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MATURITY DATE OF A NOTE PAYABLE ON DEMAND AFTER DATE

*Continental Oil Co. v. Horsey*¹

Defendant-appellee executed a written agreement guaranteeing payment to plaintiff-appellant of any sum of money due on account of the shortage of A. A shortage having been ascertained, plaintiff-appellant obtained from A a note for the amount thereof, payable "on demand after date", and authorizing confession of judgment.² In a suit by plaintiff-appellant to hold defendant-appellee on the written guarantee, a verdict was directed for the defendants on the theory that, the note being payable on demand after date, there was a suspension of enforcement of the obligation for one day, which materially altered the obligation guaranteed and, therefore, released the guarantors. On appeal from the judgment entered on said directed verdict, *held*: Reversed and new trial awarded. A note payable on demand after date is a demand note, and the obligation of a guarantor is not released by the taking of a demand note, since there is no suspension of enforcement of the obligation.

The case is of little interest for its stated holding, i. e., that a note payable "on demand after date" is a demand note, for this is in accord with the weight of authority.³ It is of major importance, however, as an indication that the recent opinion of the Court on the original argument in *Iglehart v. Farmers' Nat. Bank of Annapolis*⁴ is not to be considered Maryland law. In that case, the opinion in question stated that notes payable on demand after date, which contained a provision for confession of judgment at any time before maturity, were non-negotiable. As

¹ 177 Md. 383, 9 A. (2d) 607 (1939).

² The note read:

"\$665.42

Denton, Maryland, March 26, 1937

On Demand after date, for value received, I promise to pay to the order of Continental Oil Company Six Hundred Sixty-five and 42/100 DOLLARS at THE DENTON NATIONAL BANK, And all costs and ten per centum commissions for collecting the same, and I, we or either of us, whether makers, securities or endorsers, hereby confess judgment, to be entered by the proper official, at any time after maturity for the amount then due hereunder, with all exemptions waived."

³ (1939) 3 Md. L. Rev. 176, 181. It is interesting to note that part of the Court's reasoning at 177 Md. 385, "but that form, (of note) usually, and perhaps always, the result of writing the note on a printed blank", adopts, in effect the argument set forth, (1939) 3 Md. L. Rev. 176, 180, n. 17.

⁴ 197 A. 133, 200 A. 833, 117 A. L. R. 667 (Md. 1938). Noted (1939) 3 Md. L. Rev. 176; (1938) 24 Va. L. Rev. 921; and (1938) 117 A. L. R. 667, 673. The decision is not mentioned in the briefs of counsel for either party.

pointed out in the REVIEW's comment on that opinion,⁵ while the opinion did not discuss the time of the maturity of the notes there involved, the only possible inference was that the Court regarded them as maturing at some time after delivery, since otherwise there would have been no time before maturity when a judgment could have been confessed. The fact that the Court in the instant case, in adopting the majority view on the point common to both cases, failed to make any reference to the opinion rendered in the *Iglehart* case, must be taken as an indication that the Court does not consider that opinion to be the law of Maryland. For, it should be noted that after that opinion was rendered, a motion for reargument was granted, and on reargument the lower Court was affirmed by a divided court, "without opinion". The effect of this action on the motion for re-argument having been to nullify the earlier opinion, it never became law. That this is so is evidenced by the fact that the earlier opinion has never been officially reported, even in the form of a memorandum opinion.⁶

Assuming, however, that the earlier opinion had become law, it must be regarded as overruled by the decision in the instant case. This is so, even though the note in the instant case provided for confession of judgment *after* maturity and is to this extent distinguishable from the notes in the *Iglehart* case. The rules relating to the effect on negotiability of a confessed judgment provision were long ago laid down by the Court of Appeals⁷ and their application to the notes in either of the cases under discussion depends only on the determination of the maturity date of the notes. As stated in the former comment, "for the purpose of determining when limitations begin to run, i. e., when suit may be maintained on the instrument, a note payable on demand is due immediately, without any other demand but the suit, unless a different intention is apparent from the terms of the instrument or the purposes and circumstances of the transaction."⁸ It was suggested

⁵ (1939) 3 Md. L. Rev. 176, 180.

⁶ Nor was the Per Curiam after reargument reported, since affirmances by even division of the Court of Appeals are never officially reported. Both the original opinion and the Per Curiam appeared in the Atlantic Reporter. See *supra* n. 4.

⁷ *Edelen v. First Nat. Bank*, 139 Md. 422, 115 A. 602 (1921); *Crothers v. National Bank*, 158 Md. 587, 149 A. 270 (1930).

⁸ (1939) 3 Md. L. Rev. 176, 182. This rule is recognized in part in the instant case, 177 Md. 383, 385, 386, where the Court states: "A note payable on demand is payable immediately, without demand. Limitations begin to run on the day of execution of such an instrument." It has been recognized in full in *Blick v. Cockins*, 131 Md. 625, 630, 102 A. 1022, 1025 (1917).

in the former comment that the provision for confession of judgment "at any time before maturity" might present a basis for argument that a different intention (as to maturity date) was apparent from the face of the instrument.⁹ However, it is believed that an attempt at reconciliation of the two decisions on the ground that the Court, in the original opinion in the *Iglehart* case, was, for this reason, holding the note not to be a demand note, is not tenable, particularly since the opinion in the *Iglehart* case makes no mention of this factor as a ground for its decision. Further, in the instant case, a similar argument, i. e., that a different intention was apparent from the provision "upon demand after date" was made by appellee's counsel¹⁰ and rejected by the Court.

It is fortunate that the feared perpetuation of the rule stated in the *Iglehart* opinion has not occurred.

⁹ *Ibid.* It was, however submitted that the argument was not well founded, especially in view of the fact that the particular wording was in the printed part of a form note.

¹⁰ Appellee's Brief, 9, 10.