

“Buyer in *ordinary course of business*”

Uniform Commercial Code

The author’s favorite: *“Buyer in ordinary course of business” means a person that buys goods in good faith,..”* Better polish your boots on this one. The banks are not the purchaser; the newly created Investment Trust Vehicle was the purchaser. The banks only operate as underwriters, trustees and servicers of these **newly** created Investment Trust Vehicles.

PART 1. GENERAL PROVISIONS

§ 1-102. Scope of Article

This article applies to a transaction to the extent that it is governed by another article of [the Uniform Commercial Code].

§ 1-108. Relation to Electronic Signatures in Global and National Commerce Act

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

ESIGN ACT: TITLE 15 > CHAPTER 96 > SUBCHAPTER I > § 7003 Specific exceptions¹

(a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 1-201. General Definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of [the Uniform Commercial Code] that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of [the Uniform Commercial Code] that apply to particular articles or parts thereof:

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A

¹ <http://www.law.cornell.edu/uscode/15/7003.html>

person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

Again, the author's favorite, *"Buyer in ordinary course of business" means a person that buys goods in good faith...* Better polish your boots on this one. The banks are not the purchaser; the newly created Investment Trust Vehicle was the purchaser. The banks only operate as underwriters, trustees and servicers of these **newly** created Investment Trust Vehicles.

(21) "Holder" means: (A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or (B) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

What is needed to be understood is that the original "Wet Ink" negotiable instrument is not the instrument that was negotiated/assigned/transferred to the newly created Investment Vehicle. The creators of the Investment Trust Vehicle assigned/transferred an electronic negotiable instrument, which lacks supporting laws to exist. This electronic negotiable instrument was created by scanning the original "Wet Ink" negotiable instrument, and this electronic digitized copy was to be called the "authoritative copy" of the "transferable record." It is this "authoritative copy" that was electronically assigned/transferred in book entry form. In actuality, the registry that identifies the "authoritative copy" was updated to reflect who had beneficial ownership rights of the "authoritative copy". Since there was no negotiation of the original "Wet Ink" negotiable instrument to the newly created Investment Trust Vehicle, the Investment Trust Vehicle never became the holder or holder in due course of the original "Wet Ink" negotiable instrument.

Of particular note: if the original "Wet Ink" negotiable instrument by chance was not destroyed, then a high probability exists that the original lender vaulted the documents and the same registry, (MERS), that identified the ownership of the "authoritative copy" will also identify the custodian holding the original "Wet Ink" and the identity of the entity that has beneficial ownership rights of the documents being held by this custodian.

PART 3. ENFORCEMENT OF INSTRUMENTS

§ 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

As the newly created Investment Trust Vehicle has only ownership right to the "authoritative copy" and beneficial ownership right to the original non-negotiated "Wet Ink" negotiable instrument they have not met the definition of "Holder".

§ 3-302. HOLDER IN DUE COURSE.

(a) Subject to subsection (c) and Section 3-106(d), "holder in due course" means the holder of an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

What the courts do not see is that the electronic negotiable instrument does not bear apparent evidence of forgery or alteration; it just cannot legally exist under current laws.

(2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a).

In "good faith" ... have to re-polish the boots on this one as there is absolutely no "good faith" where there is an intentional act of not following the written laws .

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization...

The author was required to redirect attention back to the negotiable instrument; this document does not dwell into the issues of bifurcation of the security instrument from the negotiable instrument or about the perfection/continuous perfection of the security instrument.

Time to polish the boots and glue them on, this dance is going to get deep.

Shinola was immortalized in colloquial English with the phrase, "You don't know shit from Shinola," which first became widely popular during World War II.²

Maybe one day law enforcement will learn the difference.

² <http://en.wikipedia.org/wiki/Shinola>