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A Note on Interpreting Statutes

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A NOTE ON INTERPRETING CONTRACTS

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The recent case of *Castellano v. State*[1] provokes reflection upon the "plain meaning" rule in interpreting contracts and invites inquiry on just how far meaning is controlled by lexicography. In *Castellano*, the New York Court of Appeals was asked to ascertain the meaning of a condemnation clause in a lease. The landlord contended that, in the context of the lease, the word "lessor" should be read as "lessee"—a reading which would allow the major portion of the award to go to the landlord.[2] Holding that extrinsic evidence was admissible to support the landlord's contention, the court concluded that the landlord did not seek reformation of the lease, but rather, he "requested . . . an interpretation . . . . To carry out the intention of a contract, words may be transposed, rejected, or supplied, to make its meaning more clear. . . ."[3]

Castellano expresses a doctrine that received recognition in an earlier California case, *Pacific Gas & Electric Co. v. G.W. Thomas Drayage and Rigging Co.*,[4] wherein the Supreme Court of California allowed extrinsic evidence to be admitted for the purpose of showing that trade usage in the surety field rendered a contract of indemnity, with no exclusion, inapplicable to the claim *sub judice*.[5]

In contrast to the rationale of *Castellano* and *Pacific Gas & Electric* stands the New York Court of Appeals decision in *Rodolitz v. Neptune Products*.[6] In *Rodolitz*, the question presented was the interpretation of a "stop-tax" clause in a lease. By the terms of the lease, the tenant agreed to pay the increase in real estate taxes over a base computed by averaging the taxes for the first 3 years of the term. The term commenced on the date the certificate of occupancy was issued, and fortuitously, this date fell on the same year in which

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[1] 43 N.Y.2d 909, 374 N.E.2d 618, 403 N.Y.S.2d 724 (1978).

[2] *Id.* at 911, 374 N.E.2d at 620, 403 N.Y.S.2d at 726. The landlord agrued that a typographical error caused "lessee" to read "lessor". *Id.* at 913, 374 N.E.2d at 621, 403 N.Y.S.2d at 727 (Breitel, C.J., dissenting).

[3] *Id.* at 911, 374 N.E.2d at 620, 403 N.Y.S.2d at 726 (citations omitted).

[4] 69 Cal. 2d 33, 442 P.2d 641, 69 Cal. Rptr. 561 (1968) (en banc).

[5] The opinion is most interesting because of its supporting references to the classic work in semantics of Ogden and Richards. *Id.* at 35 n.2, 442 P.2d at 643 n.2, 69 Cal. Rptr. at 563 n.2 (citing C. OGDEN & I. RICHARDS, THE MEANING OF MEANING 24-47 (rev. ed. 1956)).

[6] 22 N.Y.2d 383, 239 N.E.2d 628, 292 N.Y.S.2d 878 (1968).

building taxes were exempted due to the local assessment formula. Accordingly, there was a lower base than would have prevailed had that year not been used. The court of appeals held that, although the first year of the term embraced only land taxes, it was to be used in averaging the first 3 years of the base for tax escalation. In contrast, the intermediate appellate court had excluded the first year from the computation.[7] Recognizing that the lower court's determination of the parties' intent could be correct, the court of appeals nevertheless reversed, stating:

> [T]he rule is well settled that a court may not, under the guise of interpretation, make a new contract for the parties or change the words of a written contract so as to make it express the real intention of the parties if to do so would contradict the clearly expressed language of the contract. . . .[8]

What is interesting about *Rodolitz* is that an examination of the record on appeal reveals that the trial was devoid of any testimony to show a meaning different from that adopted by the court in its literal interpretation of the contract, although on the intermediate appeal the court found language favorable to the landlord elsewhere in the lease.

The need for stability in the law as a proper foundation for conduct has been noted by Professor Harry Jones. As he phrased it, one of the "law's social ends-in-view [is] the maintenance of a reasonable security of individual expectations."[9] That this stability is a central ingredient of commercial activity is recognized in the rule that disallows going behind a negotiable instrument to show that the maker is acting only as an agent.[10] In this situation, where we are dealing with a medium that is the equivalent of currency, the need for absolute, literal adherence to word symbols is readily apparent. But the question arises whether this same absolute need also is applicable to the contracts in *Pacific Gas & Electric* and *Castellano*. One might urge, for example, that mortgage lenders rely on leases as a basis for financing projects, and indemnity contracts act as inducements for conduct that would not have gone forward but for the inducement of indemnity. That one "goes by the words"

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[7] 28 App. Div. 2d 859, 281 N.Y.S.2d 381 (2d Dep't 1967).

[8] 22 N.Y.2d at 386, 239 N.E.2d at 630, 292 N.Y.S.2d at 881 (citations omitted).

[9] Jones, *An Invitation to Jurisprudence*, 74 COLUM. L. REV. 1023, 1026 (1974).

[10] U.C.C. § 3-403(2). As has been stated, an agent's liability under a negotiable instrument "lies almost entirely in the written symbols he uses to disclose his agency status." J. WHITE & R. SUMMERS, UNIFORM COMMERCIAL CODE 403 (1972). *See also* Rotuba Extruders v. Ceppos, 46 N.Y.2d 223, 385 N.E.2d 1068, 413 N.Y.S. 2d 141 (1978).

has been stated in *Rodolitz* as a fundamental premise in contract interpretation. Yet, unless the contextual frame of reference is brought to the attention of the court as we learn from *Castellano* and *Pacific Gas & Electric*, the court is without any aid to derive meaning other than from words by themselves. Context then assumes a restricted role, as was illustrated in *Rodolitz*.[11]

By "context" we mean the psychological matrix in which the words are used or, stated differently, the "recurrent clumps of experience" upon which we rely for the linkage of the words to ideas.[12] That context is a central ingredient to meaning has been recognized, of course, as a logical proposition,[13] and similar recognition has manifested itself in judicial interpretation of agreements.[14] But are *Castellano* and *Pacific Gas & Electric* aberrations or are their holdings reconcilable with fundamental assumptions of contract interpretation?

An examination of the facts in *Pacific Gas & Electric* and *Castellano* suggests that a literal interpretation of the contract in either case would remove from consideration what human habit and conduct indicate is a more plausible and rational interpretation, since we generally view words in context. If we perceive a digression from what we normally expect, the door is opened to allow extrinsic evidence to explain the meaning of the words. In such a situation it may be urged that the "digressive conduct" of the contract poses an inherent ambiguity which allows the admission of extrinsic evidence to discern the meaning, because the literal reading, while grammatically correct, is either inconsistent with or irrational in the light of experience.[15] Extrinsic evidence was allowed in *Castellano*

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[11] On a motion for summary judgment, opposition on the ground that the contract in question is ambiguous is insufficient to resist the granting of the motion, unless the defendant introduces specific extrinsic evidence which indicates that the written agreement has a meaning different from what the words themselves reveal. Where conclusions are merely offered, the court will restrict interpretation to a literal reading. Mallad Constr. Corp. v. County Fed. Sav. & Loan Ass'n, 32 N.Y.2d 285, 290, 298 N.E.2d 96, 99, 344 N.Y.S.2d 925, 930 (1973).

[12] C. OGDEN & I. RICHARDS, THE MEANING OF MEANING 56 (1959 ed.).

[13] *See* M. COHEN, A PREFACE TO LOGIC 52 (1944); J. DEWEY, LOGIC, THE THEORY OF INQUIRY 135 (1938).

[14] City of Buffalo v. Strong & Co., 304 N.Y. 132, 138, 106 N.E.2d 217, 220 (1952). *See also* 4 S. WILLISTON, CONTRACTS § 618, at 715-16 (3d ed. 1961).

The central importance of context is also illustrated by the rule that a contract will not be construed to produce an absurdity. *E.g.*, River View Assocs. v. Sheraton Corp. of America, 27 N.Y.2d 718, 262 N.E.2d 416, 314 N.Y.S.2d 181 (1970), *aff'g* 33 App. Div. 2d 187, 306 N.Y.S.2d 153 (1st Dep't 1969).

[15] The "no-absurd-construction" rule expressed in River View Assocs. v. Sheraton Corp. of America, 27 N.Y.2d 718, 262 N.E.2d 416, 314 N.Y.S.2d 181 (1970), *see* note 13 *supra*, in a sense is a recognition of "inherent" ambiguity. The appellate division in *River View*, in

and *Pacific Gas & Electric*, but none was offered in *Rodolitz*, requiring the conventional wisdom to fill the role of interpreter.

Where there is no public policy of concern, conduct called for by contract which digresses from the norm can be given sanction, provided such a literal interpretation is clearly indicated in the contract. Thus, when one proposes to digress from habit and normal conduct, it would be well to acknowledge this in the contract and that the interpretation is not to be varied from the literal meaning because of such digression. If such a provision had been placed in the contract in *Pacific Gas & Electric* and in *Castellano*, the reasons for allowing extraneous testimony would disappear, and the agreement would then be governed by the *Rodolitz* rule. While it has been said that the surest way to misinterpret an agreement is to construe it literally,"[16] there is no warping of the contract, if the parties wish a literal construction.

Finally, we learn from *Castellano* and *Rodolitz* that translating ideas into word symbols is not an easy venture. We must strive to achieve correspondence between idea and symbol so that the latter will, to the greatest degree possible, signal the idea and reduce the probability of misunderstanding.[17] When there has been faltering, however, one must look to the learning in *Castellano* and in *Pacific Gas & Electric* to rescue the engagement—resorting to good advocacy to properly present the extrinsic evidence that will resolve the ambiguities.

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refusing to be bound by a literal reading of the lease in issue, relied upon the general practice which prevails in the drafting of default clauses in leases. *See* 33 App. Div. 2d at 190, 306 N.Y.S.2d at 156.

[16] Giuseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944).

[17] We must, of course, recognize that even though we strive to state ideas clearly, there are nevertheless limitations that cannot be overcome. As stated by a leading scholar in the field of contract law: "It is impossible completely to expunge vagueness and ambiguity from contract language." Farnsworth, *Some Considerations in the Drafting of Agreements: Problems in Interpretation and Gap-Filling*, 23 REC. OF (ASS. OF THE BAR CITY OF NEW YORK) (1968).