

**AMERICAN BANK & TRUST
COMPANY, Appellant,**

v.

SHOUSE & BURRUS, Appellee.

Court of Appeals of Kentucky.

April 15, 1983.

Action was brought arising out of claimed banker's lien or right of setoff in bank to proceeds of sale of bank stock, which had been held by individual debtor of bank prior to endorsement to third party, who then sold stock. The Circuit Court, Fayette County, George E. Barker, J., entered summary judgment against bank, and bank appealed. The Court of Appeals, Howerton, J., held that: (1) bank was not entitled to banker's lien in stock merely by virtue of fact that seller's predecessor in title was individual debtor of bank; (2) bank was not entitled to use proceeds of stock sale as setoff against individual's debt owed to bank; (3) third-party purchaser of bank stock from individual debtor of bank was bona fide purchaser, notwithstanding any knowledge that individual was having financial difficulties with bank; and (4) award of prejudgment interest was proper.

Affirmed.

1. Banks and Banking ☞136

A bank is entitled to general lien upon all securities of customer or depositor which are in bank's possession, unless property has been delivered to bank under circumstances which would limit application of the lien.

2. Banks and Banking ☞134(1)

A bank is entitled to set off general deposit to enforce collection of indebtedness owing to bank.

3. Banks and Banking ☞152

For bank to have type of possession necessary to constitute lien, certificates would have to be brought to bank by owner and left in its possession for security; bank has no lien on such property casually left at

bank or accidentally left in possession of bank other than in course of banking business.

4. Banks and Banking ☞42

No banker's lien arose on stock certificates of bank itself, which were held by individual debtor of bank, purchased by third party, and then offered for sale, where bank did not have possession of stock certificates, stock had never been encumbered as collateral for any of individual's debts, and bank, as issuer of stock, had failed to note anywhere on stock certificates that bank was claiming right of such lien. KRS 355.8-102, 355.8-103, 355.8-201.

5. Banks and Banking ☞134(1)

A setoff may be allowed when funds on deposit in bank are property of bank's debtor, funds are deposited without restrictions, existing indebtedness is due and owing to bank by depositor, and deposit was made in bank during usual course of banking business.

6. Banks and Banking ☞42

Where bank's own stock was purchased by bank itself from brokerage firm, with whom it was placed for sale by third party, who had taken unencumbered stock certificates by endorsement of individual debtor of bank, bank was not entitled, under any theory of setoff, to lien or other right in stock or proceeds payable by bank therefor, on basis of debt owed to bank by individual.

7. Secured Transactions ☞12

Even where one has knowledge of another person's financial difficulties and takes securities as pledge for personal loan, knowledge of financial difficulties does not constitute knowledge of any defect in title to the securities of pledgor.

8. Banks and Banking ☞40

Third party was bona fide purchaser of bank stock and took title thereto upon endorsement by individual debtor of bank, notwithstanding that third party may have known that bank was setting off deposited funds against debt liability of individual and that bank was forfeiting collateral pledged by individual, where stock which

was endorsed to third party by individual had not been pledged and there was no notice of lien on stock certificates. KRS 355.8-102, 355.8-103, 355.8-201, 355.8-308(2).

9. Damages \Leftrightarrow 67

Where money or property is wrongfully obtained, interest is allowable by way of damages.

10. Interest \Leftrightarrow 39(2)

Where bank wrongfully denied seller of bank's own stock the use of proceeds of sale of the stock, from date of sale until date of judgment, trial court properly awarded pre-judgment interest to seller.

11. Interest \Leftrightarrow 19(1)

Interest is recoverable as matter of law in action on liquidated claim.

J. Montjoy Trimble, Trimble & Henry, Lexington, for appellant.

William C. Shouse, Shouse & Burrus, Lexington, for appellees.

Before HOWARD, HOWERTON and PAXTON, JJ.

HOWERTON, Judge.

American Bank & Trust Company appeals from a summary judgment of the Fayette Circuit Court ordering it to pay Shouse & Burrus the sum of \$8,250.85 plus pre-judgment interest from March 12, 1982, until paid. The claim of Shouse & Burrus arose when it purchased the Bank's stock from Jan Wallace, who was indebted to the Bank for several loans. Wallace endorsed the stock certificates to Shouse & Burrus to cover a fee. The Bank had not been notified and the transfer had not been recorded when Shouse & Burrus offered the stock for sale through the brokerage firm of Hilliard-Lyons, Inc. The Bank arranged to purchase its own stock but made the purchase check payable to the brokerage house, Jan Wallace, and itself. The Bank claimed a right to do this because of a "banker's lien" on the stock. It also argued that Shouse & Burrus was not a bona fide purchaser be-

cause it had knowledge that Wallace was indebted to the Bank.

[1-3] We find no merit in the Bank's arguments. A Bank is entitled to a general lien upon all the securities of a customer or depositor which are in the bank's possession, unless the property has been delivered to the bank under circumstances which would limit the application of the lien. A Bank is also entitled to set off a general deposit to enforce collection of an indebtedness owing to the bank. For a bank to have the type of possession necessary to constitute a lien, the certificates would have to be brought to the bank by the owner and left in its possession for security. A banker has no lien on such property casually left at the bank or accidentally left in the possession of the bank other than in the course of banking business. See generally, 10 Am.Jur.2d Banks § 660 (1963).

[4] The stock was of the Bank, but the certificate was not in the possession of the Bank nor had the stock ever been encumbered as collateral for any of Wallace's debts. KRS 355.8-103, reads:

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

The Bank had not conspicuously or inconspicuously noted anything on the stock certificates. The bank stock was a security and the Bank was an issuer. KRS 355.8-102 and KRS 355.8-201.

The Bank argues that it is not claiming a lien pursuant to KRS 355.8-103. It does not claim to be an "issuer" but, rather, a banker asserting its banker's lien on a security of Wallace coming into its possession. In other words, it contends that it could claim a banker's lien on any corporate stock of its debtor which it acquired by purchase. The Bank would simply pay the purchase price less the amount the debtor owed to it. We completely disagree. The problem in this case is not limited to the relationship of the Bank with Wallace.

[5, 6] The analogy to a set-off is also inapplicable in this situation. A set-off

may be allowed when funds on deposit in the bank are the property of the bank's debtor, the funds are deposited without restrictions, existing indebtedness is due and owing to the bank by the depositor, and the deposit was made in the bank during the usual course of banking business. *Ward v. Martin*, 231 Ky. 696, 22 S.W.2d 95 (1929). In this case, we are concerned with stock which had been sold to a third party by endorsement on unencumbered stock certificates.

[7,8] Even if Shouse & Burrus had knowledge of Wallace's indebtedness to the Bank, such knowledge would not change their status as bona fide purchasers with regard to the bank's stock. All they knew, if anything, was that the Bank was setting off deposited funds against an alleged debt liability of Wallace. The Bank was also forfeiting collateral pledged by Wallace. The stock which was endorsed to Shouse & Burrus by Wallace had not been pledged, and there was no notice of a lien on the certificates. Even where one has knowledge of another person's financial difficulties and takes securities as a pledge for a personal loan, knowledge of the financial difficulties does not constitute knowledge of any defect in the title to the securities of the pledgor. *Citizens Trust & Guaranty Co. v. Hays*, 167 Ky. 560, 180 S.W. 811 (1915). American Bank had not perfected any claim in its stock owned by Wallace prior to Wallace's transfer of the stock to Shouse & Burrus. Title to the stock in this case vested in Shouse & Burrus, as a bearer, when Wallace endorsed the stock in blank. KRS 355.8-308(2).

[9-11] The Bank finally argues that the trial court erred in awarding prejudgment interest to Shouse & Burrus. We find no error. Where money or property is wrongfully obtained, interest is allowable by way of damages. *Curtis v. Campbell*, Ky., 336 S.W.2d 355 (1960). The trial court in this case allowed Shouse & Burrus interest on the sum due them from the date of the sale of the stock. The Bank denied Shouse & Burrus the use of the proceeds of the stock from the date of the sale until the date of

the judgment. Interest is recoverable as a matter of law in an action on a liquidated claim. *Shanklin v. Townsend*, Ky., 434 S.W.2d 655 (1968).

The judgment of the Fayette Circuit Court is affirmed.

All concur.



Billy K. BANKS, Appellant,

v.

BOARD OF EDUCATION OF LETCHER COUNTY, Kentucky; and Jack M. Burkich, Individually and as Superintendent of the Letcher County Schools, Appellees.

Court of Appeals of Kentucky.

April 15, 1983.

Administrator sought review of his demotion from position of director of pupil personnel to that of a classroom teacher. The Letcher Circuit Court, F. Byrd Hogg, J., upheld demotion, and administrator appealed. The Court of Appeals, Cooper, J., held that administrator had not been afforded the statutory required notice where board of education failed to act on superintendent's recommendation that administrator be demoted until after May 15.

Reversed and remanded.

Schools & 63(1)

Administrator, who was demoted from position of director of pupil personnel to that of a classroom teacher, had not been afforded statutory required notice where board of education failed to act on superintendent's recommendation that administrator be demoted until after May 15; it was required that board affirmatively act on the