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CONTRACTS AND SALES

DOUGLASS G. BOSHKOFF†

Presumably the traditional subject matter of this Survey article may cause some readers to skip rapidly to newer fields of law where more changes appear to be taking place. Honesty compels the admission that the Michigan Supreme Court has made no startling pronouncements in this area during the past year, and yet the few cases that are discussed present some very interesting insights into a wide variety of contractual problems. Pride of authorship gives rise to the hope that the following discussion will still be of value to the practicing Bar.

I

FORMATION OF CONTRACT*

Lovers of legal technicality find much to admire in the Statute of Frauds and in decisions applying it. Simply stated, the statute prevents inquiry into what happened because of apprehension that human duplicity or the frailties of memory may lead the trier of fact to an erroneous conclusion. Attitudes toward application of the statute to any particular case are colored by the various opinions as to what really happened. An impartial observer will find the statute most rigorous and unjust in application if he is convinced that the oral contract was in fact made. The desire of judges to find out what really happened has resulted in a gradual erosion of the statute through the development of various doctrines of avoidance and relaxation of the requirements for a valid memorandum. The trend is undoubtedly away from rigid enforcement of the statute. This trend is illustrated by the recent decision in Randazzo v. Kroenke,1 in which the Michigan Supreme Court held that a memorandum satisfied the statute even though that item could be supplied by oral testimony.

Two lines of argument appear in the opinion of Justice Souris. First, relying on a lengthy quotation from Corbin,2 he argued that

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* Several cases do not merit discussion in the body of this article. They are: People ex rel. Veager Bridge & Culvert Co. v. Cooke Contracting Co., 372 Mich. 563, 127 N.W.2d 308 (1964) (failure to give required notice discharges surety); Alan James Dev. Corp. v. Village of Michiana, 372 Mich. 240, 125 N.W.2d 894 (1964) (letter expressing willingness to deal not an offer); Hansen v. Catsman, 371 Mich. 79, 123 N.W.2d 265 (1963) (agreement to agree not a binding contract).

1. 373 Mich. 61, 127 N.W.2d 880 (1964).

2. 2 Corbin, Contracts § 500 (1950).
there was little danger of fraud if oral evidence supplied the identity of the plaintiff in all cases of this type. It is difficult to differ with this position. One is hard put to imagine substantial danger to the defendant arising from oral identification of the plaintiff. Of course, there is no criteria of substantial danger or the like found in the statute but this is presumably a valid item for the court to consider in deciding what the memorandum should contain.

The second argument, advanced to support the first, is found in the closing lines of the opinion.

An examination of the pleading and pretrial proceedings in this case make it evident that defendant never seriously contended that plaintiff was not the vendee under the contract which he sought to establish. Holding this memorandum sufficient to satisfy the statute of frauds does not work a fraud on anyone. The law of contracts is still in force, and plaintiff must establish the terms of the contract, while defenses such as incompetency still may be raised. As was noted in Wozniak, supra, at 435 [of 352 Mich., at 458 of 90 N.W.2d,] "equity can and will, given appealing equities arrayed against perfidy or fast dealing, prevent most of the frauds section 8 . . . of this venerable statute was intended to frustrate."

Such reasoning is open to question. Although the statute may not be popular it was still adopted to prevent inquiry into what happened in a particular case. This being so, the likelihood of truth of the oral assertion is immaterial. The case cannot be viewed on the merits without subverting the purpose of the statute. Justice Souris' opinion reflects a feeling, which is probably very widely held, that the statute may be ignored when everybody knows that there really was a contract.

The writer does not wish to make any brief for the statute. Yet as long as it exists courts ought to apply it without regard to the merits of the individual case. In this respect the Randazzo opinion is most interesting since it shows both a correct and an incorrect theoretical basis for interpreting the statutory language.

Another very interesting case is Munro v. Boston Ins. Co., which presented the question of whether a casualty insurer was obligated on a policy of fire insurance which had expired prior to the fire loss. The plaintiff sought to extend the coverage of the policy past the expiration date on some theory of estoppel. Evidently, plaintiff wished to argue that there was a custom of notifying customers of the time for renewal and that plaintiff was justified in relying on continued existence of coverage until he either received a renewal billing or a notice of termination of coverage. This contention was unsuccessful. At the conclusion of his opinion, Chief Justice Carr stated,
The trial judge was correct in his conclusion that liability under the express contract of insurance involved in this case could not be extended on the theory advanced by plaintiffs with reference to the alleged custom observed in the area by insurance agencies. As before noted, the issue here involved is not estoppel or waiver of performance in accordance with provisions of an existing contract, but presents an attempt to enlarge and extend the insurance coverage specifically provided in the contract. The acceptance of appellants' claim would result, in effect, in creation of liability following the expiration of the policy as written, and would from a practical standpoint be the equivalent of creating a new contract between the parties.\(^5\)

Certainly, in traditional terms of offer and acceptance, plaintiff has a hard argument. It is difficult to find an offer to renew the policy when a specific expiration date is stated. Even a custom of renewal in fact would probably not amount to an offer in all cases unless an extreme situation were reached in which both persons would be bound.\(^6\) However, it must also be admitted that there might be a relationship between the insured and the selling agent which would lead the former to an expectation that he would be given notice if continued coverage would not be forthcoming. If this were so, liability could be predicated on estoppel without creating a new contract between the parties. The opinion in this case does not clearly set forth the custom established by the plaintiff. Perhaps the custom was not sufficient to create liability. However, the implications of the opinion that no custom could ever help the plaintiff seem doubtful. The existence of liability arising out of the relationship between the selling agent of the company and the plaintiff should not be dismissed in such an off-hand manner.

*Van Rensselaer v. General Motors Corp.*,\(^7\) presented the question of whether the defendant was obligated to pay for the use of certain ideas submitted to it by the plaintiff. On the issue of true contract responsibility, District Court Judge Talbot Smith noted that the defendant had promptly rejected the plaintiff's submission of ideas. The plaintiff had pleaded in the alternative a theory of quasi-contractual responsibility; but this argument also failed. Judge Smith held that the ideas were not novel and further, that there was no fiduciary relationship between the parties. The plaintiff would have had to establish both points to recover in quasi-contract.\(^8\)

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5. Id. at 612, 122 N.W.2d at 657.
A gasoline station lease granted the lessee an option to purchase the premises upon the death of the lessor. The plaintiffs became hold-over tenants at the expiration of the lease and subsequently attempted to exercise the purchase option. In Glockine v. Malleck, the court held that the option could not be exercised by the tenants holding over. In a holdover tenancy, as contrasted with a renewal tenancy, all the terms of the original lease do not necessarily become part of the obligations of the parties. The incidents of the holdover tenancy are implied by law and the court held that because the option price was a fixed sum it was not justified in implying that the purchase option became part of the holdover tenancy.

In National Lumber Co. v. Goodman, the purchaser of a vendee's interest under a land contract sought to enjoin foreclosure proceedings instituted by the contract vendor. The contract provided:

No assignment or conveyance by the purchaser shall create any liability whatsoever against the seller until a duplicate thereof, duly witnessed and acknowledged, together with the residence address of such assignee, shall be delivered to and accepted by the seller, and receipt thereof indorsed thereon.

Although there had been no compliance with this clause the assignee tendered the amount due on several of the land contracts in question and requested a release of the lots. The court, emphasizing that the personal element of trust in the vendee under the original contract was very important to the vendor, held that since the assignment had not been acknowledged by the vendor, the vendee's assignee had not secured such an equity in the premises as would justify granting the relief requested. This personal element is very important. If it were not present, presumably the requested relief would have been granted.

III

Remedies

The final case to be noted is McCarty v. Mercury Metalcraft Co. Defendant argued that plaintiff's premature termination of their agreement was a breach of contract which prevented him from recov-
erong unpaid commissions due under the agreement. The court held that since the plaintiff's breach was not so substantial as to prevent the defendant from performing his obligations, it would not preclude recovery by the plaintiff. Denial of compensation to the plaintiff in this situation is not necessary to protect the defendant.