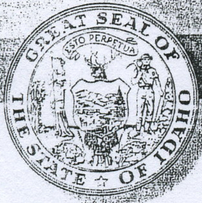
CASE 13.2

Konic International Corp. v. Spokane Computer Services, Inc.



708 P.2d 932 (1985)
Court of Appeals of Idaho

Background and Facts

David Young, an employee of Spokane Computer Services, Inc. (Spokane Computer), was instructed by his employer to investigate the possibility of purchasing a surge protector, a device that protects computers from damaging surges of electrical current. Although Young's investigation turned up several units priced from $50 to $200, none was appropriate for his employer's needs. Young then contacted Konic International Corporation (Konic) by telephone and was referred to a salesman. The salesman described a unit Young thought would be good, and Young inquired as to the price. The salesman replied, "Fifty-six twenty." The salesman meant $5,620. Young thought he meant $56.20. Young ordered the unit by telephone, and it was shipped and installed in Spokane Computer's office. The error was not discovered until two weeks later when Konic sent Spokane Computer an invoice for $5,620. Spokane Computer decided to return the unit to Konic. Konic sued Spokane Computer for the purchase price of the unit. The trial court held in favor of Spokane Computer. Konic appealed.

Issue

Was there a mutual mistake of fact that permitted Spokane Computer to rescind the contract?

In the Language of the Court

Walters, Chief Judge *Basically what is involved here is a failure of communication between the parties. Both parties attributed different meanings to the same term, "fifty-six twenty." Thus, there was no meeting of the minds of the parties. With a hundredfold difference in the two prices, obviously price was a material term. Because the "fifty-six twenty" designation was a material term expressed in an ambiguous form to which two meanings were obviously applied, we conclude that no contract between the parties was ever formed. The mutual misunderstanding of the parties was so basic and so material that any agreement the parties thought they had reached was merely an illusion.*

Decision and Remedy

The appellate court held that there was a mutual mistake of material fact that permitted Spokane Computer to rescind its contract with Konic. The appellate court affirmed the trial court's judgment in favor of Spokane Computer.

Case Questions

Critical Legal Thinking Should parties be able to rescind a contract because of mutual mistake of fact? Why or why not?

Business Ethics Did either party act unethically in this case?

Business Application Are there any winners or losers when a contract is rescinded based on mutual mistake of fact?

Business Ethics

The Doctrine of Undue Influence

In 1966, Ralla Klepak, an attorney, met Virgil Robert Woodruff when she represented him in a criminal misdemeanor proceeding. Although their relationship began as attorney and client, it developed into one of friendship. They dined, attended operas, and vacationed together. Prior to his death, Woodruff retained Klepak in her capacity as an attorney to represent his interests in various legal and personal matters.

In October 1973, Woodruff purchased a condominium unit in the John Hancock Building on North Michigan Avenue in Chicago. Klepak represented Woodruff in the purchase of the condominium. At the same time, Klepak represented Woodruff in establishing a land trust that provided that the beneficial interest in the condominium would remain Woodruff's for his life and then pass to Klepak upon his death. The Lake Shore Bank was named as trustee of the trust. Klepak notarized the land trust agreement while they were at a restaurant. Woodruff died on May 29, 1984, at the age of 54. He was a bachelor, had never married, and had no living issue. His only heirs were two maternal aunts and a paternal cousin. Two days after Woodruff's death, Klepak delivered a certified copy of his death certificate to the Lake Shore Bank. Klepak took possession of the condominium shortly after Woodruff's death and has had sole use and possession of the premises since that time. William L. Klaskin, who was named administrator of Woodruff's estate, brought this action to recover the condominium from Klepak. The trial court held in favor of the estate. The appellate court reversed. The estate appealed.

Did Ralla Klepak, as an attorney, rebut the presumption of undue influence that arose from this transaction?

Transactions between attorneys and clients are closely scrutinized. When an attorney engages in a transaction with a client and is benefitted thereby, a presumption arises that the transaction proceeded from undue influence. Once a presumption is raised, the burden shifts to the attorney to come forward with evidence that the transaction was fair, equitable, and just and that the benefit did not proceed from undue influence. Courts require clear and convincing evidence to rebut this presumption.

Some of the factors that the Supreme Court of Illinois deemed persuasive in determining whether the presumption of undue influence has been overcome include a showing by the attorney (1) that he or she made a full and frank disclosure of all relevant information, (2) that adequate consideration was given, and (3) that the client had independent advice before completing the transaction. In this case, the court evaluated the evidence adduced at trial in light of these factors and concluded that Klepak failed to overcome the presumption of undue influence. The court held that Klepak never informed Woodruff of the legal consequences of naming her as beneficiary. The court also concluded that Klepak gave no consideration for being named as beneficiary and never advised Woodruff to seek independent legal advice after learning that she was named as beneficiary.

The state supreme court held that Ralla Klepak did not rebut the presumption of undue influence that arose from the transaction at issue in this case. The court reversed the judgment of the appellate court and affirmed the judgment of the trial court. [*Klaskin v. Klepak*, 534 N.E.2d 971 (IL 1989)]

1. Did Ralla Klepak act unethically in this case?
2. Should there be a presumption that transactions between an attorney and a client have been based on undue influence? Do you think there was actual undue influence in this case?

CASE 14.?

Doherty v. Doherty Insurance Agency, Inc.

878 F.2d 540 (1989)
United States Court of Appeals, First Circuit

Background and Facts

In the mid-1930s, Bill and Jim Doherty, who were brothers, founded an insurance and real estate agency in Andover, Massachusetts. The business was successful. In 1955, Bill discovered that he was seriously ill. Concerned that Jim would be left to run the family business alone, Bill and Jim asked another brother, Joseph, if he was interested in joining the family business. Joseph was apprehensive about doing so because he was superintendent of schools in Easthampton, Connecticut, and was concerned about losing his retirement benefits. Jim (on behalf of the business) orally promised Joe "retirement benefits for his remaining life" equal to his salary at age 65 when he retired. Relying on this promise, Joe quit his job and joined the business. Bill retired on full salary in 1970. Joe retired in 1978 and was paid $2,000 a month in retirement benefits. Jim retired in 1980 on full salary. The business passed on to the next generation, consisting of Jim's and Joe's children. In 1981, a dispute arose, and Joe's children left the business. Jim's children terminated Joe's retirement payments. Joe sued. The defendants argued that the oral lifetime retirement contract was unenforceable under the Statute of Frauds because it ended up being longer than one year. The trial court held in favor of Joe. The defendants appealed.

Issue

Does the Statute of Frauds prevent the enforcement of an oral lifetime retirement contract?

In the Language of the Court

Campbell, Chief Judge *A contract for a term of years is distinguishable from one for an individual's lifetime. In the case of a contract for a term of years, a party who dies cannot be said to have "performed" the contract. Instead, the contract is one which is subject to "defeasance or cancellation" by the death of the party during the term of the agreement.*

The fact that the present contract provided for retirement benefits and that the instant dispute, arising during Joe's senior years, pertains to the payment of compensation during retirement, does not indicate that the contract could not have been performed within its initial year, had Joe had the misfortune to die then, while still in his 40s. The jury expressly found that in exchange for Joe's promise to join his brothers in Andover and "work with them for the balance of his working days," Jim (on behalf of Insurance) promised that Joe's "compensation would include retirement benefits for his remaining life." If Joe were to have died within the year, he would have completely fulfilled his promise to work "for the balance of his working days" (because his working days would have been over), and Insurance would have fulfilled its promise to compensate him for his remaining life.

This oral agreement falls outside the Statute of Frauds. The oral agreement was enforceable under Massachusetts law.

Decision and Remedy

The appellate court held that the oral contract was enforceable. Affirmed.

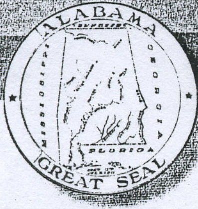
Case Questions

Critical Legal Thinking Should oral lifetime contracts be enforced? Or should they be required to be in writing?

Business Ethics Was it ethical for Jim's children to terminate Joe's retirement benefits?

Business Application Do business make many oral promises to employees? Should these contracts be in writing?

CASE 16.1



Super Valu Stores, Inc. v. Peterson

506 So.2d 317 (1987)
Supreme Court of Alabama

Background and Facts

Super Valu Stores, Inc. (Super Valu), a wholesale operator of supermarkets, developed a new concept for a market called "County Market." The basic concept of the County Market was that it must be the lowest-priced store in the marketplace and operate on a high-volume, low-profit margin structure. In 1981, Super Valu purchased a parcel of property in Oxford, Alabama, for the development of a County Market.

It planned to lease the store to an independent retailer to operate. Thomas J. Peterson, who was an executive of Super Valu, applied for the operator's position at the proposed store. In January 1984, Peterson was approved as the retail operator of the proposed Oxford County Market. On February 24, 1984, Peterson retired from Super Valu so that he could operate the new store. When Super Valu failed to construct and lease the store to Peterson, he sued Super Valu for breach of contract. The trial court held in favor of Peterson and awarded him $5 million in lost profits that would have been derived by him from the store. Super Valu appealed.

Issue

Are lost profits from an unestablished business recoverable as consequential damages even though it can be argued that they are inherently too speculative and conjectural?

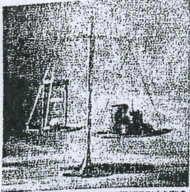
In the Language of the Court

We are of the opinion that the jury's award of damages to Peterson is completely consistent with the law of Alabama and with the evidence in this case. Current Alabama law, like the law of other states, authorizes recovery of anticipated profits of an unestablished business, if proved with reasonable certainty. This general rule is applied in most states and is referred to as the "rule of reasonable certainty." This Court's explicit rationale for applying the reasonable certainty rule was its recognition that to disallow damages for loss of reasonably certain future profits would encourage breach of contract with new businesses. The rule in Alabama is that jury verdicts awarding lost profits will be affirmed if the plaintiff provides a basis upon which the jury could, with reasonable certainty, calculate the amount of profits that were lost as a result of defendant's wrongful actions.

The fundamental basis for Peterson's evidence as to damages was Super Valu's own projections of profits, produced in its normal course of business long before this dispute arose. These projections were the product of an intense, exhaustive process involving many different Super Valu personnel. Super Valu's projections resulted from the application of a scientific methodology that for many years had accurately predicted the future performance of stores associated with Super Valu. These projections were also based upon the prior successful performances of the Super Valu business system, of which the Oxford County Market would have become a standardized part. The jury could have found that Super Valu and Peterson relied upon these profit projections in making their initial decision to go forward with the Oxford County Market store.

Decision and Remedy

The state supreme court held that lost profits from an unestablished business can be recovered as consequential damages if they can be determined with reasonable certainty. The court held that such damages were determined with reasonable certainty in this case and affirmed the trial court's judgment.



Business Ethics

A Chicken Farmer Gets Plucked

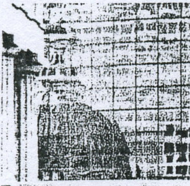
Sometimes the Statute of Frauds, which was designed to prevent fraud, is used by a party to try to renege on an oral sales contract. Consider the following case.

Perdue Farms, Inc. (Perdue), sells dressed poultry under the brand name "Perdue Roasters." On October 30, 1975, Motts, Inc., of Mississippi (Motts) entered into an oral contract with Perdue to purchase 1,500 boxes of roasters from Perdue at $0.50 per pound. Motts was to pick up the roasters at Perdue's Maryland plant. Motts entered into a contract to resell the roasters to Dairyland, Inc. Motts sent a letter to Perdue confirming their oral agreement. Perdue received the confirmation and did not object to it. When Motts's truck arrived at Perdue's Maryland plant to pick up the roasters, Perdue informed Motts's drivers that the roasters would not be loaded unless complete payment was made before delivery. Under previous contracts between the parties, payment was due seven days after delivery. Perdue informed Motts that the roasters would not be sold to Motts on credit. Perdue then sold the roasters directly to Dairyland, Inc.

Motts sued Perdue to recover damages for breach of the sales contract. Perdue denied liability, arguing that the contract had to be in writing because it was over $500. Motts argued that the situation fell under the written confirmation rule exception to the UCC Statute of Frauds.

The district court agreed with Motts. UCC 2-201 (2) binds merchants to oral sales contracts if one sends the other a confirmation letter that is not objected to within 10 days after its receipt. Both parties in this case were merchants, and Perdue did not object to Motts's confirmation letter within the 10-day period. The court denied Perdue the Statute of Frauds as a defense, thereby making Motts's confirmation letter enforceable against Perdue. [*Perdue Farms, Inc. v. Motts, Inc., of Mississippi*, 25 UCC Rep. Serv. 9 (1978)]

1. Did Perdue act morally in refusing to perform the sales contract?
2. Is it ever ethical to raise the Statute of Frauds in defense to get out of an oral contract?



Contemporary Business Environment

Integration Clause Supersedes Parol Evidence

On January 2, 1977, Carl M. Malmstrom applied for a job at Kaiser Aluminum & Chemical Corporation (Kaiser) in its aluminum can division. During the prehiring interviews with Kaiser, Malmstrom questioned his interviewers about the permanency of the position he was offered. Malmstrom testified that at the time he was hired, Mr. Johnson of Kaiser told him "as long as one does a commendable job up to Kaiser's expectations, that you had no fear of being laid off" and that "Kaiser never laid off anyone unless there was due cause obviously of some nature."

On January 13, 1977, Malmstrom was employed by Kaiser. He signed a one-page agreement with the company concerning his employment. Paragraph 1 provided: "Employer employs and shall continue to employ Employee at such compensation and for such a length of time as shall be mutually agreeable to Employer and Employee." Paragraph 6 of the employment contract was an integration clause that provided "This agreement shall supersede all previous agreements by and between Employer and Employee and shall be retroactive to the date on which Employee commenced his employment."

In April 1981, because of a decrease in business, Kaiser began terminating many employees. On January 5, 1982, Malmstrom was told he was terminated as part of the staff reduction. In the two-year period following Malmstrom's layoff, the number of Kaiser employees declined from 27,000 to 18,000. Malmstrom sued Kaiser for breach of alleged oral contracts to provide permanent employment to him. The trial court granted summary judgment for Kaiser. Malmstrom appealed.

Does the parol evidence rule make the evidence concerning the alleged oral contracts inadmissible? The appellate court held that the written employment agreement between Malmstrom and Kaiser was integrated, and evidence of other alleged oral contracts between the parties was inadmissible, under the parol evidence rule.

Paragraph 6 of the contract provided that the agreement "shall supersede all previous agreements by and between Employer and Employee." The court held that the meaning of this paragraph was clear on its face and Malmstrom offered no alternative meaning. Contrary to Malmstrom's assertion, the alleged oral agreement occurred before he signed the written agreement. The scope of the contract covered the term of employment and the compensation of the employee. It is unlikely that there would be two agreements concerning the term of the employment. The court found that the alleged oral agreement was completely inconsistent with the terms of the written contract.

The court held that the contract was a contract for employment terminable at will and that, because the contract was integrated and provided that it superseded all prior agreements, evidence of an implied agreement that contradicts the terms of the written agreement is not admissible. [*Malmstrom v. Kaiser Aluminum & Chemical Corp.*, 187 Cal.App.3d 299, 231 Cal.Rptr. 820 (Cal. App. 1986)]