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Contracts - Consideration - Bilateral Contract - Unilateral Contract - Reliance - Lefforge v. Rogers

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CONTRACTS—Consideration—Bilateral Contract—Unilateral Contract—Reliance. Lefforge v. Rogers, 419 P. 2d 625 (Wyo. 1966).

Plaintiff entered into a written contract for the sale of his automobile dealership to defendant. At the time of execution of the written contract, the parties allegedly entered into a separate, oral agreement concerning plaintiff's obligation to a sign company for the rental of certain signs used in the operation of his business. The essence of the alleged oral agreement was that defendant would assume plaintiff's liability under the existing lease and negotiate directly with the sign company for a new lease. Subsequent to the purchase, defendant used three of the signs in question and unsuccessfully negotiated with the sign company for a more favorable leasing arrangement with respect to the remaining two signs. In an action brought by the sign company against the plaintiff on the existing lease the company recovered a judgment of nearly $4,000. In an attempt to make himself whole, plaintiff brought the present action against defendant for the breach of the alleged oral agreement. The trial court determined there existed a separate oral contract concerning plaintiff's obligations to the sign company and judgment was had for plaintiff. The Wyoming Supreme Court accepted the trial court's determination that there existed a separate, oral contract covering the lease of the signs but refused to enforce it. The court *held* that there was no proof that the written contract of sale supplied the requisite consideration for the oral contract, or that there existed any other consideration to support the oral agreement.

The court's decision in the principal case was based on an express finding that the written contract failed to constitute consideration for the oral contract; nor, in the court's judgment, was there any other consideration to support it.[1] Counsel for the plaintiff had argued that the rule in *Langenback v. Mays,* namely, that "one contract may be consideration for another,"[2] should be followed. The written contract for the sale of the business would therefore provide the

1. Lefforge v. Rogers, 419 P.2d 625 (Wyo. 1966).
2. Langenback v. Mays, 205 Ga. 706, 54 S.E.2d 401, 402 (1949). In an action by a vendee on an oral promise by vendor not to compete with vendee in the motel business, the Georgia court held that the written contract of sale for the land in question supplied the necessary consideration to render the oral contract enforceable.

requisite consideration for the oral contract, found by the trial court, and in which finding the Supreme Court acquiesced.[3] The court refused to enforce the oral contract since the *Langenback* case dealt with a particular situation where the written contract for the sale of property was held to be adequate consideration for a collateral contract that restricted the vendor from competing with the vendee.[4] Without discussing any other theory of consideration to support the validity of the oral contract, agreed to have been in existence, the court refused to enforce it for lack of consideration.[5]

It is crucial in the principal case that the court accepted the trial court's determination that there existed a separate, oral agreement concerning the assumption of liability for the lease of the signs. The invalidity of the oral contract was based entirely on the court's finding that there was no consideration to render it enforceable.[6] Given this fact the problem becomes one of examining the facts in conjunction with relevant theories of traditional concepts of consideration and suggesting any theory that might have been used to support the oral agreement.

In its determination that the written contract was not consideration for the collateral oral agreement, the court did not discuss a long line of cases reflected by section 83 of the *Restatement of Contracts*. "Consideration is sufficient for as many promises as are bargained for and given in exchange for it if it would be sufficient (a) for each one of them if that alone were bargained for . . . ."[7] The first illustration following this section is clearly in point. "*A* pays *B* or promises *B* to pay him $5., not then owed by *A*, in consideration of which *B* promises *A* to give him a book and also promises to surrender a letter. Both of *B*'s promises are supported by sufficient consideration."[8] Clearly, it could be

3. Lefforge v. Rogers, *supra* note 1, at 627. "Although minds might well differ on the facts in the case before us, it would appear that the trial court . . . was not prevented from determining . . . the oral contract was one the parties might naturally have made." *Id.*
4. Langenback v. Mays, *supra* note 2.
5. Lefforge v. Rogers, *supra* note 1, at 628. "[T]here was no proof that the execution of the written contract was consideration for the alleged oral agreement or that there existed any other consideration for it." Id.
6. *Id.*
7. RESTATEMENT OF CONTRACTS § 83 (1932).
8. *Id.*

argued in the principal case that the plaintiff's written promise to transfer the business supported both defendant's written promise to buy the business and the oral promise to assume plaintiff's liability under the existing lease.[9] The *Restatement* was cited in support of the decision of the Wyoming court in *Long v. Forbes*,[10] enforcing an oral contract that would be difficult to distinguish from the oral contract in the principal case.

The context of the bilateral contract affords a second opportunity for arguing that there was adequate consideration to support defendant's oral promise. "A bilateral contract consists of mutual promises, made in exchange for each other by each of the two contracting parties."[11] In the principal case the formation of a bilateral contract would require a finding that defendant's promise was made in exchange for a *promise* by plaintiff. It is submitted that the evidence lends itself to finding either a promise not to insist upon the insertion of the lease in the written contract or a promise to forbear from taking any action. In addition, the fact that plaintiff did forbear and the signs were not dealt with in the written contract seems to infer the existence of such promises. If the bilateral nature of the oral contract, agreed by the court to have been in existence, is established, consideration would be apparent at once since mutual promises constitute sufficient consideration for a contract.[12]

The nature of the oral contract is also consistent with a unilateral contract, "one in which a promise is given in exchange for an act or forbearance."[13] Applying this definition to the principal case it should have been contended that defendant's promise to "get them [the sign company] off your back"[14] was given in exchange for plaintiff's forbearance either to insist upon inclusion of the lease assignment in

9. Lefforge v. Rogers, *supra* note 1, at 626.
10. 58 Wyo. 533, 136 P.2d 242, 247 (1943). A written contract for employment at $150 per month and a subsequent oral promise by the employer to increase past salary by $50 for the months of employment were held to be both supported by adequate consideration in the form of plaintiff's performance in reliance on the oral promise.
11. 1 A. CORBIN, CONTRACTS § 21, at 52 (1963).
12. Eller v. Salathe, 44 Wyo. 369, 12 P.2d 386 (1932).
13. Browning v. Johnson, 422 P.2d 314, 316 (Wash. 1967).
14. Lefforge v. Rogers, *supra* note 1, at 626.

the written contract or to take some action to preclude the breach. In the context of the unilateral contract, " 'consideration' is the price bargained for and paid for a promise, and it is frequently defined as a 'benifit to the party promising, or a loss or detriment to the party to whom the promise is made' ".[15]

In the brief for the appellant (defendant below), counsel argued that the agreement "to relieve the plaintiff of his obligation under the contract," was not supported by either a benefit to the promisor or a detriment to the promisee.[16] The court failed to discuss these contentions by counsel but such a discussion is imperative in this attempt to find a possible theory of consideration that could have been employed by the court. In the encyclopedia definition of consideration, discussed previously, the requisite bargained-for benefit to the promisor or detriment to the promisee is in the alternative. Counsel contended no benefit inured to the defendant by receipt of the right to deal with the sign company because he "had the right to deal with them in any event."[17] The Wyoming court has long recognized that "detriment and benefit, in this connection [with consideration for a contract] have a technical meaning. Neither need be actual."[18] After the agreement the promisor did have something he would not have received but for the contract—the right to deal with this sign company for these particular signs. This is a legal, if not actual, benefit.[19] Equally important from the trial court record, reproduced in part in the opinion in the principal case, it would appear that the bargain element of consideration is also satisfied. "Mr. Lefforge [defendant] stated that he would like to have the opportunity to deal with the sign company himself."[20] Does this not sound like a legal benefit bargained for, and received, in return for his own promise to assume liability for the signs? This bargain also goes to establish consideration on a detriment

15. 17 C.J.S. CONTRACTS § 70, at 747 (1963).
16. Brief for Appellant at 25, Lefforge v. Rogers, 419 P.2d 625 (Wyo. 1966).
17. *Id.*
18. Houghton v. Thompson, 57 Wyo. 196, 115 P.2d 654, 658 (1941).
19. Kansas State Inv. Co. v. Cimarron Ins. Co., 183 Kan. 190, 326 P.2d 299, 303 (1958). "Any benefit, profit or advantage flowing to promisor which he would not have received but for the contract, or any loss or detriment to the promisee is sufficient consideration to support the promise." *Id.*
20. Lefforge v. Rogers, *supra* note 1, at 626.

theory. "It [detriment] means giving up something which immediately prior thereto the promisee was privileged to keep."[21] Although counsel argued that "[t]here was obviously no detriment to appellee [plaintiff below] in the case at bar because the appellee retained possession of the signs."[22] Certainly the possesion of two large signs proclaiming a business one no longer owned and a judgment for nearly four thousand dollars are not without their detrimental features, both actual and legal.

A final alternative theory in support of enforcing the oral agreement is included in the very general heading of "reliance," and is sometimes called a "substitute for consideration."[23] "Reliance" as a grounds for enforcing an agreement is probably best reflected by section 90 of the *Restatement of Contracts:* "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."[24] The probability of finding unbargained-for reliance of a definite and substantial character within the scope of section 90 is yet another recognized basis for enforcing the oral contract in the principal case. The *Restatement* has been quoted in support by the Wyoming court[25] and fills a need as a doctrine already implicit in the decisions.[26] As a substitute for consideration, this doctrine is frequently thought to be limited to the enforceability of charitable subscriptions and has been given the narrow appellation, "promissory estoppel."[27] Corbin, in his work on contracts, remarks, "The American Law Institute was well-advised in not adopting this phrase and in stating its rule in terms of action or forbearance on the promise."[28] This would seem to dispel any notion that section 90 is limited to charitable subscriptions, and not applicable in the principal case.

21. 1 S. WILLISTON, CONTRACTS § 102A (1936). Cited with approval in Laibley v. Halseth, 345 P.2d 796, 799 (Wyo. 1959).
22. Brief for Appellant, *supra* note 16.
23. L. SIMPSON, CONTRACTS § 61 (1965).
24. RESTATEMENT OF CONTRACTS § 90 (1932).
25. Hanna State & Sav. Bank v. Matson, 53 Wyo. 1, 77 P.2d 621, 625 (1938).
26. 1A A. CORBIN, CONTRACTS § 206, at 250 (1963).
27. Allegheny College v. Nat'l. Chautauqua County Bank, 246 N.Y. 369, 159 N.E. 173 (1927).
28. 1A A. CORBIN, CONTRACTS § 204, at 234, 235 (1963).

In conclusion, the court in the principal case limited its discussion of finding consideration to plaintiff's single contention that the written contract supplied the consideration for the oral agreement. Once the court accepted the trial court's determination that the oral contract existed, a more thorough discussion of the various concepts of traditional consideration would have produced, if not a different result, a much stronger case for enforcing the oral contract relied on by the plaintiff. This discussion has suggested four possibilities within traditional concepts of consideration. Bargained-for consideration is clearly present if the written promise to convey the business supports the oral contract. Consideration is also very likely in the bilateral contract setting if it is found that defendant's promise was bargained-for and given in exchange for a *promise* by the plaintiff to forbear. Within the confines of the unilateral contract, plaintiff's bargained-for forbearance from any action on the lease would be sufficient consideration to support defendant's promise on either a benefit or detriment theory. Finally, the so-called "promissory estoppel" doctrine would be the basis of enforcing the contract if it is found that plaintiff's detrimental reliance was unbargained-for within the scope of section 90 of the *Restatement*.

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