

July 2013

War--Emergency Price Control--Suit for Treble Damages for Sale in Excess of Maximum Ceiling Price (Lowres v. Fergus Motors, Inc., 52 N.Y.S.2d 478 (1944))

St. John's Law Review

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Recommended Citation

St. John's Law Review (2013) "War--Emergency Price Control--Suit for Treble Damages for Sale in Excess of Maximum Ceiling Price (Lowres v. Fergus Motors, Inc., 52 N.Y.S.2d 478 (1944))," *St. John's Law Review*: Vol. 19: Iss. 2, Article 17.
Available at: <http://scholarship.law.stjohns.edu/lawreview/vol19/iss2/17>

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WAR—EMERGENCY PRICE CONTROL—SUIT FOR TREBLE DAMAGES FOR SALE IN EXCESS OF MAXIMUM CEILING PRICE.—Suit for treble damages was brought based on the allegation that the defendant “agreed, offered, and attempted to sell and deliver to plaintiff” a certain automobile at a price in excess of the maximum established under the regulations adopted by the Office of Price Administration under the authority of the Emergency Price Control Act of 1942.¹ Plaintiff sought to recover three times the sum in excess of the maximum at which defendant “agreed, offered, and attempted to sell and deliver” the automobile to plaintiff, but there was no allegation in the complaint that plaintiff actually paid anything to defendant. Defendant made a motion to dismiss the complaint for insufficiency on its face. *Held*, motion granted. Congress intended the recovery of treble damages to apply only when a price in excess of the maximum was actually paid by the consumer, not bargained for. The failure of the complainant to allege the payment of the above-ceiling price was fatal to her suit. *Lowres v. Fergus Motors, Inc.*, 52 N. Y. S. (2d) 478 (1944).

Since the Emergency Price Control Act is constitutional solely because it is a wartime emergency measure,² it must be construed in such manner as fulfills the purpose of the Congress as disclosed by the literal meaning of the words of the statute.³ In other words, the punitive feature of this section authorizing a person who has been overcharged in violation of price regulation to bring action for \$50 or for treble the overcharge must be strictly construed and cannot be operative against a defendant unless this section expressly authorizes it, and liability cannot be established or extended by implication.⁴ Going a step further, the court, in a case which gained nationwide notoriety due to the concomitant use of troops to seize and occupy the premises of the company, said, “The statute is not to be administered grudgingly, and requires a strict construction of all violative acts.”⁵

¹ Act Jan. 30, 1942, c. 26, 56 STAT. 23, 50 U. S. C. A. § 901 *et seq.*

² *Yakus v. United States*, 64 Sup. Ct. 660, 321 U. S. 414, 88 L. ed. 834 (1944); *Rottenberg v. United States*, 137 F. (2d) 850, *aff'd*, 64 Sup. Ct. 660, 321 U. S. 414, 88 L. ed. 834 (1943); *accord*, *Taylor v. United States*, 142 F. (2d) 808 (1944); *Brown v. W. T. Grant Co.*, 53 F. Supp. 182 (1943).

³ *Bowles v. Chew*, 53 F. Supp. 787; *Bowles v. Strickland*, 55 F. Supp. 132 (1944); *Ward v. Bochino*, 181 Misc. 355, 46 N. Y. S. (2d) 54 (1944); *accord*, *Bristol v. Sun Vacuum Stores*, 181 Misc. 522, 42 N. Y. S. (2d) 501 (1943); *Kerr v. Congel*, 181 Misc. 461, 46 N. Y. S. (2d) 932 (1944).

⁴ *Hall v. Chaltis*, 31 A. (2d) 699 (1943); *accord*, *Ward v. Bochino*, 181 Misc. 355, 46 N. Y. S. (2d) 54 (1944); *Lightbody v. Russell*, 45 N. Y. S. (2d) 15 (1944).

⁵ *Bowles v. Montgomery Ward & Co.*, 143 F. (2d) 38 (1943). The words quoted were cited with approval by the U. S. Supreme Court in *Hecht v. Bowles*, 321 U. S. 321, 64 Sup. Ct. 587 (1944).

The section of the statute upon which the plaintiff sued in the instant case (50 U. S. C. A. § 925[e]) reads: "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price, the person who *buys* such commodity for use or consumption may bring an action either for \$50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater." A clue as to the meaning of the word "buy" as intended by the Congress can be seen in the sentence of the section next succeeding⁶ the one quoted. That sentence reads as follows: "For the purposes of this section the *payment or receipt* of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be."⁷ The court, in granting the defendant's motion to dismiss, relied heavily upon this sentence of the statute just quoted. It was forced to do so because the legal definitions help the plaintiff. The word "buy" in a legal sense means: "to acquire the ownership of property by giving an accepted price or consideration therefor; or *by agreeing to do so.*"⁸ Thus an accepted promise to pay a certain sum for an article of goods comprises a buying of those goods, without the actual tender of the money.

The decision in the instant case was one of many in which the statute was construed in an exceedingly strict manner. In an effort to discourage the courts from rendering the statute powerless to fulfill its worthy task, Douglas, J. of the U. S. Supreme Court, skillfully warned that "the Administrator does not carry the sole burden of the war against inflation. The courts also have been entrusted with a share of that responsibility. And their discretion under Section 205 must be exercised in the light of the large objectives of the Act. For the standards of the public interest, not the requirements of private litigation, measure the propriety and need for relief in these cases. That discretion should reflect an acute awareness of the Congressional admonition that 'of all the consequences of war, except human slaughter, inflation is the most destructive' (S. Rep. No. 931) and that delay or indifference may be fatal."⁹

⁶ 50 U. S. C. A. § 925(f).

⁷ Italics supplied.

⁸ BLACK'S LAW DICTIONARY.

Following through on legal definitions, a "sale" is defined by modern authorities as "a contract or agreement for transfer of the absolute property in personalty from one person to another for a price in money." TIEDEMAN, SALES § 1, taken from 2 KENT'S COMM. 468. This definition does not accord with the older meaning given by Blackstone, who defined a sale to be "a transmutation of property from one man to another in consideration of some price." 2 BL. COMM. 446. The former, more widely accepted definition, allows an *executory* arrangement for the transfer of property to constitute a sale.

⁹ Hecht Co. v. Bowles, 321 U. S. 321, 64 Sup. Ct. 587 (1944).

With the end of the war in Europe there will be a tendency for people, particularly discharged servicemen, to forget the warnings about the rising cost of living. Vast sums of ready cash, accumulated during the war, will be ready to snatch up the newly manufactured products as they commence to roll off the production lines. The strain on the maximum price-ceilings, great as it is now, will multiply enormously. Demand will overwhelm supply, and all sorts of machinations will be attempted to escape the ceiling prices by buyer and seller alike. The courts must prepare now for the stress to come. The Emergency Price Control Act must not be allowed to become a weaponless mass of verbiage, it must be forged into an effective means capable of holding back the flood. The tendency of the courts must be away from the rule of construction applied in the instant case, and more in line with the warning of Mr. Justice Douglas.

S. P.