Buffalo Law Review

Volume 12 | Number 1 Article 22

10-1-1962

Contracts—Purchase Option Clause Noncontinuance In Lease Extension Agreements

Gerald S. Lippes

difficulty of proving negligence,[9] which in the course of the manufacturing and distributing process becomes a readily obscured happening, too much so for the res ipsa loquitur doctrine. Placing the burden on the manufacturer centers distribution of the cost of such protection. Thus, it may be readily insured against and spread in small doses by price increases. At the very heart of the decision is the simple justice of recompensing the altogether blameless but injured plaintiff. What remains now is for the courts to fill out this new theory of recovery. Apparently, liability absent privity will be found in implied warranty situations. The definition to be sought is the definition of what constitutes a warranty. In express warranty actions it is the issue as now formulated of "whether or not the manufacturer induced the sale of his goods by *direct* representations of quality which were not true, and the purchaser relied on such representations to his damage."[10]

G. S. L.

PURCHASE OPTION CLAUSE NONCONTINUANCE IN LEASE EXTENSION AGREEMENTS

This is an action by lessee seeking to exercise a purchase option clause in his original lease dating back to 1939. Considering the question of whether or not a purchase option clause in a lease which could be exercised "at any time during the term of the lease" became part of twenty-two successive extension agreements entered into after the expiration of the original term, the court of original jurisdiction granted summary judgment dismissing the complaint. The intermediate court affirmed. The Court of Appeals considered the additional fact that other provisions of the lease were specifically to be extended, while the purchase option clause was not, and each separate extension was entered into by a writing subsequent to the termination of the previous tenancy. Each extension agreement extended the lease "under the terms set forth herein." On appeal, *held,* affirmed:

> When . . . the option to purchase was exercised during a term extended by a series of new extension agreements separate from the original amended lease and options to renew contained therein, "the option is extended if the agreement refers to and continues the original lease, but the option is not extended if the agreement merely continues the tenancy, even though upon the terms fixed by the original lease." [Citation omitted.]

---

9. A number of objects have not been regarded as dangerous even though negligently made: Boyd v. American Can Co., 249 App. Div. 644, 291 N.Y. Supp. 205 (2d Dep't 1936), aff'd, 274 N.Y. 526, 10 N.E.2d 532 (1937) (can with opener key); Liedeker v. Sears & Roebuck Co., 249 App. Div. 835, 292 N.Y. Supp. 541 (2d Dep't 1937); Jaroniec v. C. O. Hasselbarth Inc., 223 App. Div. 182, 228 N.Y. Supp. 302 (3d Dep't 1928) (bed); Timpson v. Marshall, Meadows & Stewart, Inc., 198 Misc. 1034, 101 N.Y.S.2d 583 (Sup. Ct. 1950) (shoes); Block v. Liggett & Meyers Tobacco Co., 162 Misc. 325, 296 N.Y.S. 922 (Sup. Ct. 1937) (cigarettes); Prosser, The Assault Upon the Citadel, 69 Yale L.J. 1099 (1960).

10. Skeel, Product Warranty Liability, 6 Cleve.-Mar. L. Rev. 94 (1957).

Gulf Oil Corp. v. Buram Realty Co., 11 N.Y.2d 223, 182 N.E.2d 608, 228 N.Y.S.2d 225 (1962).

This matter concerns a lease, and the major consideration of the court should, in this instance, be the intention of the parties when the lease was drawn.[1] Obviously, this intention is difficult to ascertain in such situations, since it is the intention about which the parties usually disagree. Therefore, the courts have established certain rules to guide them in discerning the proper construction of the agreement. It is agreed that where the tenancy is continued, not by virtue of any provision of the original lease, but by subsequent agreement, if it refers to and *continues* the original lease, the option is extended.[2] Similarly, where the original lease provides for an extension of the term, at the tenant's election, the option to purchase therein is extended when the tenant elects to continue.[3] However, if it merely continues the tenancy, although upon the terms fixed by the original lease, it will not extend to the option.[4] This rule was applied to a lease for four months which had a purchase option clause effective "at any time during such tenancy." The court denied lessee's right to exercise the option during an extension period, holding the option ended with the original lease.[5] In the first instance, once the option is exercised, the original lease will continue in operation for the entire term without an intervening new contract.[6] In the latter case the original lease is terminated and lessee's only rights to the property are by virtue of his extension agreements.

Although these rules aid the Court in construing the lease, it is still necessary to consider the specific provisions of the contract in question to determine in which category the intention of the parties will fall in each case. In deciding that the purchase option clause did not extend to the successive extension agreements in the instant case Judge Burke declared that the litigants did not agree to renew in the original lease or the amendment to the original lease. Instead, he indicated they made separate distinct extension agreements after the first lease containing the purchase option clause, had expired. Under these circumstances, in order for the option to remain, the extension contracts must specifically refer to it. Implicit in this ruling is the recognition that the phrase "acceptance would extend the lease under the terms set forth herein" is not such a specific reference to the option clause as to include it in the

1. Orr v. Doubleday, Page & Co., 223 N.Y. 334, 119 N.E. 552 (1918); People ex rel. New York Cent. & H.R.R. v. Walsh, 211 N.Y. 90, 105 N.E. 136 (1914).

2. Masset v. Ruth, 235 N.Y. 462, 139 N.E. 574 (1923); Pflum v. Spencer, 123 App. Div. 742, 108 N.Y. Supp. 344 (2d Dep't 1908).

3. Jones & Brindisi v. Breslaw, 250 N.Y. 147, 164 N.E. 887 (1928).

4. Feudtner v. Ross, 74 N.J. Eq. 214, 69 Atl. 190 (1908); Parker v. Lewis, 267 Pa. 382, 110 Atl. 79 (1920).

5. Friederang v. Ruth Aldo Co., 199 App. Div. 127, 191 N.Y. Supp. 401 (2d Dep't 1921).

6. Matter of Harvey Holding Corp., 297 N.Y. 113, 75 N.E.2d 619 (1947); Orr v. Doubleday, Page & Co., supra note 1.

extensions. The opinion states that although a landlord is willing to give an option to purchase for a limited period, the considerations for such an agreement cannot sustain a twenty-year interval. Without specific reference otherwise, the landlord's intention will be deemed only to grant the purchase option for the life of the lease wherein it is contained:

> Although the landlord may be content for a fixed time to be bound to a fixed price, it is another matter altogether to say that the option is to continue for an extended period *unless clear words are used for that purpose.*[7] (Emphasis supplied.)

The decision is a proper one. What is an option? It is simply a purchase of time during which the party securing it may be assured the property will not be disposed of by the landlord. This both protects his desire to purchase and allows him an opportunity to consider all the facets of the property in determining whether the purchase will be advantageous. Certainly such an option is an added inducement to the lessee to rent. However, the extra consideration, clearly is to run only for the term specified, and in absence of a specification, for the term of the lease. This is necessarily so, for the consideration received for granting the option is the signing of the lease which is extinguished at the termination of the term. It is improbable that a property owner, especially if he is a businessman, will create a situation where his property can be purchased for a specific price indefinitely. The value of land fluctuates and the factors prompting such an offer change with such rapidity, that such a contract could prove almost ridiculous. The conclusion of the Court reflects this common intention by validating the simple extension agreements, which are less arduous and less expensive, while declaring the agreements do not apply to all the stipulations of the original contract, unless they are specifically referred to in the contract. This holding and these added considerations do not advocate a rule which would make a long term purchase option clause in a lease or the extension of it impossible. They simply attempt to prevent a court or the parties from misconstruing the intention of the parties making such an agreement by requiring them to be explicit, when their motives are not obvious upon scrutinizing the document, or when their intention varies from general contracts of this type.

G. S. L.

WARRANTIES OF MANUFACTURER CONCERNING DESIGN AND CONSTRUCTION OF GENERATING UNITS DECLARED NOT PROSPECTIVE IN NATURE

A generator manufacturer sold separately two sets of generating units to a utility company for the latter's use at its generating plants. The manufacturer orally guaranteed that "the sets were so designed and constructed that with

7. Sherwood v. Tucker, 2 Ch. 440 (1924).