

**TONY E. GAETANI, SR., Plaintiff and Appellant, v. GOSS-GOLDEN WEST  
SHEET METAL PROFIT SHARING PLAN, Defendant and Respondent.**

No. A087659.

**COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT,  
DIVISION TWO**

*84 Cal. App. 4th 1118; 101 Cal. Rptr. 2d 432; 2000 Cal. App. LEXIS 879; 42  
U.C.C. Rep. Serv. 2d (Callaghan) 873; 2000 Cal. Daily Op. Service 9247; 2000 Daily  
Journal DAR 12231*

November 16, 2000, Decided

**NOTICE:**

[\*\*\*1] Opinion certified for partial publication. \*

\* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part II.

**PRIOR HISTORY:**

Superior Court of the City and County of San Francisco. Super. Ct. No. 997008. Alex Saldamando, Judge.

**DISPOSITION:**

The judgment is affirmed.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Plaintiff, who brought suit against defendant on a note endorsed to plaintiff after the maker of the note defaulted, appealed a judgment of the Superior Court of the City and County of San Francisco (California) in favor of defendant.

**OVERVIEW:** Plaintiff took a note from defendant indorsed to plaintiff in 1989 that did not contain the words "without recourse," although this note contained words of equivalent effect. The note was for \$ 300,000 and was secured by a deed of trust. After the maker defaulted, plaintiff brought suit against defendant and other parties. The only contested issue at trial was whether the indorsement language allowed plaintiff to recover directly against defendant under a former provision of the Uniform Commercial Code as that code

read before repeal and revision in 1992. The trial court ruled against plaintiff, holding that the cited judicial authority was controlling and barred relief to plaintiff. The court affirmed trial court's decision, concluding that the cited cases were binding on the trial court under the 1963 version of the Uniform Commercial Code and were properly followed. Although plaintiff's arguments invited the court to confuse the two aspects of indorsement, the court noted that the trial judge kept them straight and correctly ruled that the language used effected an indorsement equivalent to one "without recourse."

**OUTCOME:** Judgment affirmed. Trial court properly followed judicial precedents in holding that plaintiff was not entitled to recover directly against defendant on the note containing words of equivalent effect to "without recourse."

**CORE TERMS:** indorsement, recourse, indorser, com, guaranty, negotiability, endorsement, case law, equivalency, subcommittee, indorser-liability, signature, holder, negotiation, foreclosure, necessary implication, principles of law, promissory note, plain meaning, transferor, effective, specify, default, impair, foll, disclaimer of liability, indorsed, assign, statutory language, judicial notice

**LexisNexis(TM) HEADNOTES - Core Concepts**

*Commercial Law (UCC) > Negotiable Instruments  
(Article 3) > Indorsement*

[HN1] Words assigning all of one's right, title and interest in a note are equivalent to indorsing it without recourse.

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**Commercial Law (UCC) > Negotiable Instruments  
(Article 3) > Indorsement**

[HN2] The form of an indorsement has two distinct but sometimes related aspects. First, it can affect the instrument's transfer and negotiability. Second, it can affect the liability incurred by the indorser.

**Governments > Legislation > Interpretation**

[HN3] Familiar cannons guide the appellate court's search for meaning. The appellate court examines first the statutory language, giving meaning to every word and phrase to accomplish a result consistent with the legislative purpose, i.e., the object to be achieved and the evil to be prevented, and reconciling wherever possible potentially conflicting provisions. A construction that makes sense of an apparent inconsistency is preferred over one that renders statutory language useless or meaningless. Only when the language remains unclear or ambiguous by those standards may the appellate court resort to other indicia of legislative intent. The appellate court generally presumes the legislature is aware of appellate court decisions and does not presume that the legislature, in the enactment of statutes, intends to overthrow long-established principles of law unless such an intention is made clear by declaration or necessary implication.

**Governments > Legislation > Interpretation**

[HN4] The appellate court should not give one provision a meaning that renders another meaningless.

**COUNSEL:**

Michael B. Bassi and Donna L. Quan for Plaintiff and Appellant.

Bayer & August and Andrew A. August for Defendant and Respondent.

**JUDGES:**

Opinion by Lambden, J., with Kline, P. J., and Ruvolo, J., concurring.

**OPINIONBY:**

Lambden

**OPINION:**

[\*1120] [\*\*433]

**LAMB DEN, J.**

California statutory and case law preceding our state's 1963 enactment of the Uniform Commercial Code established that the indorser of a promissory note could avoid liability for any default by the maker by adding the

words "without recourse" or words of equivalent effect-- what we will call "the equivalency rule." Specifically, case law held that [HN1] words assigning all of one's *right, title and interest* in the note were equivalent to indorsing it *without recourse*. (*Kern v. Henry* (1934) 138 Cal. App.. 46, 50-51 [31 P.2d 454]; [\*\*\*2] *Mathes v. Bangs* (1932) 128 Cal. App.. 171, 172-173 [16 P.2d 749].)

In the case at hand, Tony E. Gaetani, Sr. (Gaetani) took a note indorsed to him in 1989 with those equivalent words by a trustee for Goss-Golden West Sheet Metal [\*\*434] Profit Sharing Plan (Goss) as part of a real estate sale. He then brought this suit in part against Goss after the maker's default, and the trial court held, against Gaetani's arguments to the contrary, that the cited authority remained controlling and barred relief. We will affirm.

**BACKGROUND**

The note, for \$ 300,000 (the Bond note), was given by Arthur E. Bond to Goss in 1988 and was secured by a deed of trust on land in San Bernardino, [\*1121] California. In late 1989, Gaetani, general partner of RAM Investors (RAM), a Nevada limited partnership, entered an agreement with Goss trustee Eugene Supanich to sell Goss commercial property owned by RAM in Reno, Nevada. The full price was \$ 1.25 million and, in lieu of partial payment, Gaetani accepted three notes held by Goss--one for \$ 35,000, one for \$ 89,000 and the Bond note for \$ 300,000. Each was indorsed by Supanich as Goss trustee and delivered to Gaetani.

Owing [\*\*\*3] evidently to different title companies doing the drafting, the indorsements differed. The two lesser notes bore essentially this language on their reverse sides: "The undersigned [Supanich, trustee for Goss] hereby assigns all of their right, title and interest in and to the herein Note to Ram Investors, a Nevada limited partnership. [P] Pay to the order without recourse to the following: [P] Ram Investors, a Nevada limited partnership."

The Bond note indorsement, however, read: "For value received, the undersigned [Supanich, trustee for Goss] hereby assigns and transfers all right, title and interest in and to the within Note to Tony E. Gaetani, Sr." The absence of the words "without recourse" forms the nub of this appeal.

Bond ultimately paid no principal and only partial interest. In November 1997, after default, presentment, demand and notice of dishonor, Gaetani brought this action in San Francisco Superior Court against Goss, Supanich, Supanich's wife, and Bond. The case took a tortured path, with transfer of the action to San Bernardino County and back again, and ultimately came

before the Honorable Alex Saldamando for bench trial on a first amended complaint claiming [\*\*\*4] breach of contract as against Bond, breach of contract and indorser liability as against Goss, a common count for money lent as against Goss and Bond, and foreclosure of deed of trust as against all defendants. The issues were narrowed by factual and legal stipulations, including a stipulated judgment for judicial foreclosure and sale of the San Bernardino property.

In the end, the only contested issue for Judge Saldamando was whether the indorsement language allowed Gaetani to recover directly against Goss under former section 3414, subdivision (1) of the California Uniform Commercial Code as that code read before repeal and revision in 1992. The judge resolved this legal question of legislative intent against Gaetani in a carefully crafted statement of decision that found no change in the half-century of precedent "holding language of assignment to be the equivalence of without recourse." [\*1122]

The court, as to Goss, ordered judgment in its favor and declared it entitled to fees and costs as the prevailing party, in amounts not determined. Gaetani appeals as to the judgment regarding Goss, but not as to the other defendants or the foreclosure and sale. A post-notice-of-appeal [\*\*\*5] amendment inserted the fees and costs amounts, which Gaetani also purports to challenge by this appeal.

Goss has requested that we take judicial notice of (*Evid. Code*, § 452, subd. (h)) two San Bernardino County documents. One, a "Sheriff's Sale Under Foreclosure" dated March 8, 2000, shows Gaetani having a total secured indebtedness on the property of \$ 401,806, including interest and costs. The other, a "Sheriff's Certificate of Sale on Writ of Sale" dated April 4, 2000, shows Gaetani's foreclosure on the property for a credit bid of \$ 406,328.97. Gaetani does not [\*\*435] dispute either document or directly oppose judicial notice, which we grant, but he disputes Goss's suggestion that he "will likely be made whole" by the foreclosure. He notes that the \$ 80,376.01 in fees and costs from this case remain. We do not find the appeal moot.

## DISCUSSION

### I. *The Effect of the Indorsement*

[HN2] The form of an indorsement, for our purposes, has two distinct but sometimes related aspects. First, it can affect the instrument's transfer and negotiability. Second, it can [\*\*\*6] affect the liability incurred by the indorser. (Cf. *Adolph Ramish, Inc. v. Woodruff* (1934) 2 Cal. 2d 190, 195 [40 P.2d 509, 96 A.L.R. 1146] [words of guaranty].) This case concerns the indorser-liability aspect, specifically, whether the

indorsement was unqualified and thus left Gaetani with recourse against Goss in the event of Bond's default, or was qualified and thus left him without recourse. As will be explained, Gaetani's arguments invite us to confuse the two aspects of indorsement, but Judge Saldamando kept them straight and correctly ruled that the language used here effected an indorsement equivalent to one "without recourse."

#### A. *Antecedent Law*

Since Gaetani ultimately claims a 1963 statutory change in the equivalency rule, we begin with the legal history. Our state's earliest cases dealt with Field Code-derived provisions in the Civil Code as enacted in 1872. (See generally Kleps, *The Revision and Codification of California Statutes 1849-1953* (1954) 42 Cal. L.Rev. 766, 772-775, 792.) Former section 3118 of that code articulated the equivalency rule this way: "An indorser may qualify his indorsement with the words, 'without recourse, [\*\*\*7] ' or equivalent [\*1123] words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement." FORMER SECTION 3119 ADDED: "Except as otherwise prescribed by the last section, an indorsement, without recourse, has the same effect as any other indorsement." On negotiability, the provisions distinguished *general* from *special* indorsements (Civ. Code, former § 3111); special indorsements could specify the indorsee (*id.*, former § § 3113-3114) and, "by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable" (*id.*, former § 3115).

The earliest case we find applying those indorser-liability provisions to language similar to that used in the Bond note concerned language assigning "all of our interest in this promissory note ...." (*Hammond Lumber Co. v. Kearsley* (1918) 36 Cal. App. 431 [172 P. 404] (*Hammond Lumber*)). Deeming out-of-state authority persuasive, the Court of Appeal found a qualified indorsement "within the terms of section 3118 of the California Civil Code .... The propriety of such a construction as we place on the assignment [\*\*\*8] executed by respondents is plain. They conveyed all of their interest in the note. To permit the appellant to hold them as indorsers would be to allow it to exercise a right which was not within nor a part of that interest." (*Id. at pp. 432-433.*) In other words, conveying all of one's interest in a note conveyed nothing more than one's right to seek redress from the maker. This rationale accorded with long-standing precedent from other jurisdictions. (See, e.g., *Hailey v. Falconer* (1858) 32 Ala. 536, 539-540 ["'all my right and title ... to be enjoyed in the same manner as may have been by me'"].)

In 1917, California supplanted those provisions with its first uniform act on the subject, the Negotiable Instruments Law (NIL), codified as former *sections 3082 through 3266d of the Civil Code*. (Stats. 1917, ch. 751, § 1, pp. 1531-1560.) Replacing former section 3118 was new *Civil Code section 3119*, which perpetuated the equivalency rule in similar words while specifying that qualifying language did not limit negotiability: "A qualified indorsement constitutes the indorser a mere [\*\*\*9] assignor of [\*\*436] the title to the instrument. It may be made by adding to the indorser's signature the words 'without recourse', or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument." (Stats. 1917, ch. 751, § 1, pp. 1531, 1539.) A new former section 3147 provided in part that anyone indorsing an instrument without qualification "engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder ...." (Stats. 1917, ch. 751, § 1, pp. 1542-1543.) [\*1124]

Indorser-liability cases under the NIL trod the path blazed by *Hammond Lumber, supra*, 36 Cal. App. 431, and formed the authority the trial court here found controlling. In *Kern v. Henry, supra*, 138 Cal. App. at pages 48-51, a transfer and assignment of "all my right, title and interest" was deemed qualified, even though the words "without recourse" had been stricken upon objection by the transferee. "After the words 'without recourse' were stricken [\*\*\*10] from the indorsement on this note, the indorsement ... purported to transfer and assign only the right, title and interest of the respondents in the note and deed of trust securing the same and, under well-established rules, this remained a qualified indorsement." (*Id. at pp. 50-51*.) Other Court of Appeal decisions were in accord (*Mathes v. Bangs, supra*, 128 Cal. App. at p. 172 ["all of my right, title and interest"]; *Kane v. Eastman (1931) 110 Cal. App. 753, 757 [295 P. 63]* ["all my/our right, title, interest"]; cf. *Title Ins. & T. Co. v. Bandini Estate Co. (1938) 26 Cal. App. 2d 157, 159-163 [79 P.2d 141]* [bare words of assignment general but qualified when augmented by intent to pass only right, title and interest]), except where irreconcilable contrary language also appeared (*Kingsbury v. Whitacre (1934) 1 Cal. App. 2d 100, 101-104 [36 P.2d 241]* [transfer of "all rights" but with waived "presentment, demand, notice, protest and notice of protest," as would be required to hold a general indorser liable under Civ. Code, former § 3147]; *Quinn v. Rike (1920) 50 Cal. App. 243, 244-245 [194 P. 761]* [\*\*\*11] [substantially similar language]).

During this time, the Supreme Court twice confronted but never disapproved that NIL precedent. In

fact, it approved the source decision, *Hammond Lumber, in Cristina v. Mattenberger (1931) 212 Cal. 670 [300 P. 450]* (*Cristina*), where an indorser had opted to " 'guarantee that this is a good, valid and subsisting promissory note' " (*id. at p. 674*). The court held that the full circumstances were ambiguous and thus supported the admission at trial of extrinsic evidence showing a qualified indorsement and mere assignment (*id. at pp. 675-676*). The court further considered whether the ambiguity was fatal under then section 3144, which required one to " 'clearly indicate[] by appropriate words' " any intention to be bound *other than* as a general indorser. (*Cristina, supra*, 212 Cal. at p. 677; Stats. 1917, ch. 751, § 1, p. 1542.) The court adopted a minority position of no indorser liability, persuaded by *Hammond Lumber*, a case "decided prior to our enactment of the uniform law [NIL], but under a statute substantially the same as the present section 3144 ...." ( [\*\*\*12] *Cristina, supra*, at p. 677.) It held: "In view of the confusion in the holdings in other jurisdictions, and the absence of any controlling provision in our present statutes, we are not disposed to overrule that case." (*Id. at pp. 677-678*.) Thus the court approved a case finding qualified indorsement in an assignment of " 'all of our interest in this [\*1125] promissory note' " (*Hammond Lumber, supra*, 36 Cal. App. at p. 431), language less specific than the "all right, title and interest" language presented by the Bond note. Our high court having spoken, the decision is a matter of stare decisis for us, an intermediate appellate court, as well as for the trial court (*Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal. 2d 450, 455 [\*\*437] [20 Cal. Rptr. 321, 369 P.2d 937]*), unless, of course, we are ultimately persuaded by Gaetani that intervening changes in the statutory law have undermined *Cristina*.

The Supreme Court revisited the subject again three years later, in *Adolph Ramish, Inc. v. Woodruff, supra*, 2 Cal. 2d 190 (*Adolph Ramish*), but this time only peripherally. The words of indorsement [\*\*\*13] were, " 'I hereby waive presentation of the within note to the maker, demand of payment, protest and notice of non-payment, and do guarantee payment[.]' " and the issue was whether this amounted not to " 'a commercial [i]ndorsement [but] a mere guaranty [that did not] operate as a transfer which cuts off the defenses of the maker.' " (*Id. at p. 195*.) The court stressed the dual aspects of indorsement--" 'first, the passage of title to the transferee, and, second, the liability incurred by the transferor who has made the guaranty' "--but emphasized, " 'We are here concerned with the first only ....' " (*Ibid.*) It then examined authority from other jurisdictions and adopted the majority view that words of guaranty do not constitute a mere assignment but, rather, make the holder one in due course, free from equities and defenses the maker may have against the payee. (*Id. at*

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pp. 195-200.) This view was deemed both better reasoned and better policy, as it promoted the free circulation of commercial paper, within the spirit and purpose of the NIL. (*Id.* at p. 199.)

While not directly addressing indorser liability, *Adolph* [\*\*\*14] *Ramish* did comment on that case law, notably *Hammond Lumber* and *Cristina*, the latter of which had involved language of guaranty. In all of them, the court noted, " 'the action was instituted for the purpose of enforcing the liability of the endorser, so the aspect of endorsement with which we are primarily concerned was not immediately involved. Nevertheless, [two cases, *Cristina* and *Hammond Lumber*,] recognize and utilize, as the test of whether the undertaking constitutes a general endorsement, the intention of the transferor to assume the obligations of a general endorser. It would seem that this test could equally well be applied to an undertaking which operated to extend the liability of the transferor beyond that of the ordinary endorser in blank. Words of guaranty being words of enlargement rather than words of limitation, it may fairly be inferred that the transferor's intent was to assume the burdens of endorsement and, in addition, the unconditional liability of one who guarantees payment. This is the view of the majority and of the more [\*1126] recent cases.' " (*Adolph Ramish, supra*, 2 Cal. 2d at p. 196.) The court ultimately adopted [\*\*\*15] the majority view that words of guaranty enlarge liability but do not impair negotiability; that is, they have the effect, for negotiability purposes, of an indorsement " 'in blank' " (*id.* at p. 200). n1 The court did not cast doubt on the precedent that indorsement words assigning all of one's right, title and interest are the equivalent of an indorsement "without recourse."

n1 By "in blank" the court apparently meant not just a lack of specified indorsee (Civ. Code, former § 3115; Stats. 1917, ch. 751, § 1, p. 1538) but also a lack of intent to be bound in any manner *other than* as an indorser. (*Adolph Ramish, supra*, 2 Cal. 2d at p. 199, citing Civ. Code, former § 3144.) Specifically at issue was whether the language showed an intent to be a mere guarantor. (*Adolph Ramish, supra*, at p. 195.)

Thus while *Adolph Ramish, supra*, 2 Cal. 2d 190, casts doubt on any prior case holdings intimating that words of assignment effect less than a full negotiation, it leaves [\*\*\*16] undisturbed all holdings on indorser liability--that the use of assignment language may be equivalent to indorsing without recourse. The court here correctly assumed that the assignment language did not

impair negotiability; this was implicit in the stipulated facts.

[\*\*438] Gaetani apparently concedes that he is without recourse in this case if that precedent--what we will call the *Hammond Lumber* cases--remained good law at the time of Goss's indorsement of the Bond note. His argument, however, is that the 1963 adoption of the California Uniform Commercial Code (hereafter sometimes UCC) abrogated that precedent. We will reject the argument.

#### B. *The UCC of 1963*

In the nearly four decades since adoption of the UCC, no California decision has questioned the continuing vitality of the *Hammond Lumber* cases. Given the vast number of promissory notes and other instruments presumably indorsed over that time, the nearly eight decades of unquestioned case authority and the certain reliance on that authority by the public, it seems fantastic that such a change in the law could have escaped the notice of an appellate court somewhere. Nevertheless, we proceed to examine the [\*\*\*17] UCC and the reams of interpretive materials in our record. We, like the trial court, take judicial notice of these materials, most furnished by the commercial firm, the Legislative Intent Service. (*Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal. 3d 211, 219 [185 Cal. Rptr. 270, 649 P.2d 912]; *Fendrich v. Van de Kamp* (1986) 182 Cal. App. 3d 246, 254 & fn. 5 [227 Cal. Rptr. 262].) [\*1127] [HN3]

Familiar canons guide our search for meaning. We examine first the statutory language, giving meaning to every word and phrase to accomplish a result consistent with the legislative purpose, i.e., the object to be achieved and the evil to be prevented (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal. 3d 1142, 1159 [278 Cal. Rptr. 614, 805 P.2d 873]), and reconciling wherever possible potentially conflicting provisions. A construction that makes sense of an apparent inconsistency is preferred over one that renders statutory language useless or meaningless. (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal. 3d 781, 788 [176 Cal. Rptr. 104, 632 P.2d 217].) [\*\*\*18] Only when the language remains unclear or ambiguous by those standards may we resort to other indicia of legislative intent. (*Mutual Life Ins. Co. v. City of Los Angeles* (1990) 50 Cal. 3d 402, 407 [267 Cal. Rptr. 589, 787 P.2d 996].) We generally presume the Legislature is aware of appellate court decisions (*Harris v. Capital Growth Investors XIV, supra*, at p. 1155) and do not presume that the Legislature, in the enactment of statutes, intends to overthrow long-established principles of law unless such an intention is made clear by declaration or necessary implication (*Theodor v.*

