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Contracts - Statute of Frauds - Effect on Oral Exclusive Distributorship Agreement for Indefinite Duration

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CONTRACTS—STATUTE OF FRAUDS—EFFECT ON ORAL EXCLUSIVE DISTRIBUTORSHIP AGREEMENT FOR INDEFINITE DURATION—In 1935 plaintiff brewery made an oral agreement of no definite duration by which defendant and his father, as partners, were given the exclusive right to distribute its beer. Defendant, changing from one partnership to another, complied with various wishes of the plaintiff such as furnishing warehousing, purchasing uniform amounts of beer throughout the year although seasonal demands varied, dissolving the second partnership in 1950, discontinuing distribution of a rival beer in 1954, and hiring a sales promotion man in June 1954; the latter three actions taken on plaintiff's assurance that he would continue defendant's distributorship. In July 1954 plaintiff, without cause or notice, cancelled defendant's franchise. Plaintiff then brought an action against defendant for the balance due on an open account for beer sold, and defendant, admitting this, counterclaimed for breach of contract. On appeal from a verdict and judgment for defendant on the counterclaim, *held,* reversed.[1] Plaintiff was entitled to an instruction that if the jury found the parties impliedly agreed that the contract would continue for a reasonable

[1] The judgment entered was the amount of the verdict less the admitted indebtedness sued on.

time, then it must determine what period would constitute a reasonable time; if such time exceeded one year, the agreement would not be binding upon the plaintiff since it was not in writing. *San Francisco Brewing Corp. v. Bowman,* (Cal. App. 1958) 329 P. (2d) 349.

The statute of frauds expressly invalidates contracts which by their terms[2] are "not to be performed within a year from the making thereof."[3] Courts have usually construed agreements having no definite duration to be terminable at will and therefore outside the statute, for they may be fully performed within a year.[4] There is, however, a class of oral contracts which, although setting no time for performance, are not held to be terminable at will.[5] The exclusive distributorship in the principal case is illustrative of this type contract. Since the distributor, in addition to his services in selling the manufacturer's product, often incurs additional expenses in market development and other reliance on the agreement,[6] the courts usually imply that the parties intended the contract to last for a reasonable time and that reasonable notice must be given before termination. The issue squarely presented in the principal case is whether the judicial determination that the reasonable duration of an exclusive distributorship contract is more than twelve months should bring the agreement within the statute of frauds as an agreement not to be performed within one year. The few cases considering this question have suggested an affirmative answer. In a recent Texas case[7] involving the breach of an exclusive distributorship by the manufacturer, the court said that the contract should not be outside the statute simply because the duration was implied and pointed out that if the law is justified in implying any length of performance, it is justified in defining that period in regular units of time. In two other recent cases with similar facts,[8] it was stated that where a reasonable time exceeded one year, the agreement was within the statute, but the courts con-

[2] 2 WILLISTON, CONTRACTS, 2d ed., §495 (1936); 2 CORBIN, CONTRACTS §444 (1950); 1 CONTRACTS RESTATEMENT §198, comment *b* (1932); GRISMORE, CONTRACTS §266 (1947).

[3] Cal. Civ. Code Ann. (Deering, 1949) §1624.

[4] See generally 2 CORBIN, CONTRACTS §446 (1950); 2 WILLISTON, CONTRACTS, 2d ed., §495 (1936); 1 REED, THE STATUTE OF FRAUDS §200 (1884); 2 AGENCY RESTATEMENT §442, comment *a* (1933); note, 55 MICH. L. REV. 1166 (1957); 135 A.L.R. 688 (1941).

[5] Hunt Foods v. Phillips, (9th Cir. 1957) 248 F. (2d) 23; Allied Equipment Co. v. Weber Engineered Products, (4th Cir. 1956) 237 F. (2d) 879; J. C. Millett Co. v. Park & Tilford Distillers Corp., (D.C. Cal. 1954) 123 F. Supp. 484; Erskine v. Chevrolet Motor Co., 185 N.C. 479, 117 S.E. 706 (1923); 32 A.L.R. 196 at 232 (1924); 2 AGENCY RESTATEMENT §442, comment *c* (1933); 4 WILLISTON, CONTRACTS, 2d ed., §1027A, p. 2852 (1936); note, 55 MICH. L. REV. 1166 at 1167 (1957).

[6] Hunt Foods v. Phillips, note 5 supra; J. C. Millett Co. v. Park & Tilford Distillers Corp., note 5 supra; Erskine v. Chevrolet Motor Co., note 5 supra; 2 AGENCY RESTATEMENT §442, comments *a* and *c* (1933); 4 WILLISTON, CONTRACTS, 2d ed., §1027A, p. 2852 (1936).

[7] Hall v. Hall, (Tex. 1957) 308 S.W. (2d) 12.

[8] Hunt Foods v. Phillips, note 5 supra; Fibreboard Products, Inc. v. Townsend, (9th Cir. 1953) 202 F. (2d) 180.

cluded that the defendant was estopped to raise the issue because of the distributor's reliance. Finally, in a similar federal case[9] the court found a reasonable time to be one year with the result that the contract was outside the statute of frauds. The California court followed the apparent logic suggested in the above decisions that a contract with an implied duration of more than one year would appear to be a contract not to be performed within one year. However, the logic exists more in form than in substance. Generally, in exclusive distributorship agreements, it is the manufacturer who refuses to set a definite duration because he wants to be able to end the contract when he wishes. His superior economic position often gives him the power to do this.[10] The purpose of implying that an agreement such as that in the principal case must last a reasonable time is to protect the distributor from loss due to reliance expense induced by the manufacturer. To hold that the implication of a reasonable time could bring the contract within the statute is to use a device, originated for the distributor's protection, to defeat his claim. The desired result could be reached by either of two approaches. The court could refuse to allow the jury to imply a reasonable duration and simply hold the contract terminable at will by either party but only upon the giving of reasonable notice, which would not likely exceed one year. This would eliminate the statute of frauds dilemma and also afford protection to the distributor without raising the problem of holding the manufacturer liable for reliance or expectation damages based on a contract for longer than one year.[11] The alternative solution would be for the court to allow the implication of a reasonable duration but avoid the self-defeating application of the statute, where the duration is found to be longer than one year, through invocation of an estoppel based on the distributor's reliance on the agreement and consequent change of position through the incurring of expenses.[12] The frequency with which contracts of this type are used would seem to warrant some definitive manner of protection for the discharged distributor.

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[9] J. C. Millett Co. v. Park & Tilford Distillers Corp., note 5 supra.

[10] J. C. Millett Co. v. Park & Tilford Distillers Corp., note 5 supra; 4 WILLISTON, CONTRACTS, 2d ed., §1027A, p. 2853 (1936); comment, 63 HARV. L. REV. 1010 at 1012 (1950). The problem has been serious enough in the automobile industry to result in congressional legislation. See Brown and Conwill, "Automobile Manufacturer-Dealer Legislation," 57 COL. L. REV. 219 (1957); comment, 70 HARV. L. REV. 1239 (1957). See also comment, 31 COL. L. REV. 830 (1931).

[11] Even if liability were established it would seem that presumed knowledge of the one-year clause of the statute of frauds would limit foreseeability of reliance damages, and for the same reason it can be questioned whether expectation damages should not be limited by the same period.

[12] See Fibreboard Products, Inc. v. Townsend, note 8 supra. The use of estoppel to protect defendant here was expressly left open by the court. Principal case at 356.