Michigan Law Review

Volume 55 | Issue 8

1957

Agency - Liability of Principal for Termination of Agents Employment

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RECENT DECISIONS

AGENCY—LIABILITY OF PRINCIPAL FOR TERMINATION OF AGENT'S EMPLOYMENT—In the summer of 1949, appellant entered into an oral[1] contract for an indefinite time with the appellee whereby the former was granted an exclusive wholesale distributorship of appellee's farm and garden equipment. A four-year period followed in which appellant increased the number of dealers in appellee's product from four or five in 1949 to over one hundred in 1953. In the latter part of 1952 appellant contemplated an enlargement of its facilities which would require it to enter upon a fifteen-year lease. Since the lessor desired some assurances as to the duration of appellant's franchise, appellant wrote to appellee asking for such assurance and setting forth the intended lease arrangement. In its reply, appellee gave no definite assurance of the permanency of the distributorship arrangement, but did express its belief in a continuation of the relationship. Appellant executed the lease. In September 1953 appellant undertook to sell equipment that appellee considered to be in competition with its products. The distributorship contract was canceled, and appellee took over the territory and distributed its products through many of the dealerships that had been established by the appellant. Appellee sued to collect on an open account, and appellant counterclaimed for damages for unlawful cancellation of its contract. A jury awarded appellant damages, but the district court rendered judgment n.o.v. for the appellee.[2] On appeal, *held,* reversed and remanded for jury determination. The manufacturer may not terminate the agreement at will, even though the contract contains no provision for its termination, but must retain the agent in employment for a reasonable period of time. *Allied Equipment Co. v. Weber Engineered Products,* (4th Cir. 1956) 237 F. (2d) 879.

The principal case is concerned, not with the manufacturer's power to revoke the agent's authority, but with his right to do so under the agency contract. Unless the contract gives the principal the right to revoke, his act of terminating the agency, though effective to end the relationship, will nevertheless subject the principal to liability for breach of contract. According to the general rule, when a contract designates that one party shall act as the agent of another but does not set out a definite time or prescribe conditions for determining the duration of the relationship, the contract may be terminated, without liability, by either party at will.[3] Cases follow-

[1] Though the question of the statute of frauds was not raised in the principal case, courts have held that since the contract might be fully performed within one year by the death of the appellant, the statute of frauds has no application. Warner v. Texas & Pacific Ry. Co., 164 U.S. 418 (1896); Kelly-Springfield Tire Co. v. Bobo, (9th Cir. 1925) 4 F. (2d) 71.

[2] Farm and Garden Sales v. Allied Equipment Co., (E.D. Va. 1956) 138 F. Supp. 317.

[3] Cummings v. Kelling Nut Co., 368 Pa. 448, 84 A. (2d) 323 (1951); Ford Motor Co. v. Kirkmeyer Motor Co., (4th Cir. 1933) 65 F. (2d) 1001; Motor Car Supply Co. v. General Household Utilities Co., (4th Cir. 1935) 80 F. (2d) 167.

ing the general rule usually treat the contract as unenforceable because of indefiniteness and want of mutuality.[4] Thus, for the purpose of a suit for damages, the agent is said to have no contract. These questions of vagueness and mutuality were not raised in the principal case, however, for the parties assumed that there was some contractual arrangement. The principal case may be compared more appropriately with the decisions of the courts which, departing from the general rule, have recognized the existence of a contract in this situation. Some of the courts that treat the contract as valid avoid the problem of uncertainty by construing contracts prescribing no definite time limitation as terminable after a reasonable time has elapsed.[5] The rationale of these decisions is primarily the fictitious conception that the parties intended a reasonable time in which to fulfill their contractual arrangement. The principal case, however, does not rely on fictitious intent to immunize the agent from the impact of the general rule. Rather, it applies, as an exception to the general rule, the principle that when an agent, in reliance upon his agency and with the knowledge of the principal, expends funds in the interest of the agency and of the principal, the principal must allow the agency to continue for a reasonable period of time so that the agent may recoup his expenditures. By furnishing a consideration in addition to his mere services, the agent is deemed to have purchased his employment for a time long enough to allow the agent to regain his investment.[6] This is the view taken by the *Agency Restatement*[7] and by Professor Williston.[8] This consideration theory relied on in the principal case was expressed in an earlier decision of the same court in *Jack's Cookie Co. v. Brooks,*[9] where on similar facts the court held for the agent. The theory of the principal case offers little help in predicting the outcome of future cases, since it leaves several problems to be decided case by case. In the first place, it is difficult to distinguish between the agent's primary job of distributing and the "additional consideration" he furnishes in establishing a system for distributing. This difficulty is evidenced by the fact that other courts, on like facts, have found that the agent pro-

4 E.g., Curtis Candy Co. v. Silberman, (6th Cir. 1930) 45 F. (2d) 451; Willard, Sutherland & Co. v. United States, 262 U.S. 489 (1923); Jordan v. Buick Motor Co., (7th Cir. 1935) 75 F. (2d) 447. These cases hold that the contract in question only resulted in a contract for a series of independent sales. 1 CONTRACTS RESTATEMENT §32 (1932): "An offer must be so definite in its terms, or require such definite terms in the acceptance, that the promises and performances to be rendered by each party are reasonably certain."

5 E.g., Abrams v. George E. Keith Co., (3d Cir. 1929) 30 F. (2d) 90; Boehm v. Spreckels, 183 Cal. 239, 191 P. 5 (1920); Elson & Co. v. Beselin & Son, 116 Neb. 729, 218 N.W. 753 (1928).

6 *Accord:* Beebe v. The Columbia Axle Co., 233 Mo. App. 212, 117 S.W. (2d) 624 (1938); Jack's Cookie Co. v. Brooks, (4th Cir. 1955) 227 F. (2d) 935; Ansbacker-Siegle Corp. v. Miller Chemical Co., 137 Neb. 142, 288 N.W. 538 (1939); Bassick Mfg. Co. v. Riley, (E.D. Pa. 1925) 9 F. (2d) 138; Kelly-Springfield Tire Co. v. Bobo, note 1 supra; J. C. Millett Co. v. Park & Tilford Distillers Corp., (N.D. Cal. 1954) 123 F. Supp. 484.

7 2 AGENCY RESTATEMENT §442, comment *c* (1933).

8 4 WILLISTON, CONTRACTS, rev. ed., §1027A (3) (1936).

9 Jack's Cookie Co. v. Brooks, note 6 supra.

vided no consideration beyond the services necessary to perform his duties.[10] Another difficult question concerns the reasonableness of the agent's acts in supplying the additional consideration. The agent must act reasonably in relying upon the agreement[11] and in making costly expenditures. In the principal case the agent had requested assurances from the principal concerning the durability of the relationship and received in reply only vague and general statements relating to the principal's hope that the arrangement would continue. It is arguable that a prudent businessman would not rely upon such generalities in consummating a fifteen-year lease, particularly when assurances were pointedly asked for and were not received. A further perplexing problem is that of determining what period actually constitutes a reasonable time in which the agent may recoup his investment. The agent is likely to be continuously making investments so that at no one period of time may it be said that he recouped his entire expenditures. Moreover, the agent may argue plausibly that the agreement must be continued for a considerable length of time on the ground that the first years of the agreement are merely the foundation for future remunerative years.[12]

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[10] Cummings v. Kelling Nut Co., note 3 supra; Superior Concrete Accessories v. Kemper, (Mo. 1955) 284 S.W. (2d) 482.

[11] Grimes v. Baker, 133 Neb. 517, 275 N.W. 860 (1937).

[12] Superior Concrete Accessories v. Kemper, note 10 supra.