

FIRST NAT'L BANK V. ALLISON, 1973-NMSC-089, 85 N.M. 511, 514 P.2d 30 (S. Ct. 1973)

CASE HISTORY ALERT: see [§13](#) - affects 1973-NMCA-083

**FIRST NATIONAL BANK IN ALBUQUERQUE, Petitioner,
vs.
DONALD K. ALLISON, Respondent**

No. 9770

SUPREME COURT OF NEW MEXICO

1973-NMSC-089, 85 N.M. 511, 514 P.2d 30

September 14, 1973

Original Proceeding on Certiorari

COUNSEL

RODEY, DICKASON, SLOAN, AKIN & ROBB, WILLIAM A. SLOAN, ROBERT M. St. JOHN, REX D. THROCKMORTON, Albuquerque, New Mexico, Attorneys for Petitioner.

GALLAGHER & WALKER, Albuquerque, New Mexico, Attorneys for Respondent.

JUDGES

OMAN, Justice, wrote the opinion.

WE CONCUR:

John B. McManus, Jr., C.J., Donnan Stephenson, J., Samuel Z. Montoya, J., Joe L. Martinez, J.

AUTHOR: OMAN

OPINION

OMAN, Justice.

{1} This cause is before us on a writ of certiorari directed to the New Mexico Court of Appeals.

{2} Petitioner, defendant below, issued to respondent, plaintiff below, on March 7, 1953, five cashier's checks in the amount of \$1,000.00 each. Respondent deposited these

checks to his credit in a Mexican bank on September 23, 1968. Petitioner refused to honor the checks on September 30, 1968. Respondent brought suit for damages claiming the dishonor was wrongful. The trial court rendered judgment in favor of respondent for \$5,000.00. Petitioner appealed and respondent cross-appealed to the New Mexico Court of Appeals.

{3} By a majority opinion, the Court of Appeals affirmed the judgment for \$5,000.00 in favor of respondent and remanded the cause to the trial court for a determination of the amount of consequential damages to which the Court of Appeals held respondent was entitled. Allison v. First National Bank in Albuquerque, 85 N.M. 283, 511 P.2d 769 (Ct. App. 1973). We reverse the Court of Appeals.

{4} We agree with and adopt the reasoning of the dissenting opinion of Joe W. Wood, Chief Judge of the Court of Appeals. Clearly the provisions of the Uniform Commercial Code, as adopted by New Mexico in 1961, are not applicable to this case. However, as shown by the dissenting opinion of Chief Judge Wood, our six year statute of limitations [§ 23-1-3, N.M.S.A. 1953] would be applicable and the result the same under our Uniform Commercial Code.

{5} The decision of the Court of Appeals and the judgment of the trial court must be reversed and the cause remanded for the entry of judgment by the trial court dismissing respondent's complaint.

{6} IT IS SO ORDERED.

WE CONCUR:

John B. McManus, Jr., C.J., Donnan Stephenson, J., Samuel Z. Montoya, J., Joe L. Martinez, J.