

RESOLUTION 11-01-2017

DIGEST

Commercial Code: Account Debtor - Affirmative Relief

Amends Commercial Code section 9404 to allow an account debtor to seek affirmative relief for overpayment, even if the debt has been assigned.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Commercial Code section 9404 to allow an account debtor to seek affirmative relief for overpayment, even if the debt has been assigned. This resolution should be approved in principle because it will give debtors the same ability to collect for overpayment from an assignee of their debt as they have against the original creditor.

Currently, Commercial Code section 9404 protects debt purchasers by limiting the debtor’s rights to relief to an offset against the amount owed. As a result, debt purchasers hold greater rights and greater ability to recover from the account debtor than the original creditor would have held. Under Commercial Code section 9404, subdivision (b), subject to limited statutory exceptions, “the claim of an account debtor against an assignor may be asserted against an assignee . . . only to reduce the amount the account debtor owes.” This resolution would encourage entities who acquire debt obligations to conduct adequate due diligence into the debts being acquired and would decrease the opportunity for collusion between the original creditor and the assignee, to the detriment of the debtor.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Commercial Code section 9404 to read as follows:

- 1 § 9404
- 2 (a) Unless an account debtor has made an enforceable agreement not to assert defenses or
- 3 claims, and subject to subdivisions (b) to (e), inclusive, the rights of an assignee are subject to
- 4 both of the following:
- 5 (1) All terms of the agreement between the account debtor and assignor and any defense
- 6 or claim in recoupment arising from the transaction that gave rise to the contract.
- 7 (2) Any other defense or claim of the account debtor against the assignor which accrues
- 8 before the account debtor receives a notification of the assignment authenticated by the assignor
- 9 or the assignee.
- 10 (b) Subject to subdivision (c) and except as otherwise provided in subdivision (d), the
- 11 claim of an account debtor against an assignor may be asserted against an assignee under
- 12 subdivision (a) ~~only to reduce the amount the account debtor owes.~~

13 (c) This section is subject to law other than this division which establishes a different rule
14 for an account debtor who is an individual and who incurred the obligation primarily for
15 personal, family, or household purposes.

16 (d) In a consumer transaction, if a record evidences the account debtors obligation, law
17 other than this division requires that the record include a statement to the effect that the account
18 debtors recovery against an assignee with respect to claims and defenses against the assignor
19 may not exceed amounts paid by the account debtor under the record, and the record does not
20 include such a statement, the extent to which a claim of an account debtor against the assignor
21 may be asserted against an assignee is determined as if the record included such a statement.

22 (e) This section does not apply to an assignment of a health care insurance receivable.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Joseph A. Goldstein, Jonathan A. Goldstein, Charles H. Goldstein, Charles Wake, Jodi Taksar, Joel Douglas, Robin Bernstein-Lev, Brian Francis Doyle, Barry Ross, James De Sario

STATEMENT OF REASONS

The Problem: Under the statute's current language, an account debtor who has overpaid an assignor who then assigns the debt to an assignee, cannot recover the overpayment. In addition, under the current statute, the account debtor can only use this overpayment and/or overcompensation to reduce the amount that the account debtor owes to the assignee. Therefore, the account debtor is deprived of a legal mechanism to obtain the monies overpaid to the original assignor. The current statute is unjust because it legally shields and immunizes assignees from ever being financially responsible to the account debtor for the overpayment. In addition, this statute establishes a public policy that legally encourages assignees to purchase debt without due diligence and without much scrutiny.

The Solution: Would delete the words "only to reduce the amount the account debtor owes" from the statute which would then allow an account debtor to seek affirmative relief, e.g. the overpayment made by the account debtor to the original assignor, from the assignee.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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