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2002 Survey of Rhode Island Law: Cases: Contract

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Contract. *Doe v. Burkland*, 808 A.2d 1090 (R.I. 2002). The mere existence of a homosexual relationship between two parties does not impair their right to contract with each other for consideration independent of the relationship.

FACTS AND TRAVEL

The two parties lived together in a homosexual relationship for approximately nine years before their relationship ended on bad terms.[1] Doe (plaintiff) then filed a lawsuit seeking injunctive relief against Burkland (defendant) alleging harassment and threats.[2] Burkland denied Doe's claims and filed counterclaims including breach of an oral agreement to share equally any property acquired by either party during the course of the relationship.[3] Burkland's counterclaims also alleged breach of an express and implied contract, promissory estoppel, constructive trust, resulting trust, and unjust enrichment.[4]

A superior court justice dismissed all of Burkland's counterclaims under rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure because they failed to state a claim upon which relief could be granted.[5] The justice held that the counterclaims arose from alleged agreements that centered on a meretricious relationship between Doe and Burkland.[6] The justice decided the counterclaims were not viable because Rhode Island law does not recognize a marital dissolution between non-married couples.[7] The justice reasoned that contracts arising from a meretricious relationship are void as against public policy.[8] The court then entered a final judgment for Doe, from which Burkland appealed.[9]

ANALYSIS AND HOLDING

Because the superior court justice ignored the valid consideration alleged for the property sharing agreement averred in Burk-

1. Doe v. Burkland, 808 A.2d 1090, 1092 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 1092-93.
6. *Id.* at 1093.
7. *Id.*
8. *Id.*
9. *Id.*

land's counterclaims, the Rhode Island Supreme Court reversed and vacated the order and judgment dismissing those claims.[10]

The supreme court held that the parties' sexual relationship did not constitute the consideration for their putative property-sharing agreement.[11] In fact, the counterclaims contained no reference to the sexual relationship between the parties.[12] The counterclaim, instead, alleged that Burkland agreed to "devote his skills, effort, labors and earnings" to assist Doe in his career.[13] Burkland alleged that he provided homemaking services, business consulting, and counseling to Doe in consideration for the property-sharing agreement.[14] If proven, such consideration would not be illegal even if the parties had lived together in a homosexual relationship at the time they entered into the contract.[15] As long as the alleged consideration was not illegal, a suit for enforcement of the contract can proceed.[16]

Furthermore, the court held, even if there was no enforceable contract, the equitable doctrine of unjust enrichment may apply to prevent a person from retaining a benefit received from another without payment for such benefit.[17] Burkland asserted that the consideration he provided to Doe for nine years unjustly enriched the plaintiff.[18]

Also, a constructive or resulting trust may have arisen when Doe acquired property in his name alone when there was an alleged agreement to share that property with Burkland.[19] Such circumstances could give rise to an equitable duty on Doe's part to share a fair portion of the acquired property with Burkland.[20] Burkland's counterclaims alleged sufficient facts to conclude that, if proven, the court could grant him some legal or equitable relief.[21]

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10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 1094.
17. *Id.* at 1095.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*

CONCLUSION

The mere existence of a homosexual relationship between two parties does not impair their right to contract with each other for consideration independent of the relationship. As long as there is alleged legal consideration, a suit for enforcement of the contract can proceed.

Joe H. Lawson II

Contract. *Lecours v. Lecours*, 792 A.2d 730 (R.I. 2002). In a family court proceeding, the court has broad jurisdiction over property settlement agreements not merged into a final judgment of divorce. Therefore, failure to object in family court to a proposed modification of a property settlement agreement is equivalent to consenting to the modification.

FACTS AND TRAVEL

The family court found Norman E. Lecours in contempt for failing to provide his ex-wife, Dianne Lecours, life and health insurance as stated in their final judgment of divorce.[1]

The divorce decree required that Norman Lecours, through his business, maintain health insurance and a life insurance policy equal to an amount sufficient to pay off the mortgage on the marital homestead for the benefit of his ex-wife.[2] The parties also executed a separate "Property Settlement Agreement."[3] The settlement agreement was incorporated, but not merged, into the Judgment of Divorce.[4] The parties agreed that the property settlement agreement shall survive the Judgment of Divorce as an independent legal contract.[5]

In September 1999, Dianne filed a motion to adjudge defendant in contempt of the divorce decree because Norman (defendant) had failed to maintain the heath and life insurance policies.[6] At a hearing, the defendant agreed to modify the settlement agreement.[7] The defendant agreed: to make Dianne Lecours the beneficiary on an existing $50,000 policy, to apply for a new $100,000 policy for her benefit, and to provide medical insurance for her life.[8]

The defendant never objected to any terms contained in the order issued by the family court outlining the new agreement.[9] The defendant subsequently appealed the order on the belief the

1. Lecours v. Lecours, 792 A.2d 730, 730 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at 731.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*

family court erred by modifying an agreement that had not been merged into the divorce decree.[10]

BACKGROUND

Section 8-10-3 of the Rhode Island General Laws[11] gives the family court broad powers to "hear and determine all matters pertaining to 'property settlement agreements and all other contracts between persons who at the time of execution of said contracts, were husband and wife.'"[12]

ANALYSIS AND HOLDING

On appeal, Norman Lecours argued that the family court did not have jurisdiction over his property settlement agreement because the agreement was a contract, and it retained that character because it was incorporated, but not merged, into the divorce decree.[13] The defendant, however, failed to object during a family court proceeding that modified the original property settlement agreement.[14]

The Rhode Island Supreme Court held that because the family court can exercise broad powers over property settlements between husbands and wives, it was well within the power of the family court to exercise jurisdiction of the modification of a property settlement agreement.[15]

The court pointed out that the defendant agreed to modify the property settlement agreement at a family court hearing.[16] Furthermore, the defendant failed to object during those proceedings.[17] The supreme court stated, "the defendant's failure to object is tantamount to consent."[18] Defendant is barred from attacking the validity of the new terms of the agreement because of his failure to preserve the issue for appeal.[19]

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10. *Id.*
11. R.I. GEN. LAWS § 8-10-3 (1999).
12. *Lecours*, 792 A.2d at 731 (citing Bowen v. Bowen, 675 A.2d 412, 414 (R.I. 1996) (quoting R.I. GEN. LAWS § 8-10-3 (1999))).
13. *Id.*
14. *Id.* at 732.
15. *Id.* at 731.
16. *Id.* at 732.
17. *Id.*
18. *Id.*
19. *Id.*

CONCLUSION

Norman Lecours's failure to object during a family court hearing to modification of a property settlement agreement was the equivalent of consenting to the modification. His failure to preserve his objection deprived him of the standing necessary to appeal the decision.

Charles M. Edgar Jr.

Contracts. *Saber v. Dan Angelone Chevrolet*, 811 A.2d 644 (R.I. 2002). A breach of warranty of title may be proven by a showing that a substantial shadow was cast over a title, even if the title is later found to be legally valid. There is a point, however, at which a third party's claim is too attenuated. Section 6A-2-714(2) of the Uniform Commercial Code (UCC) allows deviation from typical measures of damages in special circumstances. An automobile entirely rebuilt from components from other cars and sold to the buyer without disclosure of this information is a special circumstance allowing the purchase price of the car to be the measure of damages.

FACTS AND TRAVEL

George Saber (plaintiff), a resident of Massachusetts, bought a used 1985 red Chevrolet Corvette with an automatic transmission from defendant, Dan Angelone Chevrolet, on February 7, 1990.[1] Between March 1990 and April 1992, several problems arose with the car.[2] In light of these problems, plaintiff conducted a title search to investigate the history of the car and discovered that the title application for the car described it as black with a manual transmission.[3] Through his attorney, plaintiff contacted the Massachusetts State Police.[4]

Lieutenant Joseph Costa (Lt. Costa) inspected the car and found a number of discrepancies related to the vehicle identification number (VIN) and various parts of the car.[5] The plate containing the VIN, located on the window downpost, was blistered and painted over; the numbers on the car's frame, engine and transmission did not match the VIN on the plate; and a mylar sticker containing the VIN was missing from the door of the car.[6] In light of these findings, Lt. Costa suspected that some of the car parts were stolen.[7] The next day, plaintiff drove the car to the state police barracks in North Dartmouth, voluntarily leaving the car and dropping off the keys.[8] At trial, Lt. Costa testified that

1. Saber v. Dan Angelone Chevrolet, 811 A.2d 644, 647 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*

plaintiff could not get the car back because it was impounded.[9] Later investigation revealed the car had been destroyed in a fire and rebuilt from parts of various other cars, none of which were stolen.[10] This information, however, had not been disclosed to plaintiff when he purchased the car, and it was unclear whether defendant was aware of these facts when he sold plaintiff the car.[11]

Plaintiff filed an action in superior court for damages for negligence and breach of contract.[12] The complaint was amended to include counts for deceptive trade practices, misrepresentation, revocation of acceptance, and violations of 15 U.S.C. §§ 2301-12 of the Magnuson Moss Warranty Act.[13] Plaintiff did not expressly include a breach of warranty in his complaint, but as support for his claim of negligence, he alleged that he had not been given good title to the car.[14] At the close of plaintiff's case, defendant moved for judgment as a matter of law, contending that there could be no breach of warranty because the car was not stolen.[15]

The trial justice held that warranty of title may be breached by impoundment by law enforcement and denied defendant's motion.[16] Prior to closing arguments, both parties moved for judgment as a matter of law.[17] Based on Lt. Costa's testimony, the trial justice held that the car was impounded and for this reason, defendant breached the warranty of title owed to plaintiff.[18] The jury was charged with determination of whether plaintiff provided defendant with sufficient notice under § 6A-2-607 of the Uniform Commercial Code (UCC).[19] The jury returned a verdict for plaintiff.[20] Defendant renewed its motion for judgment as a matter of law and moved for a new trial.[21] Defendant appealed the denial of both motions.[22]

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9. *Id.*
10. *Id.*
11. *Id.* at 647-48.
12. *Id.* at 648.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* (citing R.I. GEN LAWS § 6A-2-607 (2000)).
20. *Id.*
21. *Id.*
22. *Id.*

ANALYSIS AND HOLDING

In response to defendant's argument that the breach of warranty claim was not properly before the trial court, the Rhode Island Supreme Court held that defendant had impliedly consented to the litigation of the issue of breach of warranty by failing to object to plaintiff's theory of the case.[23] Rule 15(b) of the Rhode Island Superior Court Rules of Civil Procedure provides that "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."[24] Though the amended complaint did not include a count for breach of warranty of title, the defendant's failure to object until after the jury was charged, and had returned its verdict, amounted to consent to the litigation of the issue.[25] The supreme court also affirmed the trial court's finding that the car had been impounded and held that plaintiff's voluntary delivery of the car to the police was irrelevant.[26]

In reviewing the trial court's finding that the warranty of title had been breached as a matter of law, the supreme court noted that the UCC did not define good title.[27] Observing that the term was ambiguous, the court examined the official comments to the UCC as an aid to their statutory interpretation of the meaning of good title.[28] Official comment 1 to § 6A-2-312 explains that one of the purposes of the warranty of title is to provide a buyer with a good title to prevent exposure to lawsuits.[29] The comment goes on to abolish the warranty of quiet possession, but provides that the disturbance of quiet possession is one of many ways that a breach of warranty of title may be shown.[30] Without ruling on the abolition of the warranty of quiet possession, the court adopted the position that disturbance of quiet possession establishes a breach of warranty of title.[31]

In considering the scope of the warranty of title, the court noted a split of authority, and adopted the view that "a buyer

23. *Id.* at 649.
24. *Id.* (quoting R.I. SUPER. CT. R. CIV. P. 15(b)).
25. *Id.*
26. *Id.* at 650.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 650-51.
31. *Id.* at 651.

[may] establish a breach of warranty of title if a substantial shadow is cast over a title, even if the buyer's title ultimately is proven to be legally valid."[32] However, in so doing, the court acknowledged that "there is some point at which [a] third party's claim against the goods becomes so attenuated that we should not regard it as an interference against which the seller had warranted."[33] Here, although it was ultimately determined that the car was not stolen and that the defendant did have and deliver a legally valid title, the police impoundment of the car was not attenuated because Lt. Costa's suspicions, though mistaken, were reasonable.[34] Impoundment by police sufficiently called the plaintiff's ownership of the car into question so as to cast a significant shadow over his title, breaching the warranty.[35]

The supreme court then reviewed the trial court's admission of evidence of the repairs made to the car, concluding that their admission was not an abuse of discretion.[36] Defendant's appeal of the denial of its motion for judgment as a matter of law was also denied.[37] The court found that the trial justice had properly considered all relevant and material evidence and denied defendant's motion for a new trial.[38]

Finally, defendant's motion for a new trial based on erroneous jury instructions was also denied.[39] Defendant alleged that the trial justice's instruction to the jury that, if liability were established, damages would be $14,900 was error.[40] Defendant claimed that plaintiff was not damaged, or alternatively that these damages were speculative.[41] Given that the plaintiff was dispossessed of the car, for which he had paid $14,900, the court found these arguments unpersuasive.[42] The fact that the car had been put together using components from so many other cars made it difficult

32. *Id.*
33. *Id.* (quoting James J. White & Robert S. Summers, UNIFORM COMMERCIAL CODE, § 9-12 at 537 (4th ed. 1995)).
34. *Id.*
35. *Id.*
36. *Id.* at 652.
37. *Id.*
38. *Id.*
39. *Id.* at 653.
40. *Id.* at 654.
41. *Id.*
42. *Id.*

to assign a value to the car, other than the purchase price.[43] Section 6A-2-714(2) of the UCC allows deviation from typical measures for damages for breach of warranty in special circumstances.[44] The court held that the hybrid condition of the car was a special circumstance and therefore the trial justice's instruction to the jury as to the amount of damages was not in error.[45]

CONCLUSION

A failure to object to a theory of the case that encompasses an additional claim will be treated as implied consent to the litigation of the issue, and the claim will be treated no differently than other claims raised in the pleadings.

Police impoundment sufficiently calls a buyer's ownership of property into question so as to cast a significant shadow over his title. A buyer's voluntary relinquishment of the property is irrelevant to the issue of whether the property had been impounded by police. A breach of a seller's warranty of title may be shown in many ways, one of which is a showing of a substantial interference with the buyer's quiet possession of the property. Here, given the trial justice's finding that the Corvette had been impounded, plaintiff had made a sufficient showing that the warranty of title had been breached. Admission of evidence of repairs made to the car was not an abuse of discretion.

Additionally, jury instructions directing that, if liability were established, the amount of damages were to be in the amount of the purchase price, were proper under section 6A-2-714(2) of the UCC, which allows for deviation from the typical measure of damages in special circumstances. Because the car had been entirely rebuilt, the value of the car was difficult or impossible to determine. The court held that this was a special circumstance: therefore, the purchase price of the car was an appropriate measure of damages.

Carolyn P. Medina

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43. *Id.*
44. *Id.* (citing R.I. GEN. LAWS § 6A-2-714(2) (2000)).
45. *Id.*