

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

Central Division

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In re	:	
	:	
TRI-POWER ELECTRONICS, INC.,	:	Bankruptcy No. B-79-00467
fka CCS INC.	:	
	:	
Bankrupt	:	
	:	
NEVE-WELCH ENTERPRISES, INC.,	:	
a Utah Corporation	:	
	:	
Plaintiff	:	
	:	MEMORANDUM DECISION AND ORDER
vs	:	
	:	
RAY TWELVES, Receiver	:	
	:	
Defendant	:	

Appearances: Gregory B. Wall for plaintiff; Herschel J. Saperstein for defendant.

On April 21, 1979, plaintiff, Neve-Welch Enterprises, Inc., dba Neve-Welch Furniture and appliances (Neve-Welch), transported to the business address of the bankrupt, Tri-Power Electronics, Inc. (Tri-Power), various merchandise which was to be sold by Neve-Welch on an independant basis as part of the close-out sale of Tri-Power.

Neve-Welch, through its own salesmen, sold items of merchandise during the days of April 21 and 22 for which receipts were issued in the amount of \$22,020.80. Cash, checks, and bank card charges, reflecting these sales by Neve-Welch, were deposited with the other sale proceeds into the account of Tri-Power at United Bank.

On April 23, 1979, Tri-Power, by its agent, telephoned United Bank and authorized the withdrawal of \$22,020.80 from its account and requested United Bank to issue a cashier's check in the same amount, payable to Neve-Welch. United Bank issued the cashier's check that day. Also on that day Tri-Power was adjudged bankrupt. Two days later United Bank stopped payment on the cashier's check.

A complaint for reclamation of the funds deposited by Tri-Power for Neve-Welch was filed by Neve-Welch on May 11, 1979. Tri-Power then filed a Motion to Dismiss on the grounds that plain-

tiff's complaint failed to state a claim upon which relief could be granted. Tri-Power supported this claim first by the allegation that Neve-Welch had conceded commingling of the funds, and second, by the allegation that the issuance of the cashier's check by United Bank had discharged any underlying obligation of the bankrupt. A hearing was held to consider defendant's Motion to Dismiss. The Court concluded, at that time, that Neve-Welch was entitled to adduce evidence to establish that Tri-Power held the money in trust, and to dispute the claim of commingling of funds. The first ground for the motion was, therefore, unavailing. This decision addresses Tri-Power's second contention, that the issuance of the cashier's check discharged the underlying obligation.

A cashier's check is a bill of exchange drawn by a bank on its own funds (on itself). By assuming the dual position of drawer and drawee on the check, the bank injects into circulation an instrument which is considered as equivalent to, and a substitute for, the money it represents. Due to the confidence of the commercial world in such instruments when endorsed, such checks trade hands often and traverse many financial transactions. See Ross v. Peck Iron and Metal Co., 264 F.2d 262 (4th Cir. 1959); Schwartz v. Twin City State Bank, 201 Kan. 539, 441 P.2d 897 (1968).

Tri-Power authorized United Bank to issue such a check, and to make it payable to Neve-Welch. This was done to pay Neve-Welch the amount it had earned during the sale. Tri-Power could be said to have purchased the cashier's check from the bank in order to facilitate payment of the debt. By the act of issuance, United Bank assumed the status of drawer and drawee on the check, and by the act of receiving the check, Neve-Welch completed the transaction. Such a transaction is governed by UTAH CODE ANN. §70A-3-802 (1953), which states:

- (1) Unless otherwise agreed where an instrument is taken for an underlying obligation
 - (a) the obligation is pro tanto discharged if the bank is drawer, maker or acceptor of the instrument, and there is no recourse on the instrument against the underlying obligor.

Thus, Neve-Welch's act of "taking" the check in recognition of the payment due discharged the underlying obligation of Tri-Power. See Meckler v. Highland Falls Savings and Loan Ass'n., 64 Misc. 2d 407, 314 N.Y.S. 2d 618 (Sup. Ct. 1979); Rushkin v. Central Federal Savings and Loan Ass'n., 3 U.C.C. Rptg. Serv. 150 (N.Y. Sup. Ct. 1966); Malphrus v. Home Savings Bank, 44 Misc. 2d 705, 254 N.Y.S. 2d 980 (Albany County Ct. 1965).

Since Tri-Power has been relieved from liability on the instrument, its credit and resources no longer are subject to the underlying obligation. Neve-Welch must now look to the issuing bank, which has the primary obligation on the check and is the guarantor of payment. See Ross v. Peck Iron and Metal Co., *supra*; Meckler v. Highland Falls Savings and Loan Ass'n., *supra*; Allison v. First National Bank of Albuquerque, 85 N.M. 283, 511 P.2d 769, (N.M. App. 1973).

The second ground of defendant's motion is well taken. The cashier's check discharged the debt between Tri-Power and Neve-Welch in the stated amount and the motion to dismiss should be granted.

ORDER

Defendant's motion to dismiss is granted; the complaint is dismissed.

DATED this 29 day of November, 1979.

BY THE COURT



Ralph R. Mabey
United States Bankruptcy Judge

RRM/bl