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Contracts—Employment Agreement

Frank Dombrowski Jr.

tion, such an agreement is valid and binding. Since there is no allegation that a net profit was earned, only defendant's own wrong resulting in non-performance would entitle plaintiff to recover. If on retrial it is found that the embargo prevented performance, defendant is entitled to judgment, since he may prove non-performance was not caused by himself.

The case indicates with considerable force the distinction between the failure of the occurrence of an event deemed a condition precedent and the failure to perform a promise in a contract. Although the rule has been subject to criticism,[39] New York Courts have continued to hold that the imposition of a foreign embargo will not prevent a breach of a contractual duty, even where it renders performance impossible.[40]

Employment Agreement

In *Wilson Sullivan Co. v. International Paper Makers Realty Corp.*,[41] a building owner entered into a written agreement with a realty firm whereby the former "employ[ed] and appoint[ed]" the latter as exclusive renting and managing agent of the building. The agreement was to continue until a stipulated time, and if not then terminated, it would continue from year to year until terminated by either party at the end of any extended yearly term by giving of thirty days prior notice in writing. Three months after an annual renewal period began, the owner gave notice of his intention to sell the building. The agent sued for damages resulting from an alleged breach of contract.

The granting of authority to an agent is often accompanied by a contract with the agent for services. The parties are principal and agents; they are also contractors. If this dual relationship is kept in mind, the legal effects of a revocation are clear.[42] Although suitable notice by the principal revokes the agent's power, the principal cannot revoke the contract.[43]

The court, in the instant case, observing that it is limited to giving effect only to the parties express intent,[44] held (4-3) that

39. 6 WILLISTON, CONTRACTS, § 1938, (Rev. ed. 1938); RESTATEMENT, CONTRACTS, § 461.

40. *Richards v. Wreshner*, 174 App. Div. 484, 158 N. Y. Supp. 1129 (1st Dep't 1916); *Vanetta Velvet Corp. v. Kakunaka & Co.*, 256 App. Div. 341, 10 N. Y. S. 2d 270 (1st Dep't 1939).

41. 307 N. Y. 20, 119 N. E. 2d 573 (1954).

42. FERSON, PRINCIPLES OF AGENCY § 189 (1954); MECHEM, OUTLINES OF AGENCY § 23 (4th ed. 1952).

43. *Star Fire Insurance Co. v. Ring*, 118 App. Div. 107, 103 N. Y. Supp. 137 (1st Dep't 1907); 1 WILLISTON, CONTRACTS § 279 (Rev. ed. 1938).

44. *Friedman v. Handelman*, 300 N. Y. 188, 194, 90 N. E. 2d 31, 34 (1949); *Rosenthal v. American Bonding Co. of Baltimore*, 207 N. Y. 162, 168-169, 100 N. E. 716, 718, (1912); 3 WILLISTON, *op. cit.*, § 610.

where termination is specified in a certain manner, it could not imply a condition that the principal has a right to terminate the agreement by selling the building. The result reached by the court, which perhaps can be justified by the ambiguity of the agreement,[45] seems to argue from the fact of the stipulation of an express termination agreement to the finding of a contract of employment. The case principally relied on by the court did not involve such a situation,[46] since it dealt with the breach of a definitely established employer-employee relationship negotiated between the employer and a trade union, providing employment for a definite period at a guaranteed weekly wage. Here the very point in issue is whether any employer-employee relationship was ever contemplated.

The dissenters, led by Judge Dye, feel that when the contract is read in the light of its avowed purpose, it is, in form and tenure, the usual real estate management agreement, which could be converted into an employment contract only by lifting the word "employ" and "employment" out of context. Further provisions in the agreement indicated a marked similarity to the usual provisions in a management agreement which is terminated when the subject matter is extinguished by a bona fide sale after notice.

Constructive Trusts

A person who delivers monies to another with instructions to pay them to a third person may intend either to make the receiver an agent for himself or to constitute him a trustee for a third person.[47] If the former intention is found, the third person will have no right of action to recover the monies;[48] if the latter be the intention, a cause of action for money had and received will arise in favor of the third person.[49] It is the intention of the owner, and not that of the receiver which is determinative of the relationship formed.[50]

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45. After stating that defendants were employed, the parties thereafter were exclusively referred to as principal and agent.

46. *Hudak v. Hornell Industries,* 304 N. Y. 207, 106 N. E. 2d 609 (1952) noted in 4 SYR. L. REV. 146 (1952).

47. 2 WILLISTON, CONTRACTS, § 351 (Rev. ed. 1936).

48. *Erb v. Banco di Napoli,* 243 N. Y. 45, 152 N. E. 460 (1926); *Noyes v. First Nat. Bank,* 180 App. Div. 162, 167 N. Y. Supp. 288 (1st Dep't 1917), *aff'd* 224 N. Y. 542, 120 N. E. 870 (1918).

49. 2 WILLISTON, *op. cit.* § 353.

50. *Sayer v. Wynkoop,* 248 N. Y. 54, 59, 161 N. E. 417, 418 (1928). While an explicit declaration of trust may be involved, *Rogers Locomotive & Machine Works v. Kelly,* 88 N. Y. 235 (1882), circumstances which show beyond reasonable doubt that a trust was intended to be created is sufficient. *Beaver v. Beaver,* 117 N. Y. 421 (1889). The latter situation presents a question of fact for the jury. *Read v. Morford,* 203 App. Div. 166, 196 N. Y. Supp. 433 (1st Dep't 1922).