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CONTRACTS - CONSIDERATION - AGREEMENT TO REDUCE RENT RESERVED IN LEASE

CONTRACTS — CONSIDERATION — AGREEMENT TO REDUCE RENT RESERVED IN LEASE — Plaintiff sued defendants, who were trustees of a business trust, to enforce personal liability upon them for accrued rent due under a lease. When the lessee company, which was losing money because of the depression, threatened to vacate the premises, the plaintiff acquiesced in the lessee's demand that the rent be reduced for the balance of the term. Plaintiff sought to recover the amount due under the lease, claiming that the agreement for reduction was without consideration and therefore a nullity. *Held*, that in view of plaintiff's knowledge of the lessee's financial condition, the latter's agreeing to remain in actual occupancy of the premises constituted a sufficient consideration to support the agreement. *Lindeke Land Co. v. Kalman*, (Minn. 1934) 252 N. W. 650.

The general rule that an agreement to discharge a whole debt in consideration of payment of part of it is a nullity because it lacks consideration[1] has been strikingly modified both by statute[2] and judicial decision.[3] It has been

[1] Foakes v. Beer, 9 A. C. 605 (1884); Chicago, M. & St. P. Ry. v. Clark, 178 U. S. 353, 20 Sup. Ct. 924, 44 L. ed. 1099 (1900); 1 WILLISTON, CONTRACTS 257-8 (1920).

[2] In at least ten States the common law rule has been changed by statute. In Alabama Code (Michie 1928), sec. 5643; California Civil Code (Deering 1931), sec. 1524; North Dakota Comp. Laws of 1913, sec. 5828; Oregon Code Ann. (1930), sec. 9-706; South Dakota Comp. Laws (1929), sec. 787; and Tennessee Code (1932), sec. 9742 are statutes which give to a written receipt or written agreement to accept a part payment in full the same effect as the common law gave to a release under seal. In Georgia Ann. Code (Park 1914), sec. 4329, an executed agreement is a discharge, and in Maine Rev. Stat. (1930), c. 96, sec. 65, North Carolina Code (1913), sec. 895, and Virginia Code (1930), sec. 5765 part payment when accepted in full satisfaction of a larger amount will operate to extinguish the debt.

[3] Clayton v. Clark, 74 Miss. 499, 21 So. 565, 22 So. 189 (1897); Frye v. Hubbell, 74 N. H. 358, 68 Atl. 325 (1907); Baldwin v. Daly, 41 Wash. 416, 83 Pac. 724 (1906). In a few States the same result is given without the aid of a statute to a receipt in full particularly where the common law rules as to sealed instruments have been changed by statute. Dreyfuss & Co. v. Roberts, 75 Ark. 354, 87 S. W. 641 (1905); Johnson v. Cooke, 85 Conn. 679, 84 Atl. 97 (1912). See also McKenzie v. Harrison, 120 N. Y. 260, 24 N. E. 458 (1890) *semble*.

severely criticized on the grounds of its strictness and unreasonableness,[4] and in the lease field the courts have made every effort to evade it.[5] Thus, agreements for the reduction of rent have been considered an exception to the rule and, despite the inconsistency with the legalistic view of consideration, they have been held binding to the extent that they have been executed, whether partially or completely, on various grounds.[6] The ruling in the principal case that where a tenant is not bound under the lease to remain in physical possession of the premises his agreement to continue in occupancy constitutes a sufficient consideration for the landlord's promise to reduce the rent is abundantly supported by authority.[7] Yet it appears doubtful in these cases that the landlord

[4] Ames, "Two Theories of Consideration," 12 HARV. L. REV. 515 at 525 (1899).

[5] In Sigler v. Sigler, 98 Kan. 524, 158 Pac. 864 (1916), the court said the rule that payment of a lesser sum will not discharge a greater rests "rather upon technical considerations than upon common sense" and that "the modern tendency of the courts is to enlarge the exceptions to the rule in order to avoid its harshness. . . ." Hence, if the tenant has agreed to do anything he was not bound to do, however insignificant, it will be a valid consideration within the rule. White v. Walker, 31 Ill. 422 (1863) (relinquishment of a right of action against the landlord); Hastings v. Lovejoy, 140 Mass. 261, 2 N. E. 776 (1885) (agreement to furnish additional capital); Lamb v. Rathburn, 118 Mich. 666, 77 N. W. 268 (1898) (furnishing additional security for the payment of the rent); Evans v. Lincoln Co., 204 Pa. 448, 54 Atl. 321 (1903) (agreeing to conduct a first-class hotel).

[6] That there was a valid gift of the balance, Doyle v. Dunne, 144 Ill. App. 14 (1908); McKenzie v. Harrison, 120 N. Y. 260, 24 N. E. 458 (1890). *Contra,* Riley v. Kershaw, 52 Mo. 224 (1873). That it is a voluntary relinquishment of a known right, Hurlbut v. Butte-Kansas Co., 120 Kan. 205, 243 Pac. 324 (1926). That no consideration is necessary, Wilson v. Windham, 213 Ala. 31, 104 So. 232 (1925) (for modification before breach); Julian v. Gold, 214 Cal. 74, 3 Pac. (2d) 1009 (1931), noted 30 MICH. L. REV. 1110 (1932); Brackett Co. v. Lofgren, 140 Minn. 52, 167 N. W. 274 (1918), noted 16 MICH. L. REV. 640 (1918); Bowman v. Wright, 65 Neb. 661, 91 N. W. 580, 92 N. W. 580 (1902); Evans v. Lincoln Co., 204 Pa. 448, 54 Atl. 321 (1903); Conlan v. Spokane Hardware Co., 117 Wash. 378, 201 Pac. 26 (1921); Ossowski v. Wiesner, 101 Wis. 238, 77 N. W. 184 (1898) (on ground payment was by check "in full for rent"). But see Eisenberg v. Battenfield Oil Co., 251 Mich. 654, 232 N. W. 386 (1930). See also Bell v. Quagliotti, 26 Brit. Col. 482 (1919). See generally L. R. A. 1915 B, 1 at 62; 43 A. L. R. 1451 (1926).

[7] Hyman v. Jockey Co., 9 Col. App. 299, 48 Pac. 671 (1897); Doherty v. Doe, 18 Colo. 456, 33 Pac. 165 (1893); Raymond v. Krauskopf, 87 Iowa 602, 54 N. W. 432 (1893) *semble;* Sargent v. Robertson, 17 Ind. App. 411, 46 N. E. 925 (1897); Ten Eyck v. Sleeper, 65 Minn. 413, 67 N. W. 1026 (1896); Bowman v. Wright, 65 Neb. 661, 91 N. W. 580, 92 N. W. 580 (1902); Atwood v. Hayes, 139 Okla. 95, 281 Pac. 259 (1929); Sherman Clay & Co. v. Buffum & Pendelton, 91 Ore. 352, 179 Pac. 241 (1919). *Contra,* Wayland v. Latham, 89 Cal. App. 55, 264 Pac. 766 (1928) *semble;* Seymour v. Hughes, 55 Misc. 248, 105 N. Y. S. 249 (1907) *semble.*

was actually motivated to reduce the rent in exchange for the tenant's agreement to continue in occupancy of the premises. The fact is that the courts in holding this to be consideration do so *ex post facto* and contrary to the general rule that the promise and the consideration must purport to be the motive for each other. However, it would seem that this is particularly a depression problem and one which should engage the sympathies of the courts. Viewing the situation realistically, the landlord is benefited by the tenant's remaining at a reduced rent because he not only obtains some return on the premises which probably would otherwise be vacant for some time,[8] but from the standpoint of depreciation and insurance [9] it is also of advantage to him. Furthermore, it seems unfair and dishonest to permit the landlord to induce the tenant to remain in business on the strength of such an agreement and then allow the landlord to repudiate it and recover the rent originally reserved in the lease because of a narrow and artificial rule of consideration. It is therefore submitted that the decision of the court in the instant case is supported by reason and justice and that such a departure from the strict rules of consideration is desirable.

R. R. K.

[8] Ten Eyck v. Sleeper, 65 Minn. 413, 67 N. W. 1026 (1896).
[9] Bowman v. Wright, 65 Neb. 661, 91 N. W. 580, 92 N. W. 580 (1902).