Buffalo Law Review

Volume 14 | Number 2 Article 8

12-1-1964

Contracts—The Effect of the Statute of Frauds on an Implied Contract

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ing itself to *all* kinds of school segregation, especially in its statement on the extent of judicial review of a board's action.[50] This reading of *Brown* is disputed by some commentators and was not used by the Court of Appeals.[51] Judge Desmond's opinion limited comment on *Brown* to a statement that it proscribes state imposed segregation. However, there is an implication that the principle regarding the educational value of an integrated education—which was recognized by the Supreme Court—was also considered in *Balaban*. In reaching its determination, the Court of Appeals weighed the effects of the disputed action. The Board's consideration of race as one factor in determining the school district's boundaries did not, demonstrably, disadvantage the white children. But it did promote, in a positive sense, the objective of equal, integrated education for *all* children.[52] It is suggested that the Court of Appeals implicitly indicated the limits on future corrective action by a board and the possible means of challeging such action. Boards cannot cause oppression, and anyone challenging a plan must show the plan to be arbitrary and oppressive.[53] Continued use of this analysis would permit corrective action by a board and still allow sufficient judicial supervision. Considering the recent denial of certiorari by the Supreme Court, such *ad hoc* solutions may lead to ultimate approval of corrective action.

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CONTRACTS

THE EFFECT OF THE STATUTE OF FRAUDS ON AN IMPLIED CONTRACT

In November 1957, plaintiff and defendant entered into an oral agreement by which plaintiff was to act as exclusive export manager for products used with photographic and sound recording equipment manufactured by the defendant. The contract was to run for one year: from January 1, 1958 until December 31, 1958. For his services plaintiff was allowed a discount on prices of the items to be handled. Both parties performed under the contract that year. Without any further express agreement the parties also carried on this arrangement from January 1, 1959 to December 31, 1959 and during the early part of 1960. In April 1960, the defendant refused to accept plaintiff's services any longer. Plaintiff brought an action in the New York Supreme Court, for

50. On reargument of *Brown*, the Supreme Court said, "School authorities have the primary responsibility for elucidating, assessing, and solving [local] problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the . . . principles." 349 U.S. 296, 299 (1955). The Appellate Division also emphasized that boards of education were to use rezoning as one technique in effectuating the equal educational opportunity principle. Brown v. Board of Education, *supra* at 300-01.

51. *Compare* Kaplan, *Segregation Litigation and the Schools—Part II: The General Northern Problem*, *supra* note 49 *with* Maslow, *De Facto Public School Segregation*, 6 Vill. L. Rev. 353 (1961).

52. Brief for N.A.A.C.P. as Amicus Curiae, p. 12.

53. See Comment, 39 N.Y.U.L. Rev. 539, 545-48 (1964).

breach of contract. The contract alleged was the second renewal agreement beginning January 1, 1960. Defendant moved for judgment on the pleadings on the grounds that the complaint did not allege facts sufficient to state a cause of action, and on further grounds that since the original contract was oral and for more than a year the Statute of Frauds constituted a complete defense to the action. This motion was denied. The Appellate Division reversed and ordered judgment for the defendant for the reason that the original express contract was unenforceable under the Statute of Frauds because it could not be completed within a year from its making and therefore, no new contract could be implied therefrom. The Court of Appeals held that if a renewed contract could be proven by the surrounding facts, the Statute of Frauds would not be a bar. For this reason, it reversed and remanded the case to the Special Term for a determination of facts. *Cinefot International Corp. v. Hudson Photographic Industries,* 13 N.Y.2d 249, 196 N.E.2d 54, 246 N.Y.S.2d 395 (1963).

In New York an oral contract not to be performed within a year from its making is within the Statute of Frauds.[1] Once the contract has been performed the Statute of Frauds does not apply.[2] Where the term of service under a contract, taken out of the statute because of full performance, is for more than one year the law can not imply a new contract for a similar period. In that case the renewal itself would be within the statute.[3] However, where the term of service under the original contract is for one year or less a renewal agreement for a similar period may be implied.[4] The relevant time period for determining the effect which the Statute of Frauds has upon the renewal agreement begins on the date service is to start and not on the date the agreement was entered into. It ceases when the term of service ends. In 1891 the Court of Appeals of New York applied these basic principles of contract law in the case of *Adams v. Fitzpatrick.*[5] It was there settled as New York law that where one orally enters the employment of another for one year, there may arise an inference of fact that the parties intended to renew for another year. This inference was available to the party claiming the renewal even though the original contract was made more than a year before its original expiration date and thus, until performed, would itself have been unenforceable under the Statute of Frauds.[6]

When the term of service under the original contract is for more than one

1. N.Y. Pers. Prop. Law § 31 (now Gen. Oblig. Law § 5-701 (1964)); Belfert v. Peoples Planning Corp. of America, 11 A.D.2d 760, 202 N.Y.S.2d 101 (1st Dep't 1960), *appeal dismissed,* 8 N.Y.2d 1054, 170 N.E.2d 403, 207 N.Y.S.2d 267 (1960).

2. N.Y. Pers. Prop. Law § 85 (now U.C.C. § 2-201 (1964)); Tyler v. Windels, 227 N.Y. 589, 125 N.E. 926, *affirming,* 186 App. Div. 698, 174 N.Y. Supp. 762 (1st Dep't 1919); Schenley Distillers Corp. v. R. C. Williams & Co., Inc., 64 N.Y.S.2d 561 (Sup. Ct. 1946). *Cf.* Brown v. Farmer's Loan and Trust Co., 117 N.Y. 266, 22 N.E. 952 (1889).

3. Schott v. La Compagnie Generale Trans-Atlantique, 52 Misc. 236, 102 N.Y. Supp. 901 (Sup. Ct. 1906).

4. *Cf.* Goldman v. N.Y. Advertising Co., 29 Misc. 133, 60 N.Y. Supp. 275 (Sup. Ct. 1899); Lonsdale v. J. A. Migel Inc., 222 App. Div. 197, 225 N.Y. Supp. 593 (2d Dep't 1927).

5. Adams v. Fitzpatrick 125 N.Y. 124, 26 N.E. 143 (1891); *accord,* Brightson v. H. B. Claflin Co., 180 N.Y. 76, 72 N.E. 920 (1904).

6. Adams v. Fitzpatrick, *supra* note 5, at 127, 26 N.E. at 144.

year and a hold-over occurs, the *Adams* Court pointed out that the renewal agreement could escape the ban of the Statute of Frauds only in two areas where the term of service of the renewal agreement is implied as a matter of law to be for one year, provided of course that no contrary intent is shown from the surrounding facts.[7] First, when a tenant holds over after the expiration of a lease the law will imply a renewed contract for one year, but such a tacit renewal of leases applied only to real property. Thus if a chattel, not real property, is leased and a holdover occurs, the court will not imply from the holdover alone, a renewal for one year as a matter of law.[8] This rule of automatic renewal in property law has its counterpart in the field of master-servant relationships. Where one serves another under a contract and continues in his employment after the expiration of the term, there may be a new contract implied by law for one year, provided that a contrary intent is not evidenced by the facts.[9]

In the instant case, the Appellate Division reasoned that a renewed agreement could not be implied from the surrounding facts after a holdover occurred, because such a renewed agreement would be for the same time period as the original contract and therefore itself within the Statute. The court distinguished the *Adams* holding on the grounds that it was predicted on a master-servant relationship, in contrast to the agency relationship which was present in the instant case. The Appellate Division believed that if a renewal can be implied from the facts, the agreement can escape from the requirements of the Statute of Frauds only if, by implication of law, the term of service is one year. Such an implication is permissible in a master-servant relationship but not in an agency relationship. The court, therefore, viewed the *Adams* case as "strictly confined to agreements in which the master and servant relationship is the base of the contract."[10] The Court of Appeals, however, analyzed the case as involving two distinct problems. First, what is the effect of the Statute of Frauds on a renewed agreement if the original contract was within the Statute? Second, once the Statute of Frauds problem is removed, under what circumstances will an implied renewal from the surrounding facts be allowed? Does the relationship between the parties have any bearing on this second problem? In answer to the first question, it is obvious from the language of the court, although not expressly stated, that the Statute of Frauds will not bar a renewed agreement if such a renewal can be shown.[11] The original contract was entered into in November 1957 and the term of service was not to be completed until December 1959 and, therefore, until completed the contract was within the Statute. However, the relevant time period with reference to the renewed agreement would

7. *Id.* at 128, 26 N.E. at 145.
8. Chamberlain v. Pratt, 33 N.Y. 47 (1865).
9. Mason v. Lory Dress Co., Inc., 104 N.Y.S.2d 906 (Sup. Ct. 1951), *modified,* 279 App. Div. 863, 110 N.Y.S.2d 904 (1st Dep't 1952), *aff'd,* 305 N.Y. 600, 111 N.E.2d 649 (1953).
10. Cinefot International Corp. v. Hudson Photographic Indus., Inc., 18 A.D.2d 5, 6, 237 N.Y.S.2d 742, 744 (1st Dep't 1963).
11. Instant case at 250, 196 N.E.2d at 56, 246 N.Y.S.2d at 397 (1963).

be the actual term of service—one year—from January 1, 1958 to December 31, 1958. Therefore it would be possible for the plaintiff to show a renewal for a similar one year period and thereby avoid the Statute of Frauds ban. In answer to the second problem, the court was aware of the agency relationship but it concluded that a plaintiff should be permitted to show an agreed renewal from the fact of continuance beyond a year. The relationship between the parties was deemed to be irrelevant where the contract was for the performance of services. The question as to a renewed agreement is one of fact and as such the plaintiff must sustain his burden of proof.[12]

The position taken by the Appellate Division is difficult to sustain when viewed in the light of existing case law both in New York state and elsewhere.[13] The difficulty encountered appears to be based upon too narrow an interpretation of the 1891 case.[14] The intermediate court imposed a limitation in the application of its holding which does not seem to be justified either by the language of that case or by subsequent decisions.[15] The Court of Appeals is not making new law or even extending pre-existing law. It is merely clarifying and re-applying basic principles of contract law which have a firm footing in New York case law. This is being done in an area of the law which obviously and understandably involved some confusion.

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CRIMINAL LAW

POST-DATED CHECK MAY BE CRIMINAL OFFENSE UNDER § 1292-a OF N.Y. PENAL CODE

Defendant mailed a check on October 19, 1959, which was dated October 22, 1959.[1] The check was received by the complainant on October 22, 1959, and he deposited the check. A few days later the bank notified the complainant that the check was returned because of insufficient funds on part of the defendant,[2] and subsequently the defendant was convicted of issuing a fraudulent check.[3] He appealed, claiming that the instrument was a post-dated check, and that a conviction under section 1292-a of the Penal Law[4]

12. *Id.* at 253, 196 N.E.2d at 56, 246 N.Y.S.2d at 398.
13. Sines v. Wayne Co., 58 Mich. 503, 25 N.W. 486 (1885).
14. Adams v. Fitzpatrick, 125 N.Y. 124, 26 N.E. 143 (1891).
15. *Cf.* Chase v. Second Ave. R.R., 97 N.Y. 384 (1884).

1. Brief for Defendant-Appellant, p. 6.
2. Brief for Respondent, p. 2.
3. People v. Aryeh, 18 A.D.2d 967 (1st Dep't 1963), affirming by memorandum decision a judgment of the former Court of Special Sessions, New York City.
4. The relevant language of section 1292-a of the N.Y. Penal Law reads as follows: "Any person who, with intent to defraud, shall make or draw or utter or deliver any check, draft, or order for payment of money . . . upon any bank or other depository, knowing at the time of such making, . . . that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check,