customer's agreement with the bank. "Under these circumstances, a single signature is actually unauthorized, although, pending the necessary cosignature, it is potentially an authorized element of a validly executed instrument."[76] Similarly, the endorsement of one joint payee alone does not make a check "properly payable,"[77] although it is a "potentially authorized" element of a valid endorsement.

The court in *IBM* did not unduly burden bank customers by requiring them to discover and report missing endorsements within the one year time limitation. The drafters of the U.C.C. recognized that a customer does not know the signatures of endorsers and may be delayed in learning that endorsements are forged,[78] but there is no similar reason to assume that a customer will be delayed in discovering *missing* endorsements. "[E]ven a cursory glance at the back of the check . . . would bring the mistake to light."[79]

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74. *See* note 58 *supra*.

75. WHITE & SUMMERS, *supra* note 5, at 658 n.26.

76. 6E W. WILLIER & F. HART, BENDER'S UNIFORM COMMERCIAL CODE § 4-406 at 2-1212.13 (1980). *See also* B. CLARK & A. SQUILLANTE, THE LAW OF BANK DEPOSITS, COLLECTIONS AND CREDIT CARDS 3-4 (Supp. II 1979).

77. U.C.C. §§ 3-116(b), 4-401(1). *See* note 5 *supra*.

78. U.C.C. § 4-406, Comment 5.

79. 245 Ga. at 264, 264 S.E.2d at 204. Although in many cases an aggrieved co-payee will notify the drawer of nonpayment soon enough for the drawer to contact its bank within the one year period, where the co-payee would have no reason to complain of nonpayment, attorneys would best advise their clients to draw checks payable to the intended payee solely; for example, in the noted case, the check should have been made payable to Stewart Avenue only.