South Carolina Law Review

Volume 14 | Issue 1 Article 8

Fall 1961

Contracts, Bills and Notes, and Sales

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CONTRACTS, BILLS AND NOTES, AND SALES

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I. CONTRACTS

In the case of *Hamilton v. Palmetto Properties, Inc.*,[1] the plaintiff-landlord sought to reform a written lease on the grounds that she was drunk when it was executed. The Supreme Court sustained the lower court's finding upon the facts in favor of the tenant. The Court goes on to point out that although the plaintiff claims to have been overreached, within a month after the execution of the lease she consulted an attorney who advised her of its written terms, and accepted the rental payments and did not bring this action for more than a year thereafter. The Court sites with approval an 1830 decision[2] that one who seeks to void a contract on the grounds of intoxication must go immediately upon being restored to his senses and return all he has received as consideration upon the contract.

The lower court's order rescinding a contract for the purchase of real estate because of the defendant-purchaser's failure to perform within a reasonable time, in the case of *Davis v. Cordell*,[3] was reversed by the Supreme Court on the grounds that although the contract was uncertain as to the time for payment of the purchase price, a reasonable time will be implied. Where time has not been made of the essence in a contract, equitable principles require that before an action for recision for non-performance within a reasonable time will lie, notice of intention to rescind and a reasonable opportunity to perform must be given to the opposing party. Mere delay in performance will not give rise to the right of rescission unless it be such as to warrant the conclusion that the party delaying does not intend to perform.

It is interesting to note that in the two cases dealing with contracts of employment during this period the Supreme Court reversed the decisions of the lower courts which were favorable to the employees. In both cases the court looked

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1. 237 S. C. 140, 116 S. E. 2d 12 (1960).
2. Williams v. Inabinet, 1 Bail. L. 343 (1830).
3. 237 S. C. 88, 115 S. E. 2d 649 (1960).

at the facts and said that they justified a decision favorable to the employer.

The action of *Freeman v. King Pontiac Co.*[4] was brought by former employee to recover the salary due him under a contract of employment after his alleged improper discharge. The plaintiff was vice-president, secretary, treasurer and assistant to the president of the defendant corporation. He was also employed as general manager under a written contract which provided that he was "subject to the general supervision of the President and the Board of Directors" and which required twelve (12) months written notice before cancellation. The plaintiff had a dispute with the office personnel of the employer corporation and brought suit to obtain possession of the books and records. He was directed by the president of the corporation to stop this legal action and was granted access to the books and records. The action was not terminated and the plaintiff was discharged. The lower court held that the action of the plaintiff in instituting and continuing the suit was proper, that he was wrongfully discharged and entitled to his salary under the terms of the contract. The Supreme Court held that an employer has a right to discharge an employee, even one in a managerial or supervisory capacity, for the disobedience of reasonable orders or instructions, without incurring liability for breach of contract. The president of the corporation had general supervisory powers under the by-laws and the plaintiff's contract of employment and his instructions to the plaintiff affected a matter of vital importance to the corporation. Disobedience of these instructions were grounds for discharge and the court therefore reversed the decree of the lower court.

In the second case during this period in which it passed upon a contract of employment, the Supreme Court upheld a restrictive agreement which prohibited an employee from competing in the sales territory handled for the employer within two years after leaving this employment. In this case of *Standard Register Co. v. Kerrigan*[5] the Court pointed out that in early common law these restraints of a man's right to work were void as against public policy, but that today such an agreement is enforceable where ancillary to a lawful contract and necessary to protect the legitimate busi-

4. 236 S. C. 335, 114 S. E. 2d 478 (1960).
5. 238 S. C. 54, 119 S. E. 2d 533 (1961).

ness interest of the employer. The Court applied a three-point test:

1. Is the restraint reasonably required and no greater than is necessary to protect the employer?

2. Does it unreasonably restrict the employee's right to earn a livelihood?

3. Does it contravene public policy?

In reaching its decision the Court stressed that the restraint was reasonable because the employee-salesman gained knowledge and customer contacts which enabled him to solicit and deflect them from his former employer. As to the employee it was reasonable because its enforcement did not impose severe economic consequences on him.

In accordance with the terms of the contract it was construed according to the laws of Ohio. However, to be enforceable it could not be contrary to the laws or public policy of South Carolina where it is performed. The Court held that this contract was not contrary to the laws or policy of either State and that the employee's continuation of employment and promotion at the time of signing were sufficient consideration.

II. BILLS AND NOTES

The case of *Epps v. King*[6] is an action by receivers of a building supply company to recover the proceeds of a cashier's check which had been placed in the hands of the company's accountant by its president pending an offer of settlement of its creditors claims, and which had been returned to the president when the creditors rejected the offer. The Court held that despite the fact that the check was endorsed to the company, its delivery was conditional, that there was no intent to transfer title to the check, and the intention of the parties is controlling. The lower court's order directing payment to the receivers was reversed.

III. SALES

In the case of *Sanders v. Allis Chalmer's Mfg. Co.*[7] the plaintiff, a farmer, sued a farm machinery manufacturer for failure of a machine to perform as orally represented by the

6. 238 S. C. 75, 119 S. E. 2d 229 (1961).
7. 237 S. C. 133, 115 S. E. 2d 793 (1960).

dealer. The Court reversed the lower court's judgment for the plaintiff and sustained the defendant's contention that a clear and specific written warranty superseded any oral warranty. As with any other written contract, parol evidence is inadmissible to contradict or vary it. This written warranty by the manufacturer runs to the ultimate purchaser even though he dealt only with the dealer. The Court also stated that in the absence of fraud it is a person's duty to know the contents of a written contract before signing and rejected the plaintiff's contention that the warranty did not apply because he signed without reading it.