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Florida Tax Titles: Binding Effect of Contract for Sale of Public Land

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erence was made to the original reasons for the separation. Furthermore, the Court did not concern itself with an inquiry as to whether any attempt by the husband would have been fruitful.

The instant case extended the Florida law on constructive desertion; it now seems to be necessary for a husband to attempt reconciliation even when he is originally blameless and perhaps even if such attempts would obviously be futile. Failure to do this will apparently result in his being declared a constructive deserter.

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FLORIDA TAX TITLES: BINDING EFFECT OF CONTRACT FOR SALE OF PUBLIC LAND

McCarty v. Booth, 69 So.2d 655 (Fla. 1954)

Appellee purchased land acquired by the state under the Murphy Act.[1] The sale complied with law as to notice, and appellee made payment. Before the deed had been executed and delivered the county board of public instruction requested the Trustees of the Internal Improvement Fund to declare this land a public school site pursuant to law,[2] but this request was not made within the time limit of twenty-one days set by the trustees in their own rules. After some delay the trustees decided to convey the property to the county but allowed appellee thirty days in which to bring suit to determine whether they had committed legal error. Appellee sought writ of mandamus to compel transfer of title to him, and the circuit court granted the peremptory writ. HELD, mandamus lies to compel completion of this valid contract of sale. Judgment affirmed, Chief Justice Roberts and Justices Terrell and Drew dissenting.

That a contract for sale of land is binding after acceptance of offer is a principle seldom disputed.[3] The *Restatement of Contracts*[4] states that a bid at an auction is an offer and that the fall of the gavel

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[1]FLA. STAT. §§192.35 *et seq.* (1953).

[2]FLA. STAT. §192.50 (1953).

[3]*E.g.*, Perkins v. Simmons, 153 Fla. 595, 15 So.2d 289 (1943); Frissell v. Nichols, 94 Fla. 403, 114 So. 431 (1927); Tucker v. Gray, 82 Fla. 351, 90 So. 158 (1921).

[4]§27 (1932).

constitutes acceptance. Even the consideration for property sold at public auction need not be adequate, because the basic reason for bidding is to obtain the goods at the best possible price.[5] One objective of the law is to give the state and private parties equal protection of legal rights once these rights are established.[6] After their creation the rights of the state, unless varied in advance by valid statute, are essentially the same as those of any other vendor or vendee in a contract for sale of land.[7] Private parties must perform their duties under a contract, and decency and fair play demand that public officials similarly carry out contracts entered into by them on behalf of the state.[8] It is the statutory duty of the Trustees of the Internal Improvement Fund to execute a deed to the purchaser of public lands after a valid sale.[9] The proper remedy to compel performance of this purely ministerial function is mandamus.[10] Whether to sell public land is discretionary, but whether to perform a valid contract already entered into is not.

The Florida Statutes provide that a county board of public instruction may obtain for public purposes, without consideration and without sale, land held by the trustees. When a prior sale has been made, however, certain requirements must be met in order to have such a sale set aside.[11] In the instant case the board eventually complied with these requirements. It deposited with the agent of the trustees the various amounts of money required. Pursuant to resolution it requested in writing rejection of the bid. But it failed to observe the requirement in the rules that this action be taken within twenty-one days after sale. Accordingly, the trustees no longer had jurisdiction to reject the contract of sale.

Rules of administrative bodies generally have the force of law if

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[5]Sanford v. Ashton, 131 Fla. 759, 179 So. 765 (1938).

[6]People v. Stephens, 71 N.Y. 527 (1877).

[7]*E.g.*, Douglas v. Murphy, 218 La. 888, 51 So.2d 310 (1950); Willoughby v. Long, 96 Tex. 194, 71 S.W. 545 (1903); Fristoe v. Blum, 92 Tex. 76, 45 S.W. 998 (1898).

[8]Gay v. Southern Builders, Inc., 66 So.2d 499 (Fla. 1953); State *ex rel.* Wadkins v. Owens, 62 So.2d 403 (Fla. 1953).

[9]FLA. STAT. §270.09 (1953).

[10]Hunt v. Board of Comm'rs of Everglades Drainage Dist., 37 So.2d 534 (Fla. 1948); State v. Atlantic C.L. R.R., 53 Fla. 650, 44 So. 213 (1907). For a full discussion see Goodrich and Cone, *Mandamus in Florida*, 4 U. OF FLA. L. REV. 535 (1951); see also Adams and Miller, *Origins and Current Florida Status of the Extraordinary Writs, id.* at 421, 450-452.

[11]*Guide of Procedure in the Sale of Land Under Chapter 18296*, p. 6 (1952), promulgated as official rules by the Trustees of the Internal Improvement Fund.

promulgated to the public.[12] In the instant case, however, the dissenting justices took the position that the decision of the trustees, based on a rule of their own making and subject to change at their whim, was validly made. This reasoning overlooks a basic point. Rules of administrative agencies may normally be changed at will with regard to the future, but the change cannot be applied ex post facto.[13] Performance of the obligations of a contract is a basic concept in American law. The dissenting opinion does not oppose this concept but rather expresses the idea that administrative agencies may effect changes in their rules at will and apply them retroactively to contracts already made.

Assuming that the land was needed, the fact is that the board did not apply in time, although it could still have proceeded by eminent domain. It may be that the rules should be changed to lengthen the time limit if the officials find in practice that an extension of time is necessary to afford the public adequate protection. Administrative inefficiency should of course be corrected for the future, but it should not be corrected for the past by settling the whole burden upon one individual who has purposely and conscientiously relied on the rules promulgated for his guidance.

The instant decision highlights two conflicting concepts: the enforcement of contract rights, whether of the public or of an individual, and the notion that public policy requires public seizure of private property and disregard of contracts in order to obtain something for nothing. In an age such as ours the rights of the individual under law need more than ever the sturdy defense of the judiciary, and the majority in the instant case evidently sensed the far-reaching effect of a contrary decision.

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[12]*E.g.*, State v. Friedkin, 244 Ala. 494, 14 So.2d 363 (1943).
[13]York v. State *ex rel.* Schwaid, 152 Fla. 285, 10 So.2d 813 (1943).