**Buffalo Law Review**

Volume 11 | Number 1 Article 36

10-1-1961

# Contracts—Officer Not Personally Liable on Corporate Contract Notwithstanding Clause to the Contrary

Eugene J. Smolka

plaintiff, *i.e.*, a plan which was acceptable, would provide the consideration for the contract.

By imposing on the defendants an implied promise to obtain insurance from the plaintiff, if his plans were acceptable, from the initial request of the defendants, the dissent did what the majority had refused to do. This implied obligation, once established, enabled the dissent to acquire vast legal support for its decision.[5] The majority, unlike the dissent, was not willing to imply a promise to pay the plaintiff for his services, since the negotiations between the parties had not passed the informal stage. To imply a promise to pay on the basis of informal conversations between friends would, according to the majority, create a new and undesirable type of contract liability.

In *Blanshan v. Russell*,[6] the only case cited by the majority in the case at bar, it was held that services rendered by a woman to a man to whom she was engaged to be married, *without any idea of being paid therefor*, are no consideration for subsequent assurances by defendant that plaintiff would be paid. In the instant case, one can be reasonably certain that an insurance agent, whose livelihood is dependent upon his commissions from the sale of insurance, would expect compensation for his services if his plans were acceptable. The *Blanshan* case can be distinguished from the instant case because there was probably no intent by the insurance agent to offer his services gratuitously, and the dissent was undoubtedly correct in implying a promise from the initial request for an insurance plan.

*L. H. S.*

OFFICER NOT PERSONALLY LIABLE ON CORPORATE CONTRACT NOTWITHSTANDING CLAUSE TO THE CONTRARY

In *Salzman Sign Co. v. Beck*,[7] the plaintiff contracted with the Leslie 575 Corporation, of which defendant's intestate was president, for the purchase of an advertising sign. Paragraph five of the printed-form contract stipulated that where the purchaser was a corporation, the officer signing on behalf of the corporation "hereby personally guarantee[s] the payments hereinabove provided for." The signature for the purchasing corporation appeared thusly: "Leslie 575 Corp. L.S.[,] Irving Beck pres L.S.." Plaintiff sued defendant for the balance due on the contract.

The trial court held for the defendant on the ground that there was no clear indication that Beck intended to be bound personally. The Appellate Term affirmed, granting the defendant summary judgment and dismissing the complaint. The Appellate Division, in affirming,[8] granted leave to appeal to the Court of Appeals, which in affirmance held that the contract executed and

5. See Hedemann v. Fairbanks, Morse & Co., 286 N.Y. 240, 36 N.E.2d 129 (1941); Rubin v. Dairymen's League Co-op. Ass'n, 284 N.Y. 32, 29 N.E.2d 458 (1941); Willetts v. The Sun Mutual Ins. Co., 45 N.Y. 45 (1871).

6. Blanshan v. Russell, supra note 3.

7. 10 N.Y.2d 63, 217 N.Y.S.2d 55 (1961).

8. 11 A.D.2d 1068, 206 N.Y.S.2d 525 (2d Dep't 1961).

signed by the individual as president was not sufficient for Statute of Frauds purposes to bind the officer individually in the absence of "direct and explicit evidence of actual intent," even though a paragraph in the contract stated that the signing officer guaranteed payments on the contract price.

On its face the decision appears to be an affirmance by the Court of *Warren-Connolly Co. v. Saphin*,[9] an earlier case decided by the Appellate Division. In this almost identical case, the court treated a similar guarantee paragraph within the Statute of Frauds,[10] and the contract was rendered unenforceable against the signing corporate representative as an individual because he did not sign as an individual. The court felt that a contrary holding would thwart the purposes of the Statute of Frauds.

In the present case, however, the Court of Appeals did not rely on the *Warren-Connolly* case. It would seem that the Court relegated that decision to a stature of little significance and confused matters by considering a previous Court of Appeals case, *Mencher v. Weiss*,[11] from which it borrowed the term, "direct and explicit evidence," which if shown would seemingly be used to hold the corporate representative personally liable on the contract. In the *Mencher* case, the Court, in interpreting the language of the contract, had to determine whether the addition of the word "member" to the corporate signature was enough to bind the representatives as individuals in view of a statement in the collective bargaining agreement which purported to bind individual members of the corporate party. The Statute of Frauds was irrelevant there.

The result reached in the instant case, nevertheless, is the same fair judgment the Appellate Division rendered in the *Warren-Connolly* case. Noteworthy also is the fact that in the present case there was probably no fair negotiation of the guarantee paragraph; at least, the wording of the paragraph and the fact that the contract was a standard printed-form contract lead to that belief; so, for public policy reasons, that stipulation could have been rendered ineffective against the defendant here. Obviously, too, there would be undreamed of liability on the part of the corporate officer signing on behalf of his corporation were courts to give effect to a rather "obscure" single sentence in a long contract, even though it may be plausibly argued that the signing party is presumed to have read the entire contract and thus bound by all its terms.

One problem, however, yet remains. It is not quite clear what, short of a second signature as an individual, would meet the requirement of some "direct and explicit evidence of actual intent" to satisfy the Statute of Frauds.

*E. J. S.*

9. 283 App. Div. 391, 128 N.Y.S.2d 272 (1st Dep't 1952).
10. N.Y. Pers. Prop. Law § 31 (2). (The guarantee of the debt of another must be in writing signed by the person to be bound.)
11. 306 N.Y. 1, 114 N.E.2d 177 (1953).