Michigan Law Review

Volume 37 | Issue 3

1939

CONTRACTS - ASSIGNMENT OF A DEBT ARISING UNDER A CONTRACT TO BE MADE IN THE FUTURE

Stanton J. Schuman
University of Michigan Law School

CONTRACTS — ASSIGNMENT OF A DEBT ARISING UNDER A CONTRACT TO BE MADE IN THE FUTURE — The *M* Milk Co. was negotiating a sale of its business to the defendant, who did not want to purchase the business unless *M* Co. could deliver the personal property free of incumbrances. *G*, who held a mortgage on these properties, was present at the first negotiations between *M* Co. and the defendant, and at this time he released his mortgage in consideration of an assignment to him by *M* Co. of all the debts now due or to become due to it. Shortly thereafter a sale of the property was negotiated to the defendant, the result of which was that the defendant became indebted to *M* Co. for the purchase price. Part of this price being outstanding, *M* Co.'s receiver brought this action to recover the balance due. *Held*, *M* Co. had no right to recover because the debt due under the contract of sale had been effectively assigned to *G*. *Bergson v. H. P. Hood & Sons*, (Mass. 1938) 15 N. E. (2d) 196.

It is generally held that an assignment of a debt expected to arise under a contract not yet made is ineffective,[1] although it is universally agreed that one may assign conditional rights under an existing contract.[2] Many of the cases involving the attempted assignment of rights under future contracts relate to the assignment of accounts receivable.[3] Perhaps the greater number involve the assignment of future wages, and in such cases it is generally admitted that the assignment is effective if it is based on an existing employment even though no contract exists.[4] The reason for the rule which prohibits assignments of wages when there is no contract or employment is fairly obvious—i.e., it is thought that such assignments subject wage earners to hard and unreasonable conditions of servitude.[5] However, the reason for the rule when applied to

[1] 6 C. J. S. 1067 (1937); 2 WILLISTON, CONTRACTS, rev. ed., § 413 (1936); 1 CONTRACTS RESTATEMENT, § 154 (2) (1932); O'Niel v. Wm. B. H. Kerr Co., 124 Wis. 234, 102 N. W. 573 (1905).

[2] See citations, supra, note 1.

[3] A discussion of the validity of such assignments and the value of their practical application is found in 44 YALE L. J. 639 (1935).

[4] Porte v. Chicago & N. W. Ry., 162 Wis. 446, 156 N. W. 469 (1916); Gilman v. Raymond, 235 Mass. 284, 127 N. E. 794 (1920); Eagan v. Luby, 133 Mass. 543 (1882); Raulins v. Levi, 232 Mass. 42, 121 N. E. 500 (1919).

[5] Porte v. Chicago & N. W. Ry., 162 Wis. 446, 156 N. W. 469 (1916). The problem of assigning future wages is controlled by statute in many states. These statutes are classified and discussed in 31 MICH. L. REV. 236 at 243 (1933). The author of

ordinary contract cases is not quite so clear. The reason usually given is that, "In the nature of things it is impossible to make a person owner of a right that does not exist. . . ." [6] Others say that such a right is too vague and uncertain to be the subject of a transfer.[7] These reasons will not bear close scrutiny. The fact is that such an assignment might properly be sustained in equity on the theory that a trust in favor of the assignee will be impressed on the debt when it comes into existence.[8] It might also be said that an irrevocable power to collect was created in the assignee.[9] This would be in accord with the historic basis for the enforceability of assignments.[10] Other courts approach the subject by saying that there is an effective assignment only if the debt will eventually come into existence. This proposition seems to mean nothing more than that if there is a contract already in existence the assignment is effective although the debt is not yet due.[11] Still another stated test is that the assignment is valid if the debt assigned has a "potential existence." [12] Such a test is too indefinite to be of value, since it can be made to mean whatever is desired.[13] The court in the principal case said that the assignment was effective because the debt had a potential existence. Apparently it was thought to have such an existence because the assignment and the contract of sale were all parts of one transaction. In other cases [14] Massachusetts has held assignments made under similar circumstances to be effective. While the court in the principal case purports to follow

that comment also brought out an added reason for the rule, which is that the workers will lose interest in their work or in finding work after having assigned their wages.

[6] 1 CONTRACTS RESTATEMENT, § 154 (2), comment b (1932).

[7] Emerson v. European & N. A. Ry., 67 Me. 387 (1877). Any definition of assignment states that it is a transfer.

[8] Close v. Independent Gravel Co., 156 Mo. App. 411, 138 S. W. 81 (1911); Edwards v. Peterson, 80 Me. 367, 14 A. 936 (1888); First National Bank v. Slaton Independent School District, (Tex. Civ. App. 1933) 58 S. W. (2d) 870; Hurst & McWhorter v. Bell & Co., 72 Ala. 336 (1882).

[9] 2 WILLISTON, CONTRACTS, rev. ed., 1185 (1936).

[10] 2 ibid., § 408.

[11] Dennis v. Grand River Drainage District, (Mo. App. 1934) 74 S. W. (2d) 58.

[12] Horchover v. Pacific Marine Supply Co., 17 Wash. 330, 17 P. (2d) 915 (1933); First National Bank v. Slaton Independent School District, (Tex. Civ. App. 1933) 58 S. W. (2d) 870.

[13] In one case potential existence was given to a fund because the assignee had started the preliminary details of the delivery of the property which was to be assigned. Horchover v. Pacific Marine Supply Co., 17 Wash. 330, 17 P. (2d) 915 (1933). In another case an assignment was held valid as being of a fund in potential existence where, although there was no enforceable contract made, there was an "arrangement" according to which the fund would be acquired. First National Bank v. Slaton Independent School District, (Tex. Civ. App. 1933) 58 S. W. (2d) 870. Potential existence has also been applied in cases where there is a contract already in existence. Campbell v. J. E. Grant Co., 36 Tex. Civ. App. 641, 82 S. W. 794 (1904).

[14] Commercial Casualty Ins. Co. v. Murphy, 282 Mass. 100, 184 N. E. 434 (1933); Graustein v. H. P. Hood & Sons, (Mass. 1936) 200 N. E. 14 (this case involved the same transaction as the principal case but the suit was between the assignee and the purchaser). See also Terhune v. Weise, 132 Wash. 208, 231 P. 954 (1925).

the general rule that such claims are not assignable, it seems to feel that this type of case, in which the assignment and the contract arise out of one transaction, is different.[15] There is much to be said for the rule in the principal case, since the elements of uncertainty and nonexistence of any definite obligation are greatly minimized under such circumstances. However, the rule does give rise to a difficulty in that it is hard to draw the line between what is and what is not "one transaction." [16]

Stanton J. Schuman

[15] Commercial Casualty Ins. Co. v. Murphy, 282 Mass. 100, 184 N. E. 434 (1933).

[16] The problem of deciding what is "one transaction" has been well explored in cases of joinder of action where those joined arise "out of the same transaction," or in the code of civil procedure provision as to when a counterclaim can be pleaded. See 23 CYC. 411 (1906).