**Affirmed and Opinion filed November 16, 2000.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-98-00678-CV**

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**WOODFOREST NATIONAL BANK AND COMPASS BANK, Appellants**

**V.**

**CLYDE GRIESENBECK & SON, INC., Appellee**

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**On Appeal from the 333rd District Court**
**Harris County, Texas**
**Trial Court Cause No. 95-62286**

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## O P I N I O N

Appellant banks converted checks made payable to appellee Clyde Griesenbeck & Son Inc. and one of Griesenbeck's customers by cashing them over appellee's forged endorsement. *See* TEX. BUS. & COM. CODE ANN. § 3.419 (Vernon 1994).[1] Griesenbeck sued for conversion of the instruments. After trial to the bench, the trial court found for Griesenbeck for the face amount of the checks, plus interest. Findings of fact and conclusions of law were requested and filed. In a single point of error, appellants contest the statutory measure of their liability. They contend Griesenbeck's recovery should be limited to its interest in the check, not its face value, which is the measure prescribed in the statute. Because

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[1] The statute in question was extensively amended in 1995. *See* Act of May 28, 1995, 74th Leg., R.S., ch. 921, § 1, 1995 Tex.Gen.Laws 4582, 4603 (codified at TEX. BUS. & COM. CODE ANN. § 3.420 (Vernon Supp. 2000) (eff. Jan. 1, 1996).

prior precedent and the plain language of the statute dictate such a result, we affirm the judgment of the trial court.

## FACTS

Griesenbeck is a supplier of specialty building materials to contractors and subcontractors. In March 1995, one of its customers became seriously delinquent on its open account. As a condition of continuing to deal with the customer, Griesenbeck negotiated with the customer's two primary contractors; they agreed that future payments to the customer would be made in the name of the customer and Griesenbeck. In theory, the customer would need Griesenbeck's endorsement to cash the checks, at which time Griesenbeck could force the customer to pay some amount toward his open account. In practice, this did not work so well. Of the six checks issued in this form, four checks, totaling $45,125, were negotiated over Griesenbeck's forged endorsement. Griesenbeck subsequently sued the customer and appellants.[2]

## MEASURE OF DAMAGES

In their sole point of error, appellants contend the trial court erred in finding that the measure of damages was the face value of the checks. We review the trial court's conclusions of law *de novo*. *Barber v. Colorado Ind. School Dist.*, 901 S.W.2d 447, 450 (Tex. 1995).

At the time of this action, the statute in question read:

> **§ 3.419. Conversion of Instrument; Innocent Representative**
>
> (a) An instrument is converted when
>
> * * *
>
> (3) it is paid on a forged indorsement.
>
> (b) In an action against a drawee under Subsection (a) the measure of the drawee's liability is the face amount of the instrument. In any other action under Subsection (a) the measure of liability is presumed to be the face amount of the instrument.
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> * * *

[2] Woodforest National Bank was successor in interest to the bank which cashed the checks with the forged endorsement and Compass Bank was the drawee bank. Griesenbeck later nonsuited Woodforest and the customer; however, Compass filed a cross-claim for indemnity which brought Woodforest back into the lawsuit.

Appellants argue that Griesenbeck's interest in the checks was never more than $27,295.88, and that this amount should be the limit of their liability. They urge us to import into the clear language of the statute a reasonableness requirement in order to avoid a double recovery on Griesenbeck's part. *See generally* 1 JAMES J. WHITE AND ROBERT S. SUMMERS, THE UNIFORM COMMERCIAL CODE § 15.7 (3rd ed. [Practitioner's Ed.] 1988).

Griesenbeck contends that the wording of the pre-1996 statute explicitly names the face value of the check as the measure of damages, in effect creating a liquidated damages clause. We agree, for several reasons.

First, we find the statute itself is unambiguous. Because the statute is unambiguous, we are not permitted to use the techniques of statutory construction to look behind the language of a statute. *Cail v. Service Motors Inc.*, 660 S.W.2d 814 (Tex. 1983); *Comdisco Inc. v. Tarrant Co. Appraisal Dist.*, 927 S.W.2d 325, 327 (Tex. App.–Fort Worth 1996, writ ref'd). Second, in the sole supreme court case involving § 3.419(b), the measure of damages was found to be the face value of the converted instrument. *See Ames v. Great Southern Bank*, 672 S.W.2d 447, 450 (Tex. 1984). Finally, our sister court has found that the statutory remedies of § 3.419 preclude the application of extrastatutory, common-law remedies. *See New Ulm State Bank v. Brown*, 558 S.W.2d 20, 28 (Tex. App.–Houston [1st Dist.] 1977, no writ).

In light of this, we find the trial court did not err in setting damages at the face value of the checks involved. The judgment of the trial court is affirmed.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed November 16, 2000.

Panel consists of Justices Sears, Draughn, and Lee.*

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* Senior Justices Ross A. Sears, Joe L. Draughn and Norman Lee sitting by assignment.