St. John's Law Review

Volume 15, April 1941, Number 2 Article 14

Contract--Principal and Agent--Mutuality of Obligation (Nathan Rubin v. Dairymen's League Co-operative Association, Inc., 284 N.Y. 32 (1940))

St. John's Law Review

CONTRACT—PRINCIPAL AND AGENT—MUTUALITY OF OBLIGATION.—Plaintiff demands an accounting for commissions alleged to have been earned under an oral contract by which plaintiff agreed to develop the towns of Thompson, Bethel and Fallsburg in the County of Sullivan as a market for defendant's milk products in consideration for which defendant was to designate him as its exclusive distributing agent in such territory and pay him as commissions one-half cent for each quart of milk sold and one-quarter cent for each quart of cream sold. The record discloses that the alleged oral contract was terminated on April 3, 1935 by a letter from defendant to plaintiff. The defendant contends that its promise to pay commissions in exchange for plaintiff's promise to obtain markets is of no legal consequence, for it was void for lack of mutuality and cannot be upheld.[1] *Held,* where the obligation of a unilateral promise is suspended for want of mutuality at its inception, still on performance by the promisee a consideration arises which relates back to the making of the promise, and it becomes obligatory. The agreement was unilateral as to duration and could be terminated by either party at any time. *Nathan Rubin* v. *Dairymen's League Co-operative Association, Inc.,* 284 N. Y. 32, 29 N. E. (2d) 458 (1940).

Mutuality of obligation is not essential to render a party liable on a contract. If there is a consideration for his undertaking, he is bound,[2] and it is not pertinent to the existence of a consideration for a promise that mutuality of obligation should exist between the parties at the time of the making of the promise.[3] An act voluntarily performed in compliance with the proposition and in consideration of a promise by another is a sufficient consideration to render the contract binding.[4] In a decision by the New York Court of Appeals,[5] the law was stated to be that a promise, though void when made for want of mutuality of obligation, becomes binding when the promisee performs the consideration for which the promise was made; and the consideration created by such performance relates back to the original agreement. If one side of an agreement, which was originally too vague for enforcement, becomes definite by entire or partial performance, the other side of the agreement (or a divisible part thereof, corresponding to the performance received) though originally unenforceable, becomes binding.[6] In the instant case the court found that

[1] Terre Haute Brewing Co. v. Dugan, 102 F. (2d) 425 (C. C. A. 8th, 1939); Heaman v. Rowell Co., 261 N. Y. 229, 185 N. E. 83 (1933).

[2] Justice v. Lang, 42 N. Y. 493 (1870); Grossman v. Schenker, 206 N. Y. 466, 100 N. E. 39 (1912).

[3] Thomas-Huycke-Martin Co. v. Gray, 94 Ark. 9, 125 S. W. 659 (1910); Marie v. Garrison, 83 N. Y. 74 (1880); Hoffman v. Maffiali, 104 Wis. 630, 80 N. W. 1032 (1899).

[4] Wood v. Lucy, Lady Duff Gordon, 222 N. Y. 88, 118 N. E. 214 (1917) (contract granting the exclusive right to sell grantor's designs for one-half the profits held not to be void for want of mutuality).

[5] Lynch v. Murphy, 221 N. Y. 557, 116 N. E. 1059 (1914).

[6] Parks v. Griffith & Boyd Co., 123 Md. 232, 91 Atl. 581 (1914); Raymond v. White, 119 Mich. 438, 78 N. W. 469 (1899); Chard v. Ryan-Parker Con-

the contract was "unilateral as to time and hence could be terminated by either party at any time." [7] It is a well settled rule of law that a contract of agency, which leaves the agent free to terminate his relations with the principal upon reasonable notice, must be construed to confer the same rights upon the principal, unless provisions to the contrary are stipulated.[8] The plaintiff contends that the evidence presented by the defendant and accepted by the jury was insufficient to show a termination of the contract and he should recover commissions to the time of the present trial. However, a finding or a judgment by the court on facts will not be disturbed, if there is any evidence fairly tending to support it, or if sustained by sufficient evidence, or substantially supported by the evidence,[9] and the Court of Appeals so found in the instant case.

S. C.

CORPORATIONS—RECOVERY OF DECLARED DIVIDENDS—STATUTE OF LIMITATIONS.—Plaintiffs, executors of the estate of Thomas L. Jacques, deceased, seek to recover the amount of unpaid dividends on 100 shares of preferred stock of the defendant corporation together with interest. During the period from 1906 to 1938, one H. C. Lloyd was the owner of record of 100 shares of preferred stock of defendant corporation. In 1913 decedent, Thomas L. Jacques, acquired the stock certificate upon the death of his father, who evidently obtained the certificate by transfer from H. C. Lloyd. Jacques held the certificates from 1913 until his death in 1931. Until 1938 no attempt was made to present the certificate for transfer on the books of the defendant corporation. The defendant corporation from 1914 to 1922 declared dividends on this stock. After the declaration of dividends no sum was set aside from the corporate assets for their ultimate payment. Entry was made on the books of the corporation of the total

---

struction Co., 182 App. Div. 455, 169 N. Y. Supp. 622 (1st Dept. 1918); 1 WILLISTON, CONTRACTS (rev. ed. 1936) § 106 ("A promise that was originally too indefinite may by performance become definite and as to the other party to the bargain must be regarded as continuously assenting to receive such performance in return for his promise, a valid unilateral contract arises on receipt of such performance.").

[7] Nathan Rubin v. Dairymen's League Co-operative Association, Inc., 284 N. Y. 32, 38, 29 N. E. (2d) 458, 460 (1940); *cf.* Lady Duff Gordon, 222 N. Y. 88, 118 N. E. 214 (1917); Ehrenworth v. Stuhmer & Co., Inc., 229 N. Y. 210, 128 N. E. 108 (1920) (This case must be differentiated from the instant case, for herein it was agreed in writing that the contract was to last as long as both parties were in business. The default was by the defendant who was still in business and bound by the terms of the agreement, hence the plaintiff recovered damages to the date of the trial.).

[8] Wilcox & Gibbs Sewing Machine Co. v. Ewing, 141 U. S. 627, 12 Sup. Ct. 94 (1891); Martin v. The New York Life Ins. Co., 148 N. Y. 117, 42 N. E. 416 (1895); Winslow v. Mayo, 195 N. Y. 551, 88 N. E. 1135 (1909).

[9] Batchelor v. Hinkle, 210 N. Y. 243, 104 N. E. 629 (1914).