

# Lost Candy Bar

## (Lost Note Affidavits)

### Uniform Commercial Code

#### § 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument

(A) was entitled to enforce it the instrument when loss of possession occurred, or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

#### § 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

(c) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process to or with the record with the present intent to adopt or accept the record.

#### Scenario 1

The seller takes all the slips just before Christmas and enforces the slips and collects a dollar bill from all the buyers that signed slips and buys new candy bar display. Slips can be either negotiable or non-negotiable.

#### Scenario 2

The seller takes the slips and bundles a 100 of them together and sells these slips to the bank. Banks pays the seller who then has enough money to buy a new candy bar display case so he can sell more candy bars. The slips are required to be negotiable per UCC.

#### Scenario 3

(Enter the world of emerging technology – Primary Market Book-Entry)

(Legal Authority granted by the Esign Act and UETA laws) – False

(The Uniform Commercial Code governs negotiable instruments)

Seller takes all the slips and scans the slips into a graphic image and enters all the data into a spreadsheet and saves all this newly created electronic data onto a CD-ROM. Seller then sells this CD-ROM to the bank. The seller doesn't want all the old slips sitting in his till as he has no

room so he takes them out back and destroys them. (§ 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction...) It is of no difference to the seller whether the paper exists or not for he has been paid. Where are the Candy Cops when you need them?

The bank sells this CD-ROM to Biggie Bank. Biggie Bank wants to enforce the slips and collects his dollar bill but seller says prove to me I owe you a dollar bill. Biggie Bank then has a Vice President sign an affidavit because his title sounds impressive. Teller then prints out the graphic image of the slip and attaches to the affidavit and submits to the courts as proof so biggie Bank can have a new replacement slip. Biggie Bank relies upon the UCC to support the enforcement action.

(§ 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. § 3-308.

PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.)

Biggie Bank has no right to enforce the slip and go collect the dollar bill because the seller intentional and voluntarily destroyed the slip which rendered the slip null and void.