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Contracts - Mutuality of Obligation - Agreements to Purchase Goods as Needed for Future Requirements as Valid Consideration

Henry C. Mahlman

CONTRACTS—MUTUALITY OF OBLIGATION—AGREEMENTS TO PURCHASE GOODS AS NEEDED FOR FUTURE REQUIREMENTS AS VALID CONSIDERATION. At plaintiff's suggestion, an inventor commenced full-time manufacture of a shoe dressing he had devised, and executed a contract with the plaintiff under which plaintiff was to be sole distributor of the product and was to purchase not less than 25,000 bottles at fifteen cents per bottle per month, the contract to become void should plaintiff be unable to sell 25,000 bottles per month by the end of the second year. A further clause provided that plaintiff should not handle or sell any similar products for the life of the contract. By the end of the second year it became apparent plaintiff would not be able to sell 25,000 bottles per month the following year, and the parties amended their contract by striking the minimum purchase provision entirely. Friction developed between the parties and the seller notified the plaintiff that he was terminating their agreement at the end of that year. Plaintiff sued for breach of contract. It was *held* that the contract was void for want of mutuality, since the defendant could sell to no other distributor, whereas the plaintiff was not bound to purchase any of the dressing at all. *Hoffman v. Pfingsten*, 50 N.W.2d 369 (Wis. 1951).

Contracts of this nature, designed to enable a buyer to purchase goods from the seller without any specification of quantity in the agreement, are often held invalid for lack of mutuality.[1] In reality, this simply means that consideration is lacking from the agreement, since where such contacts are supported by any consideraton other than the mutual promises they are held good.[2] A promise may be a good consideration for another promise,[3] but to be such the promises must impose liability or responsibility on each party.[4] To be enforceable, therefore, contracts such as the one found in the instant case must be reasonably definite as to the time of future purchases and their quantity;[5] and quantity must not depend upon the mere will or wish of the buyer.[6] Where the only construction that can be given the agreement is that the seller is to supply what the buyer may desire or order, the

1. Leach v. Kentucky Block Cannel Coal Co., 256 Fed. 686 (S.D.N.Y. 1919); A. Santaella & Co. v. Otto F. Lange Co., 155 Fed. 719 (8th Cir. 1907); Eldorado Ice & Planing Mill Co. v. Kinard, 96 Ark. 184, 131 S.W. 460 (1910); Tiepel v. Meyers, 106 Wis. 41, 81 N.W. 982 (1900); Hoffman v. Maffioli, 104 Wis. 630, 80 N.W. 1032 (1899).

2. Armstrong Paint & Varnish Works v. Continental Can Co., 301 Ill. 102, 133 N.E. 711 (1921); Scott v. T.W. Stevenson Co., 130 Minn. 151, 153 N.W. 316 (1915); Pittsburgh, C.C.& St.L. Ry. .v Cox, 55 Ohio St. 497, 45 N.E. 641 (1896). For holdings to the effect that lack of mutuality in such situations is really lack of consideration, see Johnson v. Johnson, 188 Ark. 992, 68 S.W.2d 465 (1934); Malloy v. Egyptian Tie & Timber Co., 212 Mo.App. 429, 247 S.W. 469 (1923). See also Williston, Contracts §141 (Rev. ed. 1936).

3. Anderson v. LaRinconada Country Club, 4 Cal. App.2d 197, 40 P.2d 571 (1935); Underwood Typewriter Co. v. Century Realty Co., 220 Mo. 552, 119 S.W. 400 (1909). An indefinite promise, however, is not a good consideration. International Shoe Co. v. Herndon, 135 S.C. 138, 133 S.E. 202 (1926).

4. American Cotton Oil Co. v. Kirk, 68 Fed. 791 (7th Cir. 1895); Emerson v. Pacific Coast & Norway Packing Co., 96 Minn. 1, 104 N.W. 573 (1905); Hopkins v. Racine Malleable & Wrought Iron Co., 137 Wis. 583, 119 N.W. 301 (1909); Excelsior Wrapper Co. v. Messinger, 116 Wis. 549, 93 N.W. 459 (1903).

5. Cold Blast Transportation Co. v. K.C. Bolt and Nut Co., 114 Fed. 77 (8th Cir. 1902); Crane v. C. Crane & Co., 105 Fed. 869 (7th Cir. 1901); McCaw Mfg. Co. v. Felder, 115 Ga. 408, 41 S.E. 664 (1902); Wells v. Alexandre, 130 N.Y. 642, 29 N.E. 142 (1891).

6. Northern Iowa Gas & Electric Co. v. Luverne, 257 Fed. 818 (N.D. Iowa 1919); Conley Camera Co. v. Multiscope & Film Co., 216 Fed 892 (8th Cir. 1914); Heglie v. Rust, 211 Ill. 333, 71 N.E. 1010 (1904).

agreement imposes no obligation on the purchaser and is therefore invalid.[7] But this is not true where the agreement binds the purchaser to take from the seller whatever may be required for an established business for a definite length of time, such agreements being considered sufficiently definite and certain to be binding.[8] Most courts hold that where the purchaser is engaged in jobbing, wholesaling, or acting as a middleman, and enters into a contract of the type found in the instant case, the contract is not sufficiently definite to be enforceable, since future requirements cannot be definitely known.[9] However, a small minority of courts have held valid agreements to supply middlemen or those not engaged in an established business under some conditions.[10] The present decision nevertheless seems in accord with the weight of authority.

HENRY C. MAHLMAN

COURTS—EXTENT OF JURISDICTION—SITUATION OF REAL PROPERTY—LOCAL OR TRANSITORY ACTIONS. Defendant committed a trespass upon plaintiff's property located in Missouri. Plaintiff brought an action in Arkansas for the injuries sustained. The Arkansas court, rejecting the well established rule that such actions are local and must be brought within the state where the land is located, *held* that plaintiff might maintain his action. The court cited the Arkansas Constitution: "Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property, or character." [1] The dissenting opinion labeled the Court's action as judicial legislation. *Reasor-Hill Corp. v. Harrison*, 249 S.W.2d 994 (Ark.,1952).

Early English litigation established that an action to recover damages for injuries to land can be brought only in the jurisdiction where the land is located.[2] This rule became established due to the rules of venue which developed in England, venue being based on and controlled by the factual knowledge of the jurors who participated at the trial.[3] When the question

7. See cases cited note 1, *supra*.

8. T.W.Jenkins Co. v. Anaheim Sugar Co., 247 Fed. 958 (8th Cir. 1918); Golden Cycle Mining Co. v. Rapsom Coal Mining Co., 188 Fed. 179 (8th Cir. 1911); Edison Electric Illuminating Co. v. Thatcher, 229 N.Y. 172, 128 N.E. 124 (1920); Wells v. Alexandre, 130 N.Y. 642, 29 N.E. 142 (1891); Secor v. Ardsley Ice Co., 133 App. Div. 136, 117 N.Y. Supp. 414 (1909), *aff'd*, 201 N.Y. 603, 95 N.E. 1139 (1911).

9. For a discussion of this point, see the dissenting opinion in Oscar Schlegel Mfg. Co. v. Peter Cooper's Glue Factory, 189 App.Div. 843, 179 N.Y.Supp. 271 (1919). The amount of commodities required by jobbers and middlemen is so largely controlled by the price which can be obtained for them that to sustain contracts giving middlemen an indefinite option to purchase is simply to give the middleman an undue advantage should prices rise or fall. See Crane v. C. Crane & Co., 105 Fed. 869 (7th Cir. 1901); American Trading Co. v. National Fibre and Insulation Co., 1 W.W. Harr. (Del.) 65, 111 Atl. 290 (1920).

10. See Texas Co. v. Pensacola Maritime Corp. 279 Fed. 19 (5th Cir. 1922); Ehrenworth v. George F. Stuhmer & Co., 229 N.Y. 210, 128 N.E. 108 (1920).

1. Arkansas Constitution, Art. 2, §13.

2. Skinner v. East India Co., 6 How. St. Tr. 710 (1666); Shelling v. Farmer, 1 Str. 646 (1725); Doulson v. Matthews, 4 T.R. 503, 100 Eng. Rep. 1143 (1792); British South Africa Co. v. Companhia de Mocamibique, A.C. 602 (1893).

3. *See* Scott, Fundamentals of Procedure in Action at Law 18 ff. (1922) "Every fact relied upon in the pleadings had to be stated as having occurred at a certain place. It was the place at which the facts in issue were asserted to have occurred that determined the venue . . ."; Note, *May an Action for Trespass to Land in Another State Be Maintained in Kentucky?* 28 KyL.J. 462 (1930).