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Signature on Single Collateral Assignment Does Not Serve as Indorsement on Series of Promissory Notes.

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CASE NOTES

COMMERCIAL PAPER—Negotiable Instruments—Signature on Single Collateral Assignment Does Not Serve as Indorsement on Series of Promissory Notes

Estrada v. River Oaks Bank & Trust Co.,
550 S.W.2d 719 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

Dr. William J. Estrada executed four promissory notes in 1970, payable to the order of George Lewis. In 1972 River Oaks Bank advanced money to Lewis in exchange for a promissory note, which was secured by Lewis' collateral assignment of the Estrada notes. Lewis failed to indorse the Estrada notes, but he signed a single collateral assignment that expressly referred to the notes, and which was subsequently stapled to them by River Oaks. Lewis defaulted on his note to River Oaks, and River Oaks brought suit against Estrada on his notes.[1] Contending that River Oaks was merely an assignee and not a holder in due course, Estrada asserted as a complete set off to the notes his unsatisfied judgment against Lewis. The district court granted summary judgment for River Oaks.[2] Estrada appealed to the Houston Court of Civil Appeals (Fourteenth District). Held—*Reversed and remanded.* A signature on a single collateral assignment, stapled to a series of promissory notes by the transferee, does not serve as an indorsement on those notes.[3]

Texas adopted article three of the Uniform Commercial Code (UCC) effective September 1, 1967.[4] This article significantly modified the prior law, which had been controlled by the Negotiable Instruments Law.[5] The changes manifested in article three were intended to remove uncertainties that had existed previously.[6]

1. After an earlier and unrelated transaction, Estrada obtained a judgment against Lewis for $26,000 which he contended was a complete set off to the Estrada notes. River Oaks originally brought suit against Lewis and later joined Estrada as a defendant on the Estrada notes. Summary judgment was granted against Lewis, who did not appeal. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 723 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

2. Estrada's motion for summary judgment was denied by the district court and the denial was affirmed on appeal. *Id.* at 723.

3. *Id.* at 725, 727.

4. TEX. BUS. & COMM. CODE ANN. §§ 3.101-.805 (Tex. UCC 1968).

5. *Compare id. with* Tex. Laws 1919, ch. 123, §§ 1-198, at 190-204.

6. *See* Beutel, *Comparison of the Proposed Commercial Code, Article 3, and the Negotiable Instruments Law*, 30 NEB. L. REV. 531 (1951); Leary, *Some Clarifications in the Law of Commercial Paper Under the Proposed Uniform Commercial Code*, 97 U. PA. L. REV. 354 (1949).

The two fundamental types of negotiable instruments are bearer instruments and order instruments.[7] An instrument is payable to the bearer when it specifies that it is payable to bearer, to a named person or bearer, or to cash.[8] Bearer instruments are negotiated by delivery.[9] An instrument is payable to order when the word "order" appears on the face of the instrument along with the name of a person or his assigns.[10] Order instruments generally require indorsement by the legal owner to transfer title.[11]

A distinction has developed between transfer of an order instrument by assignment and its transfer by negotiation.[12] Transfer by negotiation qualifies the transferee as a holder in due course,[13] and he takes the instrument free of all defenses available against the transferor.[14] An assignee, or one not a holder in due course, however, takes an instrument subject to all defenses available against the assignor.[15]

Negotiation is a special form of transfer by which the transferee becomes a holder;[16] thus negotiation is necessary in order to meet the requisites of a holder in due course.[17] While an order instrument generally requires an

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7. *See* TEX. BUS. & COMM. CODE ANN. §§ 3.110 (order instruments), 3.111 (bearer instruments) (Tex. UCC 1968).

8. *Id.* § 3.111.

9. *Id.* § 3.202(a).

10. *Id.* § 3.110.

11. Wright v. Bank of Cal., 81 Cal. Rptr. 11, 14 (Ct. App. 1969); Lawson v. Finance America Private Brands, Inc., 537 S.W.2d 483, 485 (Tex. Civ. App.—El Paso 1976, no writ); *see* TEX. BUS. & COMM. CODE ANN. § 3.202(a) (Tex. UCC 1968). Early cases held that title could be transferred only by indorsement. *See* Haug v. Riley, 29 S.E. 44, 45 (Ga. 1897). This is no longer true. *See* TEX. BUS. & COMM. CODE ANN. § 3.201(c) (Tex. UCC 1968) (agreement to be liable as an indorser may be effective). *See also* U.C.C. § 3-201, Comment 6.

12. *See* United Overseas Bank v. Veneers, Inc., 375 F. Supp. 596, 609 (D. Md. 1973).

13. TEX. BUS. & COMM. CODE ANN. § 3.302 (Tex. UCC 1968) defines a holder in due course as:

> a holder who takes the instrument
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> (1) for value; and
>
> (2) in good faith; and
>
> (3) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

See United Overseas Bank v. Veneers, Inc., 375 F. Supp. 596, 602 (D. Md. 1973); Lawson v. Finance America Private Brands, Inc., 537 S.W.2d 483, 485 (Tex. Civ. App.—El Paso 1976, no writ). *See generally* J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE § 14-2 (1972).

14. Hidalgo v. Surety Sav. & Loan Ass'n, 487 S.W.2d 702, 703 (Tex. 1972); First State Bank & Trust Co. v. George, 519 S.W.2d 198, 203 (Tex. Civ. App.—Corpus Christi 1974, writ ref'd n.r.e.); TEX. BUS. & COMM. CODE ANN. § 3.305 (Tex. UCC 1968).

15. Cheshire Commercial Corp. v. Messier, 278 A.2d 413, 415 (Conn. Cir. Ct. 1971); TEX. BUS. & COMM. CODE ANN. § 3.306 (Tex. UCC 1968); *see* Harvey v. Casebeer, 531 S.W.2d 206, 208 (Tex. Civ. App.—Tyler 1975, no writ).

16. TEX. BUS. & COMM. CODE ANN. § 3.202 (Tex. UCC 1968). "Transfer" is the all-encompassing term used in the UCC to describe the act which passes an interest in the instrument to another. Scheid v. Shields, 524 P.2d 1209, 1210 (Or. 1974).

17. TEX. BUS. & COMM. CODE ANN. § 3.202 (Tex. UCC 1968); *see* Security Pac. Nat'l

indorsement for its negotiation,[18] if a transferor agrees to be liable as an indorser, the instrument may be negotiated notwithstanding his failure to sign the instrument.[19] An indorsement is considered valid only if it appears on the instrument itself, or on a separate paper which is *firmly* attached to the instrument.[20] The use of an attached piece of paper, called an allonge, is sanctioned by the UCC.[21] When allonges are used, the sufficiency of their physical attachment to the instrument is often a question of fact.[22] Historically, allonges were warranted when prior indorsements on the instrument left no space for additional signatures.[23] Several early American cases, however, permitted the use of an allonge as a matter of convenience even though adequate indorsement space remained.[24] Today, these jurisdictions would probably reach a different result.[25] While nothing in the UCC expressly conditions the use of allonges on a lack of space, some recent decisions have developed such a requirement.[26]

Bank v. Chess, 129 Cal. Rptr. 852, 856 (Ct. App. 1976).

18. *See* U.C.C. § 3-201, Comment 8. For Texas cases decided under the Negotiable Instruments Law, see First Bank v. Petrucha, 38 S.W.2d 138, 139 (Tex. Civ. App.—San Antonio 1931, writ dism'd); Lamm v. Bates, 26 S.W.2d 361, 363 (Tex. Civ. App.—El Paso 1930, writ ref'd).

19. U.C.C. § 3-201(3) permits transfer of a promissory note without written indorsement if there is an agreement between the parties. *See* Lyons v. Hager's Adm'r, 128 S.W.2d 196, 197 (Ky. 1939); Waters v. Waters, 498 S.W.2d 236, 241 (Tex. Civ. App.—Tyler 1973, writ ref'd n.r.e.).

20. *See* U.C.C. § 3-202, Comment 3.

21. *See id.* § 3-202(b); *id.* § 3-202, Comment 3. An allonge has been defined as a strip of paper attached to an instrument, on which indorsements may be written. Bergmann v. Puhl, 217 N.W. 746, 748 (Wis. 1928). Although no reported cases have arisen under the Texas UCC, allonges have been recognized under the UCC as enacted in other jurisdictions. *See, e.g.*, Lopez v. Puzina, 49 Cal. Rptr. 122, 126 (Ct. App. 1966); Lamson v. Commercial Credit Corp., 531 P.2d 966, 968 (Colo. 1975); Tallahassee Bank & Trust Co. v. Raines, 187 S.E.2d 320, 321 (Ga. Ct. App. 1972). For cases under the Texas Negotiable Instruments Law, see First Nat'l Bank v. Bell, 88 S.W.2d 119, 122 (Tex. Civ. App.—Fort Worth 1935, writ dism'd); First State Bank v. Petrucha, 38 S.W.2d 138, 139 (Tex. Civ. App.—San Antonio 1931, writ dism'd); Lamm v. Bates, 26 S.W.2d 361, 363 (Tex. Civ. App.—El Paso 1930, writ ref'd).

22. *See* Clark v. Thompson, 69 So. 925, 926 (Ala. 1915); Hills v. Gardiner Sav. Inst., 309 A.2d 877, 880 (Me. 1973). While attachment of the allonge by pinning has been held sufficient, Tallahassee Bank & Trust Co. v. Raines, 187 S.E.2d 320, 321 (Ga. Ct. App. 1972), stapling the allonge has been held insufficient. Lamson v. Commercial Credit Corp., 531 P.2d 966, 968 (Colo. 1975); James Talcott, Inc. v. Fred Ratowsky Assocs., Inc., 2 U.C.C. RPTR. SERV. 1134, 1138 (Pa. C.P. Oct. 25, 1965).

23. *See* Bishop v. Chase, 56 S.W. 1080, 1083 (Mo. 1900); Heister v. Gilmore, 5 Phila. 62, 63 (Pa. D. Ct. 1862). *See generally* Annot., 19 A.L.R.3d 1297 (1968).

24. *See* Osgood's Adm'rs v. Artt, 17 F. 575, 577 (N.D. Ill. 1883); Haug v. Riley, 29 S.E. 44, 46 (Ga. 1897); Commercial Security Co. v. Main St. Pharmacy, 94 S.E. 298, 299 (N.C. 1917); Crosby v. Roub, 16 Wis. 645, 646 (1863).

25. *See* Tallahassee Bank & Trust Co. v. Raines, 187 S.E.2d 320, 321 (Ga. Ct. App. 1972); Bergmann v. Puhl, 217 N.W. 746, 747-48 (Wis. 1928).

26. *See* Tallahassee Bank & Trust Co. v. Raines, 187 S.E.2d 320, 321 (Ga. Ct. App. 1972); Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 725 (Tex. Civ. App.—Houston

Another effective way to transfer title of an unindorsed order instrument is to employ a method which is recognized by the courts under the doctrine of incorporation by reference.[27] This prevalent principle of contract law requires the simultaneous reading of all documents that pertain to the same transaction.[28] The rule has been applied where the writings were not executed at the same time and even in the instance where one writing failed to make specific reference to the other.[29] Incorporation by reference has also been applied where one or more of the writings was a promissory note.[30] In this situation, indorsement on the last of a series of promissory notes apparently serves as an indorsement of all.[31] At least one state, however, has refused to extend the doctrine to apply to negotiable instruments where the indorsement was unattached.[32]

In *Estrada v. River Oaks Bank & Trust*[33] the Houston Court of Civil Appeals (Fourteenth District) was faced with deciding whether a series of promissory notes that had been indorsed by a single collateral assignment which was stapled to the notes by the transferee had been negotiated.[34] This determination was necessary in order to ascertain whether River Oaks Bank was a holder in due course and therefore exempt from Estrada's right to set off.[35] Justice Coulson, writing for the court, implied that the single assignment could have operated as an indorsement for one of the notes had the particular note to which the assignment was attached been discernible.[36] Further, without citing authority, the court refused to extend the

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[14th Dist.] 1977, writ filed). *See generally* Annot., 19 A.L.R.3d 1297, 1300-04 (1968).

27. *See generally* Whitman, *Incorporation by Reference in Commercial Contracts*, 21 MD. L. REV. 1 (1961).

28. *E.g.*, Board of Ins. Comm'rs v. Great S. Life Ins. Co., 150 Tex. 258, 263, 239 S.W.2d 803, 809 (1951); Pendleton Green Assocs. v. Anchor Sav. Bank, 520 S.W.2d 579, 584 (Tex. Civ. App.—Corpus Christi 1975, no writ); Texas State Bank v. Sharp, 506 S.W.2d 761, 763 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.).

29. *See* Board of Ins. Comm'rs v. Great S. Life Ins. Co., 150 Tex. 258, 267, 239 S.W.2d 803, 809 (1951); Pendleton Green Assocs. v. Anchor Sav. Bank, 520 S.W.2d 579, 584 (Tex. Civ. App.—Corpus Christi 1975, no writ); Texas State Bank v. Sharp, 506 S.W.2d 761, 763 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.). Incorporation by reference is recognized under TEX. BUS. & COMM. CODE ANN. § 3.119 (Tex. UCC 1968).

30. Pendleton Green Assocs. v. Anchor Sav. Bank, 520 S.W.2d 579, 584 (Tex. Civ. App.—Corpus Christi 1975, no writ); Texas State Bank v. Sharp, 506 S.W.2d 761, 763 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.).

31. Hubb Diggs Co. v. Fort Worth State Bank, 117 Tex. 107, 112, 298 S.W. 419, 420-21 (1927) (dicta). *Compare id.* at 112, 298 S.W. at 420-21 *with* Security Pac. Nat'l Bank v. Chess, 129 Cal. Rptr. 852, 856 (Ct. App. 1976), which held that a transfer may be made by assignment, but that for negotiation there must be an indorsement on the instrument or on a paper firmly affixed thereto.

32. *See* Hills v. Gardiner Sav. Inst., 309 A.2d 877, 880 (Me. 1973) (decided under Negotiable Instruments Law).

33. 550 S.W.2d 719 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

34. *Id.* at 724.

35. *Id.* at 723.

36. *Id.* at 725. The facts before the court failed to show whether space for indorsements

doctrine of incorporation by reference to an indorsement of a series of promissory notes,[37] and ruled that a single allonge attached to the entire series could not create so firm an attachment to the individual notes as to become a part of each.[38]

River Oaks urged adoption of the rule enunciated in *Lamson v. Commercial Credit Corp.*,[39] where the Colorado Supreme Court accepted a two-page, typed indorsement stapled to two checks as a valid allonge.[40] The *Estrada* court distinguished the present case from *Lamson* and stated that the policy considerations pertaining to the negotiation of checks were dissimilar to those surrounding negotiable notes.[41] One consideration supporting this distinction might have been the enormous volume of checks that daily pass through the collection process. These innumerable, computerized transactions necessitate permitting banks greater latitude in the acceptance of indorsements on checks.[42]

Since stapling of an allonge to a note has been held by some jurisdictions to be sufficient attachment of the paper, making it a part of the note,[43] it might logically follow that an allonge stapled by the transferor to a series of notes is firmly attached to all.[44] The *Estrada* court refused to so extend the law, however, believing the use of allonges to be a commercially undesirable practice.[45] The only justification given for this belief was the UCC requirement of "firm attachment" that had replaced the less strenuous requirement of "attachment" imposed by the prior Negotiable Instruments Law.[46] An interpretation not considered by the *Estrada* court is that the change manifested in the wording of the UCC represented an attempt

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existed on the notes since photocopies of only the front sides were in the record. The legal effect of an allonge where space does exist on the instrument was not decided. *Id.* at 725.

37. *Id.* at 726.

38. *Id.* at 725. The court found no support for such an extension under the UCC as adopted by Texas or other jurisdictions. *Id.* at 726.

39. 531 P.2d 966 (Colo. 1975).

40. *Id.* at 968.

41. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 726 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

42. *See* U.C.C. § 4-205, Comment 1; *cf. id.* § 3-206, Comment 3 (intermediary bank or a payor bank may ignore restrictive indorsements). Banks may supply a missing indorsement on an item in the collection process. Bowling Green, Inc. v. State St. Bank & Trust Co., 425 F.2d 81, 84 (1st Cir. 1970); U.C.C. § 4-205.

43. Lamson v. Commercial Credit Corp., 531 P.2d 966, 968 (Colo. 1975); James Talcott, Inc. v. Fred Ratowsky Assocs., Inc., 2 U.C.C. RPTR. SERV. 1134, 1138 (Pa. C.P. Oct. 25, 1965).

44. *Cf.* Lamson v. Commercial Credit Corp., 531 P.2d 966, 968 (Colo. 1975) (allonge stapled to two checks).

45. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 728 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed); *accord,* Clark v. Thompson, 69 So. 925 (Ala. 1915).

46. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 728 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed). *Compare* TEX. BUS. & COMM. CODE ANN. § 3.202(b) (Tex. UCC 1968) *with* Tex. Laws 1919, ch. 123, § 31, at 194.

to qualify an ambiguous term, and not necessarily an effort to restrict the use of allonges.[47] A stronger rationale for denying recognition of the allonge as a valid indorsement in the present case could have been the fact that the allonge had been stapled to the notes by River Oaks Bank, the transferee, rather than by Lewis, the transferor.[48] Had Lewis himself stapled the assignment, his intention to be liable as an indorser might have been more evident.

Although the UCC permits a negotiable instrument to be modified by another writing,[49] the *Estrada* court found that there were neither policy reasons nor Code support for extending the doctrine of incorporation by reference to the indorsement of a series of promissory notes.[50] Again, the court stated that the paper was not firmly attached to all the notes.[51] In contrast to the *Estrada* decision is *First National Bank v. Bell,*[52] a case that arose under the Texas Negotiable Instruments Law. There it was held that in the event an assignment made specific reference to the note, the note necessarily accompanied that assignment.[53] The *Bell* court stated that this accompaniment constituted substantial compliance with the requirements of attachment in the Negotiable Instruments Law.[54] Such reasoning implies that attachment may not always be required. Suggesting weakness in this rationale, the *Estrada* court criticized the *Bell* decision as setting forth an unsound construction of the Negotiable Instruments Law.[55] *Bell* apparently equated attachment with accompaniment, holding that accompaniment would constitute substantial compliance with the requirement of attachment.[56] Even if its interpretation of the Negotiable Instruments Law is correct, the *Bell* decision would not be controlling under the UCC,[57] for the addition of the word "firmly" to the requirement of attachment in section 3-202(2) indicates quite clearly that mere accompaniment is insufficient.[58]

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47. *See* James Talcott, Inc. v. Fred Ratowsky Assocs., Inc., 2 U.C.C. RPTR. SERV. 1134, 1137 (Pa. C.P. Oct. 25, 1965).

48. *See* U.C.C. § 3-201, Comment 6.

49. TEX. BUS. & COMM. CODE ANN. § 3.119 (Tex. UCC 1968).

50. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 727 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed). No authority was cited for the court's position that incorporation by reference applies only to single promissory notes. *Id.* at 726.

51. *Id.* at 725.

52. 88 S.W.2d 119 (Tex. Civ. App.—Fort Worth 1935, writ dism'd).

53. *Id.* at 123 (on motion for rehearing).

54. *Id.* at 122-23 (on motion for rehearing).

55. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 726 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed). *See generally* 14 TEXAS L. REV. 402, 403 (1936).

56. First Nat'l Bank v. Bell, 88 S.W.2d 119, 123 (Tex. Civ. App.—Fort Worth 1935, writ dism'd) (on motion for rehearing).

57. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 726 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

58. *See* U.C.C. § 3-202, Comment 3.

In instances where the doctrine of incorporation by reference is appropriate, the notes need not be written contemporaneously with the collateral assignment, although they must relate to the same transaction.[59] Additionally, the collateral assignment must include at least an implied agreement that the transferee be liable as an indorser.[60] The collateral assignment which Lewis executed expressly referred to the Estrada notes, established the liability of Lewis,[61] and thus could have been construed as an incorporation of the indorsement.[62] The *Estrada* court felt, however, that establishing such a construction would impede future use of commercial paper.[63] In reaching its decision the court relied heavily on the pre-Code case of *Hills v. Gardiner Savings Institution,*[64] and two California cases.[65] These cases provide minimal support for the court's position, however, because each is distinguishable in that the assignments in them were not physically attached to the notes in any manner.[66]

The court stated that the extension of the incorporation by reference doctrine urged by River Oaks would introduce a "needless element of uncertainty into commercial transactions."[67] River Oaks had the absolute right to demand Lewis' indorsement on each note.[68] The bank's failure to

59. *See* Board of Ins. Comm'rs v. Great S. Life Ins. Co., 150 Tex. 258, 267, 239 S.W.2d 803, 809 (1951); Pendleton Green Assocs. v. Anchor Sav. Bank, 520 S.W.2d 579, 584 (Tex. Civ. App.—Corpus Christi 1975, no writ); Texas State Bank v. Sharp, 506 S.W.2d 761, 763 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.).

60. See note 19 *supra.*

61. *See* Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 723, 728 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

62. *See* Hubb Diggs Co. v. Fort Worth State Bank, 117 Tex. 107, 112, 298 S.W. 419, 421 (1927). The *Hubb Diggs* court stated in dicta that under the Negotiable Instruments Law, the indorsement on one note of a series was a sufficient indorsement of all. *Id.* at 112, 298 S.W. at 420. If this is correct, it should not matter which of the notes is indorsed. Thus, the *Estrada* court's confusion as to which note was indorsed by the allonge should not have barred a similar result. The court, however, did not cite *Hubb Diggs.*

63. *See* Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 726-27 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed); *cf.* Northside Bldg. & Inv. Co. v. Finance Co. of America, 166 S.E.2d 608, 611 (Ga. Ct. App. 1969) (unindorsed order instrument held as collateral by pledgee prevented assignee from becoming holder in due course).

64. 309 A.2d 877 (Me. 1973).

65. Security Pac. Nat'l Bank v. Chess, 129 Cal. Rptr. 852 (Ct. App. 1976) (decided under UCC); Lopez v. Puzina, 49 Cal. Rptr. 122 (Ct. App. 1966) (decided under NIL).

66. Security Pac. Nat'l Bank v. Chess, 129 Cal. Rptr. 852, 855 (Ct. App. 1976); Lopez v. Puzina, 49 Cal. Rptr. 122, 123 (Ct. App. 1966); Hills v. Gardiner Sav. Inst., 309 A.2d 877, 880-81 (Me. 1973). Incorporation by reference has no bearing on the requirement that indorsement must be on or attached to the instrument. Lopez v. Puzina, 49 Cal. Rptr. 122, 125 (Ct. App. 1966); *accord,* Hills v. Gardiner Sav. Inst., 309 A.2d 877, 880-81 (Me. 1973).

67. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 728 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed).

68. *Id.* at 728. A transferee of an order instrument has the right to obtain a court order requiring the transferor to indorse the note. United Overseas Bank v. Veneers, Inc., 375 F. Supp. 596, 604 (D. Md. 1973); *see* TEX. BUS. & COMM. CODE ANN. § 3.201(c) (Tex. UCC 1968).

make this insistence further justified the *Estrada* court's refusal to extend the doctrine of incorporation by reference in the present case. The court failed to explain the basis for its fear of uncertainty.[69] One explanation might have been the realization that if the notes became separated, those still unindorsed would become susceptible to fraud or forgery.[70] Forged notes add considerable confusion to commercial transactions, and prevent all subsequent takers from acquiring the status of holder in due course.[71] An indorsed order note must be inviolable; if not, any distinction between bearer and order instruments would disappear.

The court's holding that River Oaks was not a holder in due course of the Estrada notes did not prevent the bank from recovering as an assignee. As an assignee, however, River Oaks took the notes subject to all defenses and equities that would have been available against Lewis.[72]

The *Estrada* court established precedent by refusing to accept a single collateral assignment as an indorsement on a series of promissory notes. A valid indorsement of the notes could have been implied since the collateral assignment expressly referred to the notes and was attached to all the notes. The court could have reached this result by analogy with law developed for the acceptance of checks.[73] Alternatively, they could have relied on dicta in *Hubb Diggs Co. v. Fort Worth State Bank*[74] that an indorsement on the last note in a series may serve as an indorsement for the entire series.[75] The court refused, however, to extend the allonge or incorporation by reference concepts reasoning that such extensions might impede the negotiability of commercial paper, especially if an unindorsed note should become separated from the allonge.

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69. The court's only rationale appears to be that ownership should be readily determinable by looking at the instrument or attachments. Estrada v. River Oaks Bank & Trust Co., 550 S.W.2d 719, 727 (Tex. Civ. App.—Houston [14th Dist.] 1977, writ filed). There was an attachment to the Estrada notes, however, which must be viewed as at least some evidence of indorsement. Therefore, the basis for the court's fear of uncertainty is left unexplained.

70. *Cf.* Northside Bldg. & Inv. Co. v. Finance Co. of America, 166 S.E.2d 608, 609-11 (Ga. Ct. App. 1969) (unindorsed order instrument held as collateral by pledgee). *See generally* 2 BENDER'S UNIFORM COMMERCIAL CODE SERVICE, § 3.07[4] (1976).

71. *See* Jerman v. Bank of America Nat'l Trust & Sav. Ass'n, 87 Cal. Rptr. 88, 91 (Ct. App. 1970) (forged checks); TEX. BUS. & COMM. CODE ANN. § 3.404 (Tex. UCC 1968); *cf.* Northside Bldg. & Inv. Co. v. Finance Co. of America, 166 S.E.2d 608, 609-11 (Ga. Ct. App. 1969) (discussed resulting confusion when unindorsed instrument was pledged as collateral). *See generally* Whaley, *Forged Indorsements and the U.C.C.'s "Holder"*, 6 IND. L. REV. 45 (1972).

72. *See* Stone & Webster Eng'r Corp. v. First Nat'l Bank & Trust Co., 184 N.E.2d 358, 360-61 (Mass. 1962); *cf.* Northside Bldg. & Inv. Co. v. Finance Co. of America, 166 S.E.2d 608, 611 (Ga. Ct. App. 1969) (no indorsement). *See generally* J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE § 14-3 (1972).

73. See text accompanying notes 39, 40, 41, and 42 *supra.*

74. 117 Tex. 107, 298 S.W. 419 (1927).

75. *Id.* at 112, 298 S.W. at 420.