1965

Contracts - Signature on Instrument

Ronald H. Heck
Kenneth S. Robb

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the Contracts Commons

Recommended Citation

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
The Supreme Court’s decision in Giaccio offers a deserved reprimand to a practice of criminal practice conceived in obscurity. The imputation of criminal conduct where none has been found to exist, only serves to promote judicial hypocrisy. Thus the decision by the Supreme Court marks the demise of a legislative and court created “quasi-crime.”\(^{20}\) It is no longer possible for a Pennsylvania jury to impose costs on an acquitted defendant “as a deserved rebuke, admonition or penalty for conduct not sufficient to warrant a conviction.”\(^{21}\) Yet the Giaccio decision does raise a question of future jury reaction in cases involving first offenders. A verdict of “not guilty and pay the costs” plus the silent admonition, “but don’t do it again”\(^{22}\) has in the past permitted first offenders to avoid the stain of a criminal record. But, whether jurors will continue to allow a first offender a second chance, absent the silent admonition, remains to be seen. In this regard, the problems of the administration of criminal justice in a system limited by the requirements of due process illustrate the need for a pragmatic approach to the first offender issue. The aims of the criminal law must be redirected from within the legal system to accommodate both the demands of punishment and those of fundamental fairness as correctional devices.

*John F. Naughton*

**CONTRACTS—Signature on Instrument**—The traditional view that one is bound by his signature may be in jeopardy in Pennsylvania.


In a recent decision,\(^1\) the Pennsylvania Supreme Court, after discussing at great length many unnecessary and irrelevant factors, with one Justice concurring and three Justices dissenting, adhered to a basic principle of contract law. It appears, from this case, that only a plurality of the court is willing to hold that one is bound by what he signs. Others on the court, without even mentioning this rule, seemed to be calling for a principle which would in fact destroy this traditional view.

Richard B. Herman, a real estate broker, brought this action for a commission allegedly earned through the sale of some real estate owned by the defendant, James L. Stern. John J. Shaw, Jr., then lessee of the premises in question, engaged the plaintiff, Herman, late in 1959 to find a subtenant for the unexpired term of his lease.\(^2\) Herman found a sub-

---

2. The term was not to expire until August 31, 1960.

---

\(^{22}\) *Commonwealth v. Giaccio*, *supra* note 7, at 147, 202 A.2d at 60.
tenant, Roslyn Sailor, who also signed a new lease for an additional three-year period. Plaintiff prepared both the sublease from Shaw to the new tenant and the new lease from Stern to this same tenant.

Both leases, at paragraph 37(B), contained a usual provision for rental collections by the plaintiff and a provision for commissions for this service. This paragraph also provided:

In the event that, at any time while Lessee or any affiliate or successor to or assignee of Lessee is in possession of the demised premises . . . , the premises shall be sold to the Lessee, . . . Principal agrees to pay to Richard B. Herman & Company, Inc., a commission of 5% of the sale price . . . regardless of whether or not Principal shall have obligated himself to pay a commission on said sale to anyone else.

Both leases were signed by plaintiff as agent and by the tenant. At the bottom of the lease appeared the following:

The principal of Richard B. Herman & Company, Inc., having examined the above lease and agreements, hereby agrees to them and ratifies and approves of the same in all particulars. [Emphasis added.]

The signature and seal of the defendant followed this statement.

In October, 1962, the premises were sold to the tenant and her husband. Plaintiff sought a commission on the sale based on the above-mentioned contents of paragraph 37(B). The defendant Stern contended, that through error and mistake, this provision was not eliminated from the printed form before being signed as no prior agreement was made with Herman with respect to the payment of commissions in the event of any sale.

Four opinions were filed by the Justices of the Pennsylvania Supreme Court. In affirming the judgment below for the plaintiff, Justice O'Brien spoke for himself, Chief Justice Bell, and Justice Musmanno. A concurring opinion was filed by Justice Roberts, while Justices Eagen and Cohen filed separate dissenting opinions in which Justice Jones concurred.

Justice O'Brien, after disposing of the allegation of mistake by the defendant, followed the traditional view that one is bound by what he signs:

3. Justice O'Brien stated that "the bold assertion of error and mistake falls far short of the requirement necessary for reformation of the contract." To substantiate his position, he cited Pennsylvania Rules of Civil Procedure 1019(b) which states: "Averments of fraud or mistake shall be averred with particularity. Malice, intent, knowledge, and other conditions of mind may be averred generally."

Appellant [Stern] obligates himself in clear and unambiguous language, for a recited consideration from the broker, under seal, to pay specific commissions. . . .

When appellant ratified and approved the document, he accepted not only the lessee's offer, but also the appellee's offer. . . .

Whether an oral discussion was had concerning the commission in the event a sale took place between the parties is of no moment in the face of the written argument in clear and unambiguous terms, there having been no allegation of fraud.

Concurring, Justice Roberts confined himself to the problem of whether or not a judgment on the pleadings should have been entered in favor of the plaintiff. Roberts was of the opinion that the averments of the defendant were insufficient to bar such judgment. Dissenting, Justice Cohen held that the plaintiff, in relying solely upon the signed writing, failed to aver facts sufficient to prove the existence of a contract. And, since Herman was an agent of Stern, he had a duty to disclose the contents of the lease regarding his fees. Justice Eagen, dissenting, and assuming the validity of reverse unilateral contracts under Pennsylvania law, argued that there had been no acceptance of the offer by the defendant, and, under the particular facts of this case, "the signature of the defendant can hardly be considered an unequivocal acceptance."

The basic problem facing the court, which caused its dilemma, was whether or not one should be bound by his signature on an instrument, regardless of his knowledge of its contents. With few exceptions, the accepted view in Pennsylvania for over a century has been that enunciated in Greenfield's Estate:

\[5. \text{Herman v. Stern, supra note 1, at 283, 213 A.2d at 599.}\]
\[6. \text{Id. at 285, 213 A.2d at 600.}\]
\[7. \text{Ibid.}\]
\[8. \text{Supra note 3.}\]

9. Justice Cohen stated: "It might be quite reasonable to bind the principal with respect to promises made to the tenant in a lease which he has failed to read. But it is not at all reasonable to hold that he should have reasonably understood without explicit disclosure, which is not here alleged, that a document such as that involved in the instant case was also an offer by his agent regarding fees. Requiring agents to bargain at arm's length for their compensation in a manner distinguishable from the performance of their fiduciary duties is not burdensome and is in accord with sound agency principles." Herman v. Stern, supra note 1, at 298, 213 A.2d at 607-08.

\[10. \text{Id. at 300, 213 A.2d at 603.}\]


\[12. 14 Pa. 489 (1850).\]
out requiring the contents to be made known to him, he will be bound to it, though it turn out to be contrary to his mind. . . . 13

This view was also adopted by the drafters of the Restatement. 14 The basis for this rule at its inception and even more so today is the necessity for stability in economic transactions. This underlying policy was clearly expressed by the court in General Refrigerator and Store Fixture Co. v. Fry: 15

The whole business structure of America would become a shambles if signers in serious transactions were to be allowed to repudiate their obligations on the basis that they did not know what they were signing. The ever-constant possibility of such a disavowal would turn into water the adhesive mortar of legal responsibility holding together the bricks of every contractual wall; such an accepted possibility would wreck every business dealing at the slightest touch of the repudiator. 16

A plurality of the court, speaking through Justice O'Brien, after an extensive discussion of the facts and procedural issues, adopted this traditional view. However, throughout his entire opinion, no mention was made of this view, nor were there any references made to cases in support of it. It appears, then, that Justice O'Brien in arriving at his decision thought the problem too basic to warrant extensive discussion and citation.

Under this traditional view, Pennsylvania has recognized a few exceptions. The equitable principle of unconscionability was the first recognized exception to the general rule. However, as of today, it is still a principle applicable in Pennsylvania only in a court of equity in such circumstances as defenses to suits for specific performance. 17 While this principle of unconscionability is not applicable to actions at law, the court could have extended its application to such actions as has been done recently in a few jurisdictions. 18 However, since the principle is usually applicable to situations where a party knowingly signs an unfair contract, 19 and since in the case before us the defendant is claiming lack of knowledge of any con-

13. Id. at 496.
14. Supra note 4.
15. Ibid.
16. Id. at 19, 141 A.2d at 838.
19. Williams v. Walker-Thomas Furniture Co., supra note 18, at 449 discusses unconscionability to "include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party."
tract, even if the court would have considered the unconscionability principle as now being applicable to actions at law, it is obvious that it would have had no application to the facts in the instant case. Likewise, the conclusion would have been the same had the court taken the alternate route and extended the policy behind the unconscionability section of the Uniform Commercial Code to transactions other than the sale of goods.

Another recognized exception to the traditional view in Pennsylvania deals with one who unwittingly signs a document which contains a confession of judgment clause. However, this exception is limited to situations where the clause is hidden or otherwise removed from the body of the writing. The court has stated in Cutler Corporation v. Latshaw that:

A warrant of attorney authorizing judgment is perhaps the most powerful and drastic document known to civil law...

The mere physical inclusion of such a warrant in a mass of fine type verbiage on each reverse sheet does not of itself make it a part of the contract.

In the present case, Justice O'Brien distinguished Cutler on the grounds that paragraph 37(B) was of the same size type as the rest of the agreement and was contained within the body of the writing. Even if the court desired to expand the Cutler principle from those cases involving confession of judgment clauses to other vital rights and obligations, it is doubtful that such an extension would include ordinary contractual obligations, particularly where such obligations are contained in the body of the writing in uniform print.

The dissenting opinions of Justices Cohen and Eagen seem to advocate the creation of another exception to the traditional view. Although not specifically called for by either Justice, a tendency toward the application of a standard of reasonableness is evident in their opinions. Justice Cohen, after considering the principal-agent relationship, actually discusses the reasonableness of holding Stern liable on this contract. Justice Eagen states:

In view of the type of promise asserted, the signature of the defendant can hardly be considered an unequivocal acceptance. This is particularly so where, as in the present case, the alleged acceptance is incorporated or "slipped" into the agreement between the lessor and the third party.

21. See Note, 45 Va. L. Rev. 583, 590 (1959) which discusses the possible extension of the rule of § 2-302 by analogy to cases which involve contracts not specifically covered by the section. See also Griesmore, Contracts § 294 (Rev. Ed. Murray 1965).
23. Id. at 4, 97 A.2d at 236.
24. Id. at 5, 97 A.2d at 236.
25. Supra note 9.
Justice Eagen obviously envisions cases where it would be unreasonable to bind a party by his signature, this specific case being one of these situations. However, a standard of "reasonableness" would have an unstabilizing effect on the commercial system which has been so adequately protected by the traditional view. It is submitted that a rule of "reasonableness" should not be considered by the Pennsylvania courts in the future. Further, the courts should be very cautious about creating any new exceptions to the traditional rule.

The traditional view and its exceptions are firmly established in Pennsylvania in clear and concise terms. The court, by discussing such a multiplicity of topics and expressing such a wide diversity of opinion, has converted a simple contracts problem into an unduly complex maze of verbiage.

Ronald H. Heck
Kenneth S. Robb

INSURANCE—Total Disability—The concept of "total disability" is clarified and expanded in Pennsylvania.


In September of 1965, the Supreme Court of Pennsylvania redefined and expanded, in _Cobosco v. Life Assurance Company of Pennsylvania_, the difficult insurance question of the meaning of the term "total disability."

The appellant, Mrs. Cobosco, was the owner of a hardware store. From 1951 until October, 1960, the time of her disabling accident, she ran the store almost entirely by herself. She worked eight to ten hours a day, six days a week. The only assistance she received was from her son, who made occasional deliveries, and from an employee who handled the heavier merchandise.

In October of 1960, Mrs. Cobosco fractured her right femur and was hospitalized. Two months later, she sustained the same injury and re-entered the hospital. Almost a year after the original accident, Mrs. Cobosco fell, this time twisting her right leg. As a result of these accidents, Mrs. Cobosco suffered a permanent shortening of her right leg and a permanent "foot drop." She could not drive a car, walk without a cane,

1. 419 Pa. 158, 213 A.2d 369 (1965). The opinion of the court was written by Mr. Justice Cohen. Mr. Chief Justice Bell dissented but did not file an opinion.

2. A "foot drop" is the inability to raise the foot. It is caused by a direct blow to the sciatic nerve in the leg. The muscles of the calf, and the muscles on the lateral aspect of the shin-bone become wasted and flabby. The hamstring muscle on the back side of the thigh and the muscles of the buttocks may also become atrophied or flabby. The amount of paralysis and weakness depends upon the site and the amount of injury to the nerve.