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PARTNERSHIPS—SALE OF GOODWILL—RIGHT OF RETIRING PARTNER TO EJECT PARTNERSHIP FROM LEASED PREMISES—Plaintiff, owning a one-third interest in a partnership, sold his interest to the other partners, among them the defendant. Included in the sale was the goodwill of the partnership. The reversion

in the property leased by the partnership was subsequently acquired by plaintiff, who notified defendant to vacate the premises upon termination of the lease. Defendant refused, and plaintiff brought a forcible entry and detainer action, recovering judgment in the trial court. On appeal, *held*, affirmed. *Stone v. Lerner*, (Colo. 1948) 195 P. (2d) 964.

The rule is generally accepted that after its sale goodwill must not be impaired by an act of the vendor.¹ Courts have held that goodwill may attach to land,² an enterprise,³ or a business name.⁴ Goodwill attaching to land inures to the benefit of the owner,⁵ or of the lessee where the land has been leased;⁶ when the lease expires, the goodwill passes to the lessor.⁷ This analysis would explain the decision in the principal case, for defendant would have lost his interest in the goodwill when the lease expired and could not have been injured by plaintiff's action. Goodwill may also adhere to a business.⁸ So, where a vendor of a milk route and its goodwill,⁹ or a vendor of a newspaper route and its goodwill,¹⁰ took another route covering the same territory, the courts held that he could not by such means take away that which he had sold. In these and similar cases, where the seller has derogated from his grant by going into a competing business, the courts disagree as to how much freedom to compete he should have.¹¹ These decisions are of limited significance in the present case, however, for here the vendor was not competing, nor was there any indication that he intended to set up a similar business on the premises.¹² Although a tenant may be considered to have an

¹ Foreman, "Conflicting Theories of Good Will," 22 COL. L. REV. 638 (1922).

² *Cruttwell v. Lye*, 17 Ves. Jun. 334, 34 Eng. Rep. 129 (1810). *Chittenden v. Witbeck*, 50 Mich. 401, 15 N.W. 526 (1883).

³ *Chittenden v. Witbeck*, 50 Mich. 401, 15 N.W. 526 (1883). *People ex rel. A. J. Johnson Co. v. Roberts*, 159 N.Y. 70, 53 N.E. 685 (1899); *Pollock v. Ralston*, 5 Wash. (2d) 36, 104 P. (2d) 934 (1940).

⁴ *Mutual Life Ins. Co. v. Menin*, (C.C.A. 2d, 1940) 115 F. (2d) 975.

⁵ *Wright*, "The Nature and Basis of Legal Goodwill," 24 ILL. L. REV. 20 at 33 (1929); "In many instances the so-called 'goodwill return' is no more than pure site rent. There arises an unearned differential advantage attaching to the land and inuring to the benefit of the owner of the land. It was this fact which often led the courts to refer to goodwill as attaching to the land, premises, or location. This was the basis for the earliest goodwill concept. . . . Where by habit or custom the customers 'resort to the old place,' a certain value attaches to the land."

⁶ *Chittenden v. Witbeck*, 50 Mich. 401, 15 N.W. 526 (1883).

⁷ *Ibid.*

⁸ *Smith v. Gibbs*, 44 N.H. 335 at 346 (1862): "By the sale of the good-will of an established business we understand that the seller parts with and the purchaser acquires the right to continue that established business, with all the advantages belonging to it as such." See also, *Churton v. Douglas*, 1 Johns. 174, 70 Eng. Rep. 385 (1859); *Millspaugh Laundry v. First National Bank*, 120 Iowa 1, 94 N.W. 262 (1903).

⁹ *Munsey v. Butterfield*, 133 Mass. 492 (1882).

¹⁰ *Wentzel v. Barbin*, 189 Pa. 502, 42 A. 44 (1899).

¹¹ 11 VA. L. REV. 392 (1925).

¹² In *Pulos v. Demarco*, [1917] 2 W.W.R. 1000 (Alta.), seller of goodwill took a new lease of the premises which buyer occupied under the existing lease, with the idea of returning there when the existing lease expired and carrying on a similar business. The court concluded that such an act was a direct solicitation of the old customers,

“expectancy of renewal” with which the seller of goodwill should not interfere, it would also seem that the tenant should have no right to demand from the landlord a renewal on expiration of the lease.¹³ This would appear to be equally true where the seller becomes the landlord. If, however, the seller then re-establishes the same business on the premises, the buyer of the goodwill should be entitled to relief,¹⁴ even in those jurisdictions where the vendor is given the most freedom.¹⁵

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tending to depreciate that which was sold, and ordered the assignment of the new lease to the buyer, with the lessor's consent; if that were unobtainable, the seller would not be allowed to carry on the business in the premises.

¹³ *Fine v. Lawless*, 139 Tenn. 160, 201 S.W. 160 (1918). *Crittenden & Cowles Co. v. Cowles*, 66 App. Div. 95 (1901), 72 N.Y.S. 701.

¹⁴ *Lindstrom v. Sauer*, (La. App. 1936) 166 S. 636. *Fine v. Lawless*, 139 Tenn. 160, 201 S.W. 160 (1918). *Pulos v. Demarco*, [1917] 2 W.W.R 1000 (Alta.).

¹⁵ *Cottrell v. Babcock Printing-Press Mfg. Co.*, 54 Conn. 122, 6 A. 791 (1886).