

1963

# Josephine H. Christensen v. Financial Service Co., Inc. : Respondent's Answer to Petition for Rehearing

Utah Supreme Court

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## Recommended Citation

Response to Petition for Rehearing, *Christensen v. Financial Service Co.*, No. 9649 (Utah Supreme Court, 1963).  
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In the Supreme Court  
of the State of Utah

MAR 19 1963

JOSEPHINE H. CHRISTENSEN,  
as guardian ad litem for and in be-  
half of JOSEPH CHRISTENSEN,  
aka JOSEPH NORMAN CHRIST-  
ENSEN,

*Plaintiff and Respondent,*  
vs.

FINANCIAL SERVICE CO., INC.,  
*Defendant and Appellant.*

Supreme Court, Utah

Case No.  
9649

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RESPONDENT'S ANSWER TO PETITION  
FOR RE-HEARING

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Appeal from the Judgment of the  
1st District Court for Cache  
County

Hon. Lewis Jones, Judge

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## AUTHORITIES

### CASES CITED

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# In the Supreme Court of the State of Utah

JOSEPHINE H. CHRISTENSEN,  
as guardian ad litem for and in be-  
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*Plaintiff and Respondent,*  
vs.

FINANCIAL SERVICE CO., INC.,  
*Defendant and Appellant.*

Case No.

9649

## RESPONDENT'S ANSWER TO PETITION FOR RE-HEARING

On the 28th day of February, 1963, the Appellant petitioned this Court for re-hearing of the above entitled case. Appellant contends that this Court erred in holding the Plaintiff a holder in due course and seeks re-hearing upon this contention. The Respondent opposes such contention set forth in the petition for re-hearing upon the grounds that this Court did not err in its Findings and enunciation of the law.

### STATEMENT OF FACTS

In addition to those facts stated in Plaintiff's Brief, the record shows that Norman Christensen gave consideration for the note in question to the Appellant. The

record does not indicate whether or not the Respondent gave consideration to his Father, Norman Christensen.

## ARGUMENT

### POINT 1

THIS COURT'S DECISION OF JANUARY 25, 1963 WAS NOT IN ERROR HOLDING THAT THE RESPONDENT WAS A HOLDER IN DUE COURSE.

A. The Plaintiff has admitted by way of brief and in the trial of the matter that Joseph Christensen did not give consideration for the note in question, which is a correct statement in that Joseph Christensen did not give any consideration to Financial Service Co., Inc., for the drawing of the note sued upon here. The consideration came from Norman Christensen, the Father of the Respondent. The record shows that the Appellant did not pursue the question of whether or not Joseph Christensen gave his Father consideration for the note.

B. This Court did not err in holding the Respondent payee a holder in due course as the Appellant received the consideration it bargained for.

Respondent's main brief, pages 12 and 13 states that the consideration for the drawing of the note need not pass from the payee to the maker so long as the maker receives a consideration bargained for as the exchange for the promise contained in the instrument. This holding was subscribed to by the California Court

in Flores vs. Wood Specialties Inc. 292 Pac. 2nd 626 which was cited by this Court in its decision filed January 25, 1963.

The Appellant cites the case of Seaboard Finance Co. vs. Miles & Sons, Inc. Cal. App, 227 Pac. 2nd 892, which case concerns itself with the sufficiency of evidence needed to rebutt the presumption of consideration. A careful reading of that case will reveal that the intermediate California Court held that a payee could not be a holder in due course. Therefore, the law cited in that case and the presumption relied upon could not be authority for the proposition at Bar.

The Flores case supra decided after the Seaboard Finance Co. case held opposite to the Seaboard case and announced a different rule of law with different presumptions. To adopt the Appellant's contention in the Seaboard Finance Co. case to the case at Bar would do what the Appellant has advised this Court not to do: to make a hasty extension of the doctrine that a payee may be a holder in due course.

Appellant further cites the case of Atkinson vs. Inglewood State Bank, Colorado, 348 Pac. 2nd 702, which is a case dealing with fraud in the inception of the note and whether or not the Colorado Court should have submitted the question of fraud to the jury. The trial Court in the case at Bar sat without a jury. It is obvious from the Findings of the trial Court that fraud

was not an issue in this case. The Colorado Court did not decide the question of whether or not a payee could be a holder in due course, although by way of dicta, the Court indicated that under a different set of facts, a payee may be a holder in due course.

The cases cited by Respondent state that consideration need not pass from the payee to the maker, so long as the consideration for the note moves from or goes to the maker of the note and is the thing bargained for as the exchange for the promise by the maker. The appellant received consideration bargained for, being the cancellation of the debt owed by the Appellant to Norman Christensen. The Appellant in the trial of the matter, raised the question of consideration and the Respondent proved consideration for the note. The record shows that the Respondent met every issue as to consideration for the note raised by the Appellant. Certainly the Respondent should not be called upon to rebutt an issue not raised by the Appellant in the trial. Therefore, Respondent could rely upon the presumption of consideration between the Respondent and his Father.

### CONCLUSION

It cannot be said that this Court's decision contains a hasty extension of the doctrine that a payee may be a holder in due course. The cases cited by the Court reflect a sound enunciation of the law. The California case cited by the Appellant was decided prior to the Flores

vs. Wood Specialties, Inc. case supra and does not reflect the sound reasoning of the Flores case. This Court has given attention to the background of the problem and has not been disposed to seize upon any one phase in the Negotiable Instruments Act as a foundation for a hasty extension of the doctrine that a payee may be holder in due course. The Court's ruling does not create confusion but announces a principle that eliminates confusion in the area of the law not heretofore determined in this State. The Respondent prays that this Honorable Court deny the petition for a re-hearing submitted by the Appellant and to award to the Respondent the costs of Court and fees as this Court deems equitable.

Respectfully submitted.

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