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EQUITY-SPECIFIC PERFORMANCE-DECREASE IN MONEY VALUE SUBSEQUENT TO THE INCEPTION OF AN OPTION CONTRACT IS NOT HARDSHIP

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Equity—Specific Performance—Decrease in Money Value Subsequent to the Inception of An Option Contract Is Not Hardship—In 1940 defendant leased his property to the plaintiff for ten years with an option to purchase for $25,000 at any time within the term of the lease. One month before the lease expired, the plaintiff gave defendant notice of his election to exercise the option. Defendant claimed that, subsequent to exercise of the option, a fair bid of $35,000 had been made by a third party and, therefore, he was not required to convey. In an action for specific performance, the trial court held that the subsequent bid was of no effect under the contract,[1] and the plaintiff was entitled to the property. On appeal from an order granting a new trial, *held,* for plaintiff. In the absence of an unconscionable overreaching, the adequacy of consideration is determined at the time of the contract's inception. Therefore, evidence of 1950 property value, the competence of the

[1] The contract in the principal case allowed the lessor-defendant to accept a bid from a third person, only after the lessee-plaintiff refused to purchase on identical terms. The bid made in this case, aside from being of doubtful value, followed the plaintiff's exercise of the option and was thus ineffective. Principal case at 712.

bid, and the depreciation of money values is immaterial. *Shell Oil Co. v. Kapler*, (Minn. 1951) 50 N.W. (2d) 707.

Equity will grant specific performance in actions on land contracts because of the traditionally unique character of real estate, which makes remedies at law inadequate.[2] The denial of this extraordinary remedy historically lies within the chancellor's "discretion," which through years of case law has crystallized into principles to guide the court.[3] Thus a long list of legal and equitable defenses may exist at the time of the contract to serve as grounds for denying specific performance.[4] Rarely,[5] however, will a disparity between price and value arising subsequent to the inception of the contract be fatal to a plea for specific performance, unless mixed with elements of plaintiff's fault[6] or caused by unforeseen factors which, had they been contemplated by the parties, the court assumes would have been allocated to the plaintiff's risk.[7] The depreciation of money value was placed within this unforeseen factor category by the United States Supreme Court in the famous Civil War case of *Willard v. Tayloe*.[8] In that case, although it was acknowledged that the risk of rise in land value lay with the owner in an option contract, the court held that the war-time issue of legal tender notes was an uncontemplated risk from which the owner should be protected; the device employed was a conditional decree requiring a tender of gold or silver coin by the plaintiff seeking the land.[9] The Legal Tender Decisions and the more recent Gold Clause Decisions, which equated the classes of currency, have cut off the use of the conditional decree as it was employed in *Willard v. Tayloe*,[10] but the

[2] CONTRACTS RESTATEMENT §360 (1932).

[3] "The formula as to judicial discretion, therefore, is habitually used by the courts simply to indicate that the cases before the court are governed, not by legal rules, but by some well-established equitable principles." Bennett v. Moon, 110 Neb. 692 at 696, 194 N.W. 802 (1923).

[4] POMEROY, SPECIFIC PERFORMANCE OF CONTRACTS, 2d ed., §175 (1897).

[5] McLean v. Clark, 118 Misc. 284, 193 N.Y.S. 113 (1922); cf. Low v. Treadwell, 12 Me. 441 (1835).

[6] Laches appears the most often in the cases, Roby v. Cossitt, 78 Ill. 638 (1875); see list of cases and annotation, 11 A.L.R. (2d) 394 (1950).

[7] Owner spent 15 years in litigation protecting title, Fitzpatrick v. Dorland, 27 Hun (34 N.Y.) 291 (1882); purpose of purchase prohibited by ordinance, Anderson v. Steinway & Sons, 178 App. Div. 507, 165 N.Y.S. 608 (1917); cf. Biggs v. Steinway & Sons, 229 N.Y. 320, 128 N.E. 211 (1920); special assessment added to option price in a conditional decree, King v. Raab, 123 Iowa 632, 99 N.W. 306 (1904); physical destruction of land due to a storm, Huguenin v. Courtenay, 21 S.C. 403, 53 Am. Rep. 688 (1884).

[8] 8 Wall. (75 U.S.) 557, 19 L. Ed. 501 (1869).

[9] The operation of "Gresham's Law" had virtually driven gold and silver coin out of circulation by 1864, Willard v. Tayloe, supra note 8, at 569.

[10] Longworth v. Mitchell, 26 Ohio St. 334 at 343 (1875) held that the relief granted in Willard v. Tayloe, supra note 8, was prevented by the Legal Tender Cases, 12 Wall. (79 U.S.) 457, 20 L. Ed. 287 (1871). Holder of public obligations was unable to show damage from the withdrawal of gold coin from circulation, Nortz v. United States, 294 U.S. 317, 55 S.Ct. 428 (1935); Perry v. United States, 294 U.S. 330, 55 S.Ct. 432 (1935); exercise of an acknowledged governmental power is not nullified by the use of a "gold clause" in a private contract, Norman v. B. & O. R. Co., 294 U.S. 240, 55 S.Ct. 407 (1935).

underlying problems of the effect to be given depreciated money remains.[11] Drastic changes in money values, when pressed by counsel, have influenced courts in rehearing support decrees,[12] in giving jury instructions in tort cases,[13] and in reviewing damage assessments.[14] However, a fundamental division of opinion is found in cases where the courts are required to apply foreign exchange rates: the federal rule, by computing the exchange of foreign currency into that of the forum at judgment day rates, adheres to the traditional currency philosophy;[15] but the "breach day" rule, in making the computation as of the time the cause of action arose, treats money as a mere commodity, allocating the risks of subsequent inflation in foreign currency to the defendant.[16] Attorneys have not been quick to utilize the "breach day" philosophy in domestic cases, and courts hearing specific performance cases have not distinguished inflationary effects due to money fluctuations from those due to contemplated market factors.[17] The argument that this distinction would overburden a jury is inapplicable to a court in equity, while the practical difficulties of computation and price index selection would likewise appear a small burden compared to many assumed by chancellors in other cases.[18] By failing to recognize drastic fluctuations in the medium of exchange as a separate element of risk to be allocated and by limiting *Willard v. Tayloe* to cases of inflation caused by new currency types, the court in the principal case by-passed the underlying reasoning of the Supreme Court decision. The result reached is convenient and just on the facts,[19] for the relative value of the land in terms of the 1940 dollar had decreased,[20] leaving the disparity between price and value short of un-

[11] Dawson and Cooper, "The Effect of Inflation on Private Contracts, United States, 1861-1879," 33 MICH. L. REV. 706 at 872 (1935); cf. MCCORMICK, DAMAGES 198 (1935).

[12] Stanley v. Stanley, 158 Fla. 402, 28 S. (2d) 694 (1947).

[13] Halloran v. New England Tel. & Tel. Co., 95 Vt. 273, 115 A. 143 (1921); cf. Palmer v. Security Trust, 242 Mich. 163, 218 N.W. 677 (1928).

[14] Noyes v. Des Moines Club, 186 Iowa 378, 170 N.W. 461 (1919); see comment 48 COL. L. REV. 264 (1948).

[15] "An obligation in terms of the currency of a country takes the risk of currency fluctuations and whether creditor or debtor profits by the change the law takes no account of it." Justice Holmes in Deutsche Bank Filiale Nurnberg v. Humphrey, 272 U.S. 517 at 519, 47 S.Ct. 166 (1926). See Rifkind, "Money As A Device for Measuring Value," 26 COL. L. REV. 559 (1926).

[16] Justice Sutherland's dissent in Deutsche Bank Filiale Nurnberg v. Humphrey, note 15 supra, at 520; Hoppe v. Russo-Asiatic Bank, 235 N.Y. 37, 138 N.E. 497 (1923). For a compromise suggestion based upon allocation of risk principles see, MCCORMICK, DAMAGES §49 (1935).

[17] Martin v. Toll, 196 Iowa 388, 192 N.W. 806 (1923); cf. Daughdrill v. Edwards, 59 Ala. 424 (1877), complicated by the fact that the Confederate currency designated in the contract had become both worthless and illegal.

[18] For a continuing contract of a complex nature see, Union Pacific R. Co. v. Chicago, Rock Island & Pacific R. Co., 163 U.S. 564, 16 S.Ct. 1173 (1896); see comment 5 TEX. L. REV. 203 (1927).

[19] See note 1 supra.

[20] U.S. Dept. of Commerce, Business Statistics Supplement to "Survey of Current Business" (1951), 1940 monthly all commodity indexes: wholesale 102.3, retail 99.8; 1950 monthly all commodity indexes: wholesale 49.8, retail 58.2. These figures indicate that the 1950 dollar was 48.7% of the 1940 wholesale dollar and 58.3% of the 1940 retail

conscionable. Nevertheless, it is suggested that the basic philosophy of *Willard v. Tayloe* should survive. Once the risk of cheapened money is isolated as a factor, its validity as a defense should be accepted or rejected only after an analysis of the facts before the court in light of allocation or risk principles.[21]

Harry T. Baumann, S.Ed.

dollar in purchasing power. To remain abreast of the money inflation the land in the principal case, valued at $25,000 in 1940, would have to increase to $51,300 (based on the wholesale index) or $42,900 (based on the retail index), both of which are in excess of the $35,000 bid claimed by the defendant.

[21] Support for these arguments may be found in, Dawson and Cooper, "The Effect of Inflation on Private Contracts: United States, 1861-1879," 33 MICH. L. REV 706 at 912 (1935); 4 WILLISTON, CONTRACTS §§927-954 (1936).