

2001

# Valley Bank and Trust Company v. First Security Bank of Utah : Petition for Rehearing

Utah Supreme Court

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## Recommended Citation

Legal Brief, *Valley Bank and Trust Company v. First Security Bank of Utah*, No. 13852.00 (Utah Supreme Court, 2001).  
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BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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Case No. 13852

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VALLEY BANK AND TRUST COMPANY,  
a Utah corporation,

Plaintiff and Appellant,

-vs-

FIRST SECURITY BANK OF UTAH, N.A.,

Defendant and Respondent.

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PETITION FOR REHEARING

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**FILED**  
AUG 4 - 1975

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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VALLEY BANK AND TRUST COMPANY,  
a Utah corporation,

Plaintiff and Appellant,

-vs-

FIRST SECURITY BANK OF UTAH,  
N.A.,

Defendant and Respondent.

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Case No: 13852

PETITION FOR REHEARING

Pursuant to Rule 76(e), Utah Rules of Civil Procedure, Respondent First Security Bank of Utah, N.A., respectfully petitions the Court to grant a rehearing in the above-entitled matter. This petition is based on the grounds that the Court incorrectly ruled that Chapter 4 created a conflict with Chapter 3 with respect to the requirements of notice of dishonor.

DATED this \_\_\_\_\_ day of August, 1975.

RAY, QUINNEY & NEBEKER

By

  
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By

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

VALLEY BANK AND TRUST COMPANY,	:	
a Utah corporation,	:	Case No: 13852
	:	
Plaintiff and Appellant,	:	
	:	BRIEF OF RESPONDENT
-vs-	:	IN SUPPORT OF
	:	PETITION FOR REHEARING
FIRST SECURITY BANK OF UTAH,	:	
N.A.,	:	
	:	
Defendant and Respondent.	:	

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IN THE SUPREME COURT OF THE STATE OF UTAH

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VALLEY BANK AND TRUST COMPANY,	:	
a Utah corporation,	:	Case No: 13852
	:	
Plaintiff and Appellant,	:	
	:	BRIEF OF RESPONDENT
-vs-	:	IN SUPPORT OF
	:	PETITION FOR REHEARING
FIRST SECURITY BANK OF UTAH,	:	
N.A.,	:	
	:	
Defendant and Respondent.	:	

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NATURE OF THE CASE

This was a case arising under the Uniform Commercial Code contesting the validity of a chargeback made by an intermediary bank on the account of a depositing bank after oral notice of dishonor.

DISPOSITION IN THE LOWER COURT

After trial before the court, the District Judge entered Findings of Fact, Conclusions of Law and Judgment for the Defendant-Respondent. The court found that the plaintiff received oral notice of dishonor and that oral notice was sufficient notification under Utah Code Annotated, §70A-4-212 (1968).

RELIEF SOUGHT IN REHEARING

Respondent First Security Bank of Utah, N.A., seeks a rehearing to demonstrate that no conflict exists between Chapters 3 and 4 with respect to the requirements of notice of dishonor.

STATEMENT OF THE FACTS

The parties have set forth the facts in this case in their respective briefs on file with this Court and a repetition thereof is not necessary here. The only facts of particular import to this petition for rehearing will be argued below.

ARGUMENT

THERE IS NO CONFLICT BETWEEN THE PROVISIONS OF CHAPTER 3 AND CHAPTER 4 WITH RESPECT TO THE REQUIREMENTS OF NOTICE OF DISHONOR.

The Defendant-Respondent First Security Bank urges a rehearing in the above-captioned matter on the grounds that this Court incorrectly ruled that Chapter 4 created a conflict with Chapter 3 with respect to the requirements of notice of dishonor. All statutory references herein relate to the Uniform Commercial Code, Title 70A, Utah Code Annotated, 1968. In its Opinion reversing the judgment of the trial court, this Court noted that §70A-4-212 provides that a collecting bank may revoke a settlement and charge back the amount to its customer "if by its midnight deadline or within a longer reasonable time after it learns the facts, it returns the item or sends notification of the facts." The Court then emphasized that the requirement was to "send" notification of dishonor.

The majority opinion adopted the lower court's findings that timely and actual notice was given by Respondent to Appellant concerning the transaction in question. The Court concluded, however, that "send" as defined in §70A-1-201 requires written notification.

The Court properly recognized that §70A-3-508(3), expressly made applicable to Chapter 4 by §70A-4-104(3), provides that notice of dishonor may be either oral or written. However, the Court concluded, by virtue of §70A-4-102(1), that if there was any conflict between the provisions of Chapter 3 and 4, Chapter 4 would prevail. The Court ruled that there was a conflict between Chapters 3 and 4 and consequently that the provisions of Chapter 4 requiring "sending" of notification of facts should prevail with respect to a notice of dishonor.

Respondent submits that there is no conflict unless this Court permits the general definition of "send" in §70A-1-201 to prevail over the more specific provisions in other chapters. The definitions of §70A-1-201 are expressly "subject to additional definitions contained in subsequent chapters of this act which are applicable to the specific chapters or parts thereof," and "unless the context otherwise requires." It must be emphasized that the definition of "send" is not expressly made applicable to Chapter 4. However, §3-508 is made expressly applicable to Chapter 4 by §70A-4-104(3) and indicates in specific terms that notification of dishonor may be oral or written. §3-508 is precisely the "additional definition contained in subsequent chapters" which should prevail over the general definition of "send" in §1-201

and is placed in a context which does not require a different reading.

This argument is merely a statement of the well-recognized proposition that the specific, in this case §3-508, prevails over the general, in this case §1-201. 73 Am. Jur. 2d, Statutes, §257.

It is further well recognized that it is the duty of the courts to interpret statutes so as to reconcile any conflicts. In re Yonk's Estate, 115 Utah 292, 204 P.2d 452 (1949), 73 Am. Jur. 2d, Statutes, §254. The court In re Yonk's Estate explained the rule this way:

"It is our duty in interpreting statutes to reconcile any apparent conflicts, if possible, and to give full force and effect to all provisions." Id. at 457.

The incorporation of §3-508 by §4-104 consciously avoids a conflict that might otherwise exist and must be deemed a deliberate act on the part of the Code draftsmen and the Utah Legislature. This Court can avoid any conflict by adopting the specific definition of notice of dishonor in §3-508, which must be deemed to modify the general definition of "send" in §1-201.

#### CONCLUSION

The precise statutory interpretation urged by the Respondent is:

- A. Section 70A-4-104 expressly incorporates §70A-3-508 into Chapter 4;
- B. Section 70A-3-508 permits notice of dishonor to be oral or written;
- C. The definition of "send" in §70A-1-201 is thus superseded or modified to the extent that sending notice of dishonor



as a condition precedent to the right of chargeback under §70A-4-212 may include an oral communication; and

- D. Respondent's act in telephonic communication represented "notification of the facts" in full compliance with §70A-4-212 and §70A-3-508.

Respondent First Security Bank respectfully requests that a rehearing be granted to permit it to demonstrate that no conflict exists between Chapters 3 and 4 with respect to the requirements of notice of dishonor and that the trial court's Findings, Conclusions and Judgment should be affirmed.

DATED this 4<sup>th</sup> day of August, 1975.

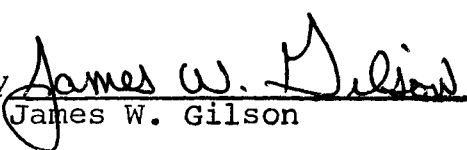
Respectfully submitted,

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