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Restitution - Recission - Measure of Restitution Required of Rescinding Vendee of Executed Land Contract

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RESTITUTION—RESCISSION—MEASURE OF RESTITUTION REQUIRED OF RESCINDING VENDEE OF EXECUTED LAND CONTRACT—Plaintiff vendee sought to rescind an executed contract for the sale of an inn, alleging fraud in the inducement. The lower court granted rescission and ordered repayment to the plaintiff of that part of the purchase price already paid over to defendant-vendor, less $2,500, which was found to be the fair or reasonable rental value for the period of the plaintiff's possession.[1] Both parties appealed, defendant claiming a higher rental figure and plaintiff asserting that no rental should be allowed. *Held,* the plaintiff should be charged rent[2] measured by the value of the benefits which accrued to him through the use of the premises. *Beaudry v. Favreau,* 99 N.H. 444, 114 A. (2d) 666 (1955).

A vendee rescinding an executed land contract is generally required to make restitution in the amount of the fair or reasonable rental value of the property for any period of ownership which he may have enjoyed.[3] This

[1] The report of the case does not make it at all clear when plaintiff abandoned possession or when he discovered the fraud. It will be assumed for the purposes of this note that the possession was surrendered or a tender of restoration made when the fraud was discovered, for if possession was retained beyond that point, several new elements are introduced, i.e., a new factor in the determination of relative fault and a possible basis for arguing affirmance of a voidable contract.

[2] It is, of course, improper to refer to this payment or credit as rent, for, as the principal case points out, it is not based on the relationship of lessor and lessee. The word will be used, however, for the sake of convenience.

[3] Kunde v. O'Brian, 214 Iowa 921, 243 N.W. 594 (1932); Huff v. Knight, 58 R.I. 257, 192 A. 470 (1937). It is conceivable that the requirement that plaintiff account for the reasonable rental value of the premises grew out of a desire to strike a balance of treatment between the interest on the purchase money which the defendant vendor is required to pay the plaintiff-vendee, this being the value to the vendor of the use of the vendee's money. This reasoning also affords an explanation for the practice of holding that one cancels out the other. See Lutz v. Cunningham, 240 Iowa 1037, 38 N.W. (2d) 638 (1949); Shields v. Bogliolo, 7 Mo. 134 (1841).

amount is presumably determined by way of a finding as to what the owner could have realized by leasing rather than selling the premises.[4] Even if the rescinding vendee has not occupied the premises he will nevertheless be forced to account for the reasonable rental for that period during which he might have possessed and benefited from the use of the land.[5] The principal case departs from this line of authority by requiring the vendee to restore only the actual benefits realized, thus eliminating the question of rental value, unless the vendee actually takes possession of the premises. The important consideration becomes *actual realization* of benefit as opposed to the benefit which the vendee *might have realized* from his period of ownership.[6] The accounting is, of course, part of the restitution which a rescinding party must make as a part of the unwinding process which he is seeking. Clearly it would be unjust to allow the plaintiff to keep that which he has received while permitting him to regain from the defendant that with which he has parted. Assuming that the rationale of restitution is to avoid this injustice,[7] it is indeed hard to quarrel with the solution reached in the principal case, i.e., requiring the plaintiff to account for the value of benefits which accrued to him. The vendee has received only this amount and should not be forced to return more. By way of further justification for the result reached in the principal case, it may be noted that the vendor is the person who most benefits from the fair rental measure—he gets back the land plus the rental he might have realized. The plaintiff-vendee, on the other hand, suffers to the extent that the reasonable rental exceeds the benefit, if any, he actually realized. Keeping in mind the fact that the original wrong is the vendor's[8]

4 Kunde v. O'Brian, note 3 supra; Huff v. Knight, note 3 supra.

5 Elrod-Oas Home Bldg. Co. v. Mensor, 120 Cal. App. 485, 8 P. (2d) 171 (1932).

6 The principal case cites only one case as authority for the result reached. It is a Kentucky case, decided in 1821, which seems to have been overlooked by the few courts and counsel who have considered the problem since that time. The theory of the holding is quite adequately expressed by the court: "Neither party ought . . . to be enriched, to the prejudice of the other . . . but the possessor cannot be said to be enriched, in any case, beyond the actual profits he has received. . . ." Richardson v. M'Kinson, 5 Litt. Sel. Cases (16 Ky.) 320 at 323 (1821). See also Allen v. Talbot, 170 Mich. 664, 137 N.W. 97 (1912); Coffman v. Huck, 19 Mo. 435 (1854).

7 RESTITUTION RESTATEMENT §66, comments *a, c, d,* illus. 9, §159, comment *a,* and §157 (1937), lend support to this view. Section 66, comment *d,* illus. 9, seems to cover the exact problem involved in the principal case and it dictates a like result. Even more favor is shown to the plaintiff since it requires him to account for the value to him "or the reasonable value of the use of the land, whichever is less." But cf. Marr v. Tumulty, 256 N.Y. 15, 175 N.E. 356 (1931).

This concept of avoiding the unjust retention of benefits provides the basis for analogous holdings in cases where a plaintiff in default is seeking restitution. In such cases the defendant is the innocent party and he is required to restore to plaintiff only the value to him of that part of plaintiff's performance which he has retained or benefited from. See 5 CORBIN, CONTRACTS §§1122, 1124 (1951). "The theory is that it is unjust for the promisor [the innocent defendant] to profit even though his promise has never become absolute." Schwasnick v. Blandin, (2d Cir. 1933) 65 F. (2d) 354 at 357.

8 There was no finding in the principal case on the question of the nature of the fraud or misrepresentation involved. The court seems, however, to assume that the rescission is based on fraud.

it is not at all unpalatable to favor the vendee at the expense of the vendor.[9] Considering the basis of the requirement for restitution and the relative fault of the parties, the principal case seems to have set a good precedent for this area of the law of restitution.[10]

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9 Cf. Wilks v. McGovern-Place Oil Co., 189 Wis. 420, 207 N.W. 692 (1926).

10 Corbin seems to be in general agreement with this result in land contract breach cases (failure of title) although the element of fault may conceivably be absent in such cases. 5 CORBIN, CONTRACTS §1115 (1951).