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CONTRACTS - INTERPRETATION - "PERMANENT EMPLOYMENT"

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CONTRACTS — INTERPRETATION — "PERMANENT EMPLOYMENT" — Plaintiff, a consulting engineer, had developed a clientele affording him a weekly income of $200, and was considering Purdue University's attractive offer of an associate professorship. Knowing these facts, defendant corporation proposed by telephone that if plaintiff would reject the Purdue offer and agree to purchase the home of defendant's power superintendent, it would give plaintiff permanent employment at a salary of $600 per month. Relying thereon, plaintiff immediately accepted, rejecting the Purdue offer, contracting to purchase the home, and performing his duties under the employment contract for about twenty-two months, after which defendant discharged him without cause. In affirming an order sustaining a demurrer to the complaint, the court *held* that the hiring was for an indefinite period, terminable at the will of either party. *Skagerberg v. Blandin Paper Co.*, (Minn. 1936) 266 N. W. 872.

In the absence of a stipulated term of hiring,[1] a promise of "permanent employment" normally and reasonably may designate (*a*) a position terminable at the will of either party, but of a probable lasting character, as contrasted

[1] Cases involving contracts in which there is no suggestion whatever as to duration of the employment are ably discussed in the note in 32 MICH. L. REV. 107 (1933).

to a temporary hiring, or (*b*) a hiring for so long as the employer pursues the same business and the employee is able to do the work properly. If the employer's offer asks only the act of rendering service as acceptance of and consideration for his promise of permanent employment, courts are inclined to adopt interpretation (*a*), terming the employment an indefinite, general hiring, terminable at the will of either party,[2] and holding the employer liable on the unilateral obligation only for work done prior to the discharge. On the other hand, if the request is that the offeree agree to part with some valuable consideration in addition to services, interpretation (*b*) prevails,[3] permitting the employee to recover damages for the wrongful discharge.[4] In fixing the meaning of language used in unintegrated informal contracts, courts should adopt "the sense in which the party who used the words in question should reasonably have apprehended that the other party would understand them."[5] Though the meaning placed on the term by the offeree at the time of agreement is generally reflected in the legal consideration yielded by him, other elements and circumstances are equally demonstrative of that understanding. The principal case places interpretation (*a*) upon the disputed phrase for the reason that none of the four elements of detriment and reliance listed by plaintiff[6] constituted additional consideration to defendant so as to bring the case under the stock exception to interpretation (*a*). It is submitted that giving up a thriving business or professional practice has actually been held sufficient additional consideration to support interpretation (*b*),[7] and that the detriment to plaintiff in rejecting another bona fide offer or in undertaking a collateral contract obligation constitutes such consideration, regardless of absence of

[2] Cases collated in 35 A. L. R. 1432 (1925); 8 Ann. Cas. 280 at 283 (1908). See also Rape v. Mobile & Ohio R. R., 136 Miss. 38, 100 So. 585 (1924); Arentz v. Morse Dry Dock & Repair Co., 249 N. Y. 439, 164 N. E. 342 (1928).

[3] Release of personal injury claim: Pennsylvania Co. v. Dolan, 6 Ind. App. 109, 32 N. E. 802 (1893); Carter White Lead Co. v. Kinlin, 47 Neb. 409, 66 N. W. 536 (1896); Duff v. Ford Motor Co., (Tex. Civ. App. 1936) 91 S. W. (2d) 871.

Abandonment of thriving business: Carnig v. Carr, 167 Mass. 544, 46 N. E. 117 (1897); Kevil v. Standard Oil Co., 8 Ohio N. P. 311 (1901); Rague v. New York Evening Journal Pub. Co., 164 App. Div. 126, 149 N. Y. S. 668 (1914); Roxana Petroleum Co. v. Rice, 109 Okla. 161, 235 P. 502 (1925).

Resignation of government position and pension expectancy: Riefkin v. E. I. Du Pont de Nemours & Co., (App. D. C. 1923) 290 F. 286; Heaman v. E. N. Rowell Co., Inc., 236 App. Div. 34, 258 N. Y. S. 138 (1932).

Disclosure of secret formula: Beck v. Walkers, 24 Pa. Co. Ct. 403 (1897).

[4] Under interpretation (*b*) courts find that the term of employment is sufficiently definite to permit enforcement of the contract, that the contract is not within the statute of frauds, that the requisite mutuality exists, and there is consideration for the permanent obligation. Cases are gathered in the note in 35 L. R. A. 512 (1897).

[5] 3 WILLISTON, CONTRACTS, rev. ed., § 605, p. 1734 (1936); George Tritch Hardware Co. v. Donovan, 74 Colo. 350, 221 P. 881 (1923).

[6] (1) Rejection of the Purdue offer; (2) agreement to purchase the superintendent's house; (3) giving up established business; and (4) defendant saved commission that it otherwise would have to pay engineers on new construction work.

[7] See note 3, supra.

benefit to defendant.[8] Even a complete failure of these facts to satisfy the additional consideration requirement does not eliminate their significance as circumstances surrounding the negotiations, indicating the meaning plaintiff reasonably attributed to "permanent employment" and to which defendant should be held.[9] A result contrary to that reached in the principal case would justly place upon the experienced employer the risk of clearly defining the terms of his offer, which is preferable to so severely penalizing the inexperienced employee for attaching to a term of the offer a meaning which, though reasonable, is at variance with the employer's subjective understanding.

[8] 1 WILLISTON, CONTRACTS, rev. ed., § 102, p. 323 (1936).

[9] Carnig v. Carr, 167 Mass. 544, 46 N. E. 117 (1897); Riefkin v. E. I. Du Pont de Nemours & Co., (App. D. C. 1923) 290 F. 286.