

1963

Contracts - Uniform Commercial Code - Statute of Frauds

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The question has been posed: suppose the signer admits that the plaintiff pointed out the warranty of attorney? Few would deny that the other party *should* be bound by the provision. But, if the *Foster* case means what it says, this would not be the result, unless the party signed the warrant where it appeared. Such emasculation of the manifest intent of the parties is a drastic departure from the generally accepted rule. As Chief Justice Bell stated in his dissent in the *Foster* case:

The language could not be clearer, nor could the intention of the parties be more clearly expressed.

I believe that *Frantz Tractor Company, Inc. v. Wyoming Valley Nursery*, 384 Pa. 213, 120 A.2d 303, is distinguishable, because the warrant of attorney authorizing the confession of judgment was so finely printed as not to be readily legible and so close in type as to be blurred in places. However, if not distinguishable, I would overrule *Frantz*. For these reasons, I dissent.

As a result, in many cases the proponent of a warrant of attorney can be deprived of its effective use even though the party had full knowledge of its existence and intended to be bound thereby at the time the agreement was made. Clearly, a wholesale revision of business and legal forms containing the warrant is now in order, and many judgments now of record are vulnerable.

CONTRACTS — Uniform Commercial Code — Statute of Frauds — The check was not a sufficient memorandum to satisfy the Statute of Frauds provision of the Uniform Commercial Code—Requirements writing must contain in order to fulfill such provision.

Arcuri v. Weiss, 198 Pa. Super. 506, 184 A.2d 24 (1962).

The plaintiff initiated an action in assumpsit for the recovery of a deposit of \$500.00 on the purchase of the defendant's restaurant business. The defendant had offered his restaurant for sale and the plaintiff made out and gave to the defendant a check payable to him for \$500.00 with the following note on the check: "Tentative deposit on tentative purchase of 1415 City Line Ave., Phila. Restaurant, Fixtures, Equipment, Goodwill."

The defendant inquired several times as to what the plaintiff intended to do regarding the transaction. Finally in May, 1958, the plain-

tiff's attorney contacted the defendant and informed him that the plaintiff was no longer interested in purchasing the restaurant and requested the return of the \$500.00. The defendant refused and this suit was instituted to recover the payment made by the plaintiff to the defendant. The trial court held for the defendant and the plaintiff appealed.

Considering and interpreting section 2-201(1)¹ of the Uniform Commercial Code² which sets forth the requirements of a memorandum necessary to satisfy the Statute of Frauds, the Superior Court reversed the lower court's judgment in favor of the defendant-appellee and entered a judgment *n.o.v.* for the plaintiff-appellant.

The court felt that the use of the word "tentative" on the check evidenced only a memorandum of a desire to enter into a final and conclusive contract at a later date. Thus, the writing in question was only a step in the negotiations between the parties. While recognizing that section 2-201(1) of the U.C.C. has greatly liberalized the requirements of a memorandum evidencing a contract, the court decided it still requires some writing which indicates that a contract for sale has been effected. The writing on the check was merely a memorial of an incomplete agreement and the Statute of Frauds provision in section 2-201(1) was not fulfilled.

The importance of the Court's decision is contained in its analysis and brief comment on the U.C.C. Here the court reiterates and reaffirms the Pennsylvania Supreme Court's interpretation of section 2-201(1) contained in *Harry Rubin & Sons, Inc. v. Consolidated Pipe Co.*,³ recognizing that a memorandum need not contain all the *essential* terms of the contract.

In the *Rubin* case the plaintiff entered into three separate oral agreements for the purchase of plastic hoops from the defendant, each being in excess of \$500.00. The defendant failed to deliver a substantial portion of hoops as required by the agreements. At the trial the Statute of Frauds was asserted as a defense to two of the oral contracts. The plaintiff contended that certain memoranda, a letter and a purchase order, were sufficient to take both oral agreements

1. Act of 1953, April 6, P.L. 3, § 2-201, PA. STAT. ANN. tit. 12A, § 2-201(1). "Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing."

2. Hereinafter referred to as the U.C.C.

3. 396 Pa. 506, 153 A.2d 472 (1959).

out of the Statute of Frauds. The plaintiff's letter referred to the oral agreements as orders.

The court held that the plaintiff's use of the word "order" in his letter contemplated a binding agreement and, thus, removed both oral contracts from the operation of the Statute of Frauds. Further the court stated, that the object of the revision of the Statute of Frauds in the code ". . . is the elimination of certain formalistic requirements adherence to which often resulted in injustice, rather than the prevention of fraud. The present memoranda fulfill the requirement of affording a belief that the oral contracts rested on a real transaction. . . ."⁴

The U.C.C. was designed with an eye to adjusting the law to fit the practices of the business community.⁵ A need for such a change was based on evidence that the traditional legal concepts were not in accord with commercial needs.⁶ The present general rule governing the sufficiency of a memorandum is: ". . . that the writing afford a basis for believing that the offered oral evidence rests on a real transaction."⁷ The inclusion of specific terms is no longer vital;⁸ in fact, they may even be incorrectly stated in the memorandum.

Section 4 of the Uniform Sales Act,⁹ the predecessor of the U.C.C., while also requiring that there be a "memorandum in writing of a contract or sale," was much more strictly construed. The court required the memorandum to do more than merely recognize the existence of a contract. "To satisfy the requirements of the Statute, the signed, written memoranda must either contain, or together with other writings adopted by reference, must disclose all of the essen-

4. *Harry Rubin & Sons, Inc. v. Consolidated Pipe Co.*, 396 Pa. 506, 512, 153 A.2d 472, 476 (1959).

5. Carrington, *The Uniform Commercial Code—Sales, Bulk Sales, And Documents of Title*, 15 WYO. L.J. 1, 5 (1960); Shattuck, *The Uniform Commercial Code—A Modernization of Commercial Law*, 35 WASH. L. REV. 398, 411 (1960).

6. *Id.* at XL.

7. UNIFORM COMMERCIAL CODE, Comment 2, § 2-201, p. 51; PA. STAT. ANN. tit. 12A, *Uniform Commercial Code Comments*, p. 85; *Harry Rubin & Sons, Inc. v. Consolidated Pipe Co.*, *supra* note 4.

8. *Id.*; PA. STAT. ANN. tit. 12A, *Pennsylvania Bar Association Notes*, pp. 83-84; *e.g.* the writing need not indicate who is the buyer or seller.

9. Pa. P.L. 543, § 4 (1915), as amended, Pa. P.L. 310, No. 174, § 2 (1925), repealed Pa. P.L. 3, § 10-102 (1953).

"A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf."

tial elements of the alleged contact, and if any of such essentials are missing or incompletely stated, the memoranda are insufficient."¹⁰ When this view is compared with the interpretation of the U.C.C., as evidenced by the comments to the code, the *Rubin* case, and the instant case, the relaxation in the application of the Statute of Frauds becomes quite clear. An indication of the change is the insignificant place held by the price term in the U.C.C. While in the past, it was always considered essential by the courts,¹¹ the feeling of the drafters of the code was that the price term could easily be supplied without danger of fraud by market prices, valuations current in the area, existence of a reasonable price in the contemplation of the parties, and the fact that the parties based their dealings on a price list or catalogue known to both.¹²

Since the U.C.C. is now and most likely will be in effect in an increasing number of states in the near future¹³ this decision is of great moment. It is submitted that decisions of the courts of a state in which the uniform law is in effect carry much weight in a foreign jurisdiction operating under the same uniform law. Thus, when a controversy arises in one of the other code states concerning section 2-201(1), the decision in the present case will be closely scrutinized and exercise great influence on the courts of such states.

It appears paradoxical that while the memorandum requirements of the Statute of Frauds provision have been relaxed, a corresponding restriction has been added that was not contained in the Uniform Sales Act. Under the Uniform Sales Act in the absence of a memorandum the entire oral contract was removed from the operation of the Statute of Frauds upon the acceptance and receipt of all or part of the goods or partial payment of the contract price.¹⁴ This exception applied equally to severable and non-severable contracts.¹⁵ Under the U.C.C., however, the oral contract will be enforced only to the extent of the goods delivered and accepted or which have been paid

10. *North Jersey Sales & Constr. Co. v. Emerman Erie Steel Co.*, 169 Pa. Super. 436, 438, 82 A.2d 307, 309 (1951).

11. UNIFORM COMMERCIAL CODE, Comment 1, § 2-201, p. 51; PA. STAT. ANN. tit. 12A, *Uniform Commercial Code Comments*, p. 86.

12. *Ibid.*

13. States in which it is now in effect: Arkansas, Connecticut, Illinois, Kentucky, Massachusetts, New Hampshire, New Mexico, Ohio, Pennsylvania, Rhode Island, and Wyoming.

States in which it will go into effect in 1963 and 1964: Alaska, Georgia, Michigan, New Jersey, Oklahoma, and Oregon.

14. *Jessup & Moore Paper Co. v. Bryant Paper Co.*, 283 Pa. 434, 443, 129 Atl. 559, 563 (1925).

15. *Ibid.*

for, such payment being accepted.¹⁶ Thus, the traditional exception to the Statute of Frauds now applies only to the portion concerned, and in non-severable contracts, it does not apply at all. So, in a non-severable contract, *i.e.*, one involving a single object, when less than the full payment is made, the code will not enforce the contract.¹⁷ Where A makes a down payment of \$300.00 on the purchase of a refrigerator costing \$500.00, the contract for sale will not be removed from the bar of the Statute of Frauds and, therefore, will not be enforceable.

TAXATION — Income vs. Gift — Payments to Widow of Officer-Stockholder — Payments made to a widow by a corporation of which her deceased husband had been an officer, director and shareholder are not gifts unless they proceed out of generosity, affection, respect, admiration, charity or like impulses.

Smith v. Commissioner of Internal Revenue, 305 F.2d 778 (3d Cir. 1962).

The Commissioner of Internal Revenue determined deficiencies in the taxpayer's income tax of \$27,000 for 1955 and \$22,000 for 1956. In issue was the proper tax treatment under the 1954 Internal Revenue Code of certain payments made to the taxpayer, widow of a corporation's deceased officer and director. The Tax Court concluded that the payments constituted ordinary income and upheld a deficiency against the taxpayer.

Taxpayer's husband had been a director and officer of J. Wiss and Sons, Inc., manufacturers of scissors, shears and kindred products. His salary and bonus totaled \$30,000 in each of the three years preceding his death. Eight days after his death, the board of directors (all of whom were related to decedent) unanimously adopted a resolution to pay, in recognition of decedent's valuable and loyal services, to his widow, his unearned salary for the remainder of the year, \$33,000 a year for the next two years, and \$5,000 as a death benefit allowable under the provision of Sec. 101(b) of the Internal Revenue Code of 1954. In adopting the resolution the Board had in mind the fact that the decedent's death resulted in a curtailment of income

16. UNIFORM COMMERCIAL CODE, Comment 2, § 2-201, p. 51; PA. STAT. ANN. tit. 12A, *Pennsylvania Bar Association Notes*, p. 85.

17. *Williamson v. Martz*, 11 Pa. D. & C. 2d 33, 35, 29 Northumb. L.J. 32, 34 (Pa. Com. Pl. 1956).