Buffalo Law Review

Volume 3 | Number 2 Article 18

4-1-1954

Interpleader—Test of Mutually Exclusive Claims

Donald J. Holzman

The scope of this last section of I. T. 3795 was severely restricted in a subsequent case where the taxpaper *purchased* stock options from his employer corporation and later *sold* them at a profit. The Tax Court, relying on the dictum in the *Smith* case, held that the spread between the sale and purchase price of the options was not ordinary income and that I. T. 3795 did not apply. *Lauson Stone,* 19 T. C. 872 (1953), *aff'd,* 210 F. 2d 33 (1954).

Although in the instant case the employee exercised, rather than sold the options, which he received in connection with an employment contract rather than by purchase, the court reached the same result as in the *Stone* case, *supra.* The court here relies heavily on the manifest intent of the corporation that the option be considered compensation for the year in which it was granted, and the finding that the option could have been sold for a substantial sum in the year of its receipt.

By holding that, despite the subsequent exercise, the value of the option at the time of grant was the only compensation involved, the *McNamara* case has now completely vitiated I. T. 3795, *supra,* and its rigid objective criteria.

Since the court did find that the grant of the option was intended to be compensation, T. D. 5507 is not yet squarely controverted if the option, rather than the stock purchased pursuant to it be considered the "property transferred." However, there seems to be little doubt that the courts have not departed from their position that what is compensation under the code is determined by the action and intention of the parties and not by Treasury Regulations.

Jules Gordon

INTERPLEADER — TEST OF MUTUALLY EXCLUSIVE CLAIMS

A and B are brokers. In an action by A to recover commissions from vendor, B was interpleaded. In the contract of sale between vendor and purchaser, the latter designated B as procuring broker and agreed to deliver to vendor an agreement indemnifying him against loss by reason of any claim by any other broker for commissions. Simultaneously, another agreement was made between vendor and B reciting the contents of the above contract and stating that vendor was to pay $90,000 to B. *Held* (4-1): B can rest on his agreement with vendor; A's claim for commissions earned is not affected thereby; therefore, interpleader should not have been granted. *Norman v. Oakland Golf Club,* 282 App. Div. 960, 125 N. Y. S. 2d 859 (2d Dep't 1953).

Interpleader allows a party to avoid the risk of being vexed by two or more suits in respect to one liability. 4 POMEROY'S EQUITY JURISPRUDENCE § 1320 (5th ed. Symons 1941). Modern statutes have enabled courts of law to grant this relief which had its origin in the common law and was expanded in equity. Rogers, *Historical Origins of Interpleader,* 51 Yale L. J. 924 (1942); C. P. A. §§ 285-287. Interpleader statutes in New York include both an action of interpleader, C. P. A. § 285, and interpleader in a pending action, C. P. A. §287. However, unless stating so, the statutory remedy does not in itself shed the effect of the original doctrines of interpleader. POMEROY, *supra,* § 1329; *Pouch v. Prudential Ins. Co.,* 204 N. Y. 281, 97 N. E. 731 (1912). Such doctrines have dealt primarily with: (1) disinterest, *e. g.* that the person asking the relief neither have nor claim any interest in the subject matter; (2) no independent liability, *e. g.,* that such person stand perfectly indifferent between both claimants as a mere stakeholder; (3) identity, *e. g.* that the claim be for the same thing; and (4) privity, *e. g.* that all claims be derived from a common source. POMEROY, *supra,* § 1322; See also Frumer, *On Revising the New York Interpleader Statutes,* 25 N. Y. U. L. J. 737 (1950).

The requirement of "disinterest" has been eliminated in New York by statute as to interpleader in a pending action. C. P. A. § 287. "It probably can be said that the requirement of 'no independent liability' has been eliminated by statute to the same extent as that of 'disinterest,'" Furmer, *supra,* at 764, citing *Fanning v. Supreme Council,* 61 App. Div. 190, 70 N. Y. Supp. 437 (1st Dep't 1901); The "identity" requirement has not been strictly adhered to in New York. *Dorn v. Fox,* 61 N. Y. 264 (1874); "It has been pointed out that the 'identity' requirement is partly an unsuccessful attempt to phrase the principle of 'mutual exclusiveness,'" Frumer, *supra* at 751; Chafee, *Modernizing Interpleader,* 30 YALE L. J. 814 (1921); *Clark v. Childs,* 234 App. Div. 561, 256 N. Y. Supp. 69 (4th Dep't 1932). Some courts have denied interpleader if a stakeholder has a separate contract with each claimant, since no "privity" is said to exist between the claims. *McCreery v. Inge,* 49 App. Div. 133, 63 N. Y. Supp. 158 (1st Dep't 1900). However, the privity theory is perhaps giving way to broader, more liberal rules of modern practice, the trend apparently being to ignore the requirement or hold it inapplicable. Frumer, *supra; Dardonville v. Smith,* 133 App. Div. 234, 117 N. Y. Supp. 216 (2d Dep't 1909), overruling *McCreery v. Inge, supra.*

As a result of the development of the law indicated above, the primary test in New York now appears to be that of mutually exclusive claims. This is illustrated in *Clark v. Childs, supra,* where the court, denying interpleader, mentioned that the validity

of one claim did not depend on the invalidity of the other claim and said, ". . . in every case of interpleader, whether by action or by motion, a prerequisite is that . . . the claims must be mutually exclusive." *Clark v. Childs, supra* at 561, 256 N. Y. Supp. at 70. Further indications are seen in the following cases where interpleader was allowed. *Rasines v. Ines,* 85 App. Div. 483, 83 N. Y. Supp. 228 (1st Dep't 1903), defendant owed but one amount; *Trembley v. Marshall,* 118 App. Div. 839, 103 N. Y. Supp. 680 (1907) (1st Dep't 1907), defendant had not rendered himself liable to pay double commissions; *Dardonville v. Smith, supra,* liability was to one only; *Fox v. Commeyer,* 93 Misc. 180, 156 N. Y. Supp. 1046 (1st Dep't 1916), no conduct resulted in liability for commissions to both brokers; *Myers v. Batcheller,* 177 App. Div. 47, 163 N. Y. Supp. 88 (3rd Dep't 1917), the facts allow but one recovery against defendant; *Salamon v. Brooklyn Savings Bank,* 180 Misc. 841, 44 N. Y. S. 2d 420 (Sup. Ct. 1943), no special contract gave more than one the right to the commission; *Fanslow v. Manufacturers Trust Co.,* 181 Misc. 272, 47 N. Y. S. 2d 396 (Sup. Ct. 1943), defendant would ultimately be liable for only one commission. This same test led to a denial of interpleader in these cases: *Wood, Dolson Co., Inc. v. Leonett Realty Co., Inc.,* 227 App. Div. 552, 238 N. Y. Supp. 342 (1st Dep't 1930), one broker based his claim upon producing a purchaser, and the other claimed by reason of closing title; *Strauss v. Grande Maison de Blanc,* 237 App. Div. 83, 260 N. Y. Supp. 368 (1st Dep't 1932), since each claimant had a separate agreement, each might recover upon his respective claim, the so-called debts not being mutually exclusive.

In its memorandum the court in the instant case does not openly avow to a definite principle. However, *Williamsburgh Savings Bank v. Avery,* 260 App. Div. 1047, 24 N. Y. S. 2d 367 (2nd Dep't 1940), a case with similar facts, is cited as not controlling, because in that case "the insert signed by the broker was, so far as the broker was concerned, specifically stated to be but a memorial of the original employment of the broker. It was not a new agreement supported by a new consideration moving to the seller." *Norman v. Oakland Golf Club, supra* at 961, 125 N. Y. S. 2d at 860. This would imply the instant case followed the dissent in the *Williamsburgh* case, *supra* at 1047, 24 N. Y. S. 2d at 368, where two justices expressed the view that since the vendor had determined for itself, by stipulation, that it was liable to one broker, it could possibly be liable to both. Therefore, the vendor was not rightly seeking to avoid a double payment, because, there, it could not be said only one payment was due.

The court's construction of the facts in the *Norman* case, resulted in a decision in accord with the test of mutually exclusive claims. However, a court might properly construe the same

facts to mean that the contract by which vendor agreed to pay $90,000 to B was made for B being the procuring cause of the sale and not in consideration of the indemnity agreement. Adopting this interpretation, which allows substance to prevail over form, the claims of both A and B would then be based purely on commissions earned; they would be mutually exclusive; interpleader could be allowed. See dissent, *Norman v. Oakland Golf Club, supra* at 961, 125 N. Y. S. 2d at 861.

Donald J. Holzman

LABOR LAW — STATE JURISDICTION PRE-EMPTED

In order to induce an interstate trucker's employees to join it, defendant union posted pickets at petitioner's loading platform, though there was no labor dispute or strike in progress. Petitioner, whose business fell off by as much as 95% as a result of the refusal of other unionized carriers to cross the line, obtained an injunction under state law prohibiting such picketing. *Held,* unanimously affirming the Pennsylvania Supreme Court's vacating of the injunction, jurisdiction of such practices is vested exclusively in the National Labor Relations Board. *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (A. F. L.),* 74 Sup. Ct. 161 (1953).

The instant decision is another in a long line of cases which has taken up the task of defining the respective areas of state and federal jurisdiction in the field of concerted labor activities, beginning with the proposition that where "federal administration has made comprehensive regulations effectively governing the subject matter of the statute, . . . state regulation in the field of the statute is invalid even though that particular phase of the subject has not been taken up by the federal agency." *Bethlehem Steel Co. v. New York State Labor Relations Board,* 330 U. S. 767 (1947). As to certain areas of labor relations, federal action is in terms exclusive; *e. g.,* representation proceedings, 29 U. S. C. A. § 159. In others, state action is in terms permitted; *e. g.,* union shop agreements, 29 U. S. C. A. § 164(b). Problems arise in that area where federal law has not completely occupied the field.

The wholesale extension of federal power over the field of union unfair labor practices, an area which, prior to the enactment of the Taft-Hartley Act, was solely a state concern, has resulted in a considerable amount of litigation. States may not promulgate a policy contrary to that of the federal act, *International Union, U. A. W. A., C. I. O. v. O'Brien,* 339 U. S. 454 (1950), even in the exercise of their police powers, *Amalgamated Ass'n of Street, Electrical Ry. & Motor Coach Employees v. Wisconsin Employment Relations Board,* 340 U. S. 383 (1951). On the