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Contracts—Effect of Interstate Commerce Regulation Upon One Trip Lease Agreement

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sufficiency of that consideration is not important since the lessee agreed to pay the lessor a fixed percentage of the profits if any.

The majority passed over the percentage rental in the present case by saying that there was no rental obligation whatsoever. This summary dismissal might have been occasioned by the lack of control the defendant had over the machine. To the Court the lack of control indicated that defendant was being paid for placing the machine on his premises rather than paying a percentage rent. Is this approach sound? In the *Peerless* case the owner reserved the property right in the dispensers, and the control element is the same. Therefore, we must once again return to the fixed rental obligation as the real distinction.

This writer feels that the Court should have decided the case differently. The amount of control given up in the instant situation is normal to this type of business arrangement. Sometimes the agreement refers to a loan of a dispenser or machine and sometimes to a lease. There is often a percentage sharing of the profits. Section 399 should not be so strictly construed as to apply only to business arrangements which involve a fixed financial obligation. It is true that the statute is in derogation of the common law and may be strictly construed. However, it is also remedial in nature, designed to protect the unwary and thus may be liberally construed.[23] In a statute of this nature the legislative purpose would be best fulfilled by a liberal construction. The sponsor of the bill in effect stated: "This bill seeks to protect all businessmen from fast talking sales organizations armed with booby traps which they plant in *business contracts* involving equipment rentals. . . . The automatic renewal clause was eliminated from landlord leases (see Real Property Law, 230). It should be outlawed in *business contracts* too." (Emphasis added.)[24] The essence of the statute is to protect the unwary by giving them notice of automatic renewal. True, these clauses create financial burdens and the statute seeks to prevent this, but more importantly it seeks to prevent it for the unwary. The essence of the statute is to give notice of the automatic renewal clause. Having to live with this agreement for another three years, under the conditions set forth, is as much of a burden as the few pennies a day it costs for towel or soap services. The miniscule distinctions made in this case will lead to nothing but confusion in the application of the section. It leaves us without a rule, by which we may define the curbs in this highway to the emancipation of the unwary businessman.

F. P. M.

EFFECT OF INTERSTATE COMMERCE REGULATION UPON ONE TRIP LEASE AGREEMENT

The decision of the Court of Appeals in *Leotta v. Plessinger*[25] indicates an intention on the part of the Court to hold authorized carriers of interstate commerce regulated commodities to a strict interpretation of the Commission's

23. N.Y. Statutes § 321 (McKinney).
24. N.Y. Legislative Annual, 1953, pp. 61-62.
25. 8 N.Y.2d 449, 209 N.Y.S.2d 304 (1960).

regulations. The plaintiffs herein were the passengers and operator of an automobile which was involved in a collision with a tractor trailer truck, operated by Plessinger, owned by Harvey Hole (hereinafter called Hole), and bearing the Interstate Commerce Commission decal of the lessee Riggs Dairy Express Inc. (hereinafter called Riggs), all defendants in this action. The issue before the Court on appeal was that of liability as between lessor and lessee in a one-way-trip lease agreement. The one-way-trip lease agreement in point provided for the carriage by Hole of a regulated commodity from Chicago, Illinois to Somerville, Massachusetts for Riggs. The load was delivered in Somerville and unloaded on the 19th of November. The accident out of which this cause of action arose took place on the 22nd of November in Avoca, New York, while the operator Plessinger was proceeding in the general direction of Chicago, searching for a return load as he went. This was five days after and many miles away from the alleged end of the one way trip lease. The Court's basis for holding Riggs liable for the operation of the truck, even after the objective of the lease had been accomplished, was the new set of ICC Regulations which went into effect on September 1, 1953.[26] The regulations have since been upheld by the United States Supreme Court.[27] The Court's reasoning was that Riggs, by failure to comply strictly with certain provisions of the enactment, did, as a matter of law, continue in control of and was responsible for the truck after unloading and was so at the time of the accident.

§ 207.4

> (b) *Receipts for equipment to be specific.* . . . and when the possession by the authorized carrier ends; it or its employee or agent shall obtain from the owner of the equipment, or its regular employee or agent duly authorized to act for it, a receipt specifically identifying the equipment and stating therein the date and the time of day possession thereof is taken.
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> (d) *Identification of equipment as that of the authorized carrier.* The authorized carrier . . . shall properly and correctly identify such carrier, during the period of the lease. . . .
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> (d) (1) The authorized carrier operating equipment under this part shall remove any legend, showing it as the operating carrier, displayed on such equipment, and shall remove any removable device showing it as the operating carrier, before relinquishing possession of the equipment.[28]

In the lower court the jury found negligence and verdicts were entered against Riggs and Hole. On motion the trial court granted a judgment over, against Riggs, in favor of the lessor Hole, in an amount equal to the sum of the verdicts (in excess of $150,000). The Appellate Division reversed the judgment over against Riggs, dismissed the complaint and cross claim against

26. 49 C.F.R. § 207 (1961).
27. American Trucking Assns. v. United States, 344 U.S. 298 (1953).
28. Supra note 26.

Riggs, and affirmed all other judgments of the trial court.[29] The Court of Appeals reversed the judgment of the Appellate Division as to Riggs and reversed the judgment against Hole, ordering a new trial on all issues but the negligence of the operator.[30]

The essential question of law presented on appeal was whether a lessee (Riggs) could be held liable for an accident which occurred some five days after and many miles away from the alleged and apparent end of the lease. It was material to the question of possession that at the time of the mishap the truck still displayed the ICC decal and the driver still had the receipt which was to be delivered up to the lessee at the time possession was to be surrendered by him.[31] The Court of Appeals ruled that upon this evidence and evidence adduced to the effect that it was of economic concern to Riggs that the lessor obtain a return load to make his entire venture profitable, a jury could find wilful violation of the regulations, and that Riggs was still in possession at the time of the collision, and consequently liable for the negligence of the operators as a matter of law.

Judge Desmond, concurring in result only as to Riggs, prefers the more drastic measure of holding liable authorized carriers for noncompliance with the regulations regardless of the presence or absence of wilfullness. The purpose of the ICC Regulation was to terminate the many evils attending the one-way-trip lease.[32] It appears that this purpose can only be served by a strict adherence to the letter of the law, and that is what the courts of New York will demand.

The Court added as dicta that Riggs could be estopped from denying ownership, analogizing the ICC decal with the license plates of the Automobile Registration Cases.[33]

The Court ordered a new trial for Harvey Hole, for it was error to rule inadmissible evidence introduced to rebut the presumption of permission from an owner to a driver. The nature of a provision in an agreement between the owner and driver is a proper subject for the jury.[34] It was also error to rule that evidence was inadmissible as prejudicial when it referred to insurance on the truck, since such evidence went to a material issue of the case.[35]

Judge Fuld in a dissent challenged the propriety of submission of this question to a jury. He felt that Hole could be found liable under Section 388 (formerly Section 59) of the Vehicle and Traffic Law. To allow an owner to

29. 8 A.D.2d 502, 188 N.Y.S.2d 737 (4th Dep't 1959).
30. Supra note 25.
31. Supra note 26.
32. American Trucking Assns. v. United States, supra note 27.
33. Switzer v. Aldrich, 307 N.Y. 56, 120 N.E.2d 159 (1954); Shuba v. Greendonner, 271 N.Y. 189, 2 N.E.2d 536 (1936).
34. Leahy v. Kaszubski, 283 App. Div. 947, 130 N.Y.S.2d 221 (2d Dep't 1954); Ferris v. Sterling, 214 N.Y. 249, 108 N.E. 406 (1915).
35. Richardson, Evidence 143 (8th ed. 1955); McGovern v. Oliver, 177 App. Div. 167, 163 N.Y. Supp. 275 (1st Dep't 1917).

escape liability because of the failure of his operator to comply with the regulations would cast a burden upon the innocent party and open the door to wilful deception.

Although the view advanced is humane and seems very logical, it fails to fully regard the position of the owner who expressly limits the use.

The problems presented in this controversy will largely be avoided in the future, for the inclusion of Section 207.4 (a)(3) provides that leases to an authorized carrier are not to be for terms less than 30 days.[36] The Section was not in effect at the time of this accident.

D. R. K.

"PREVIOUSLY MADE" AND "UNSETTLED" CLAIMS UNDER SUBCONTRACT BAR DEFENSE OF RELEASE

In *Corhill Corp. v. S. D. Plants, Inc.*,[37] plaintiff subcontractor sued the defendant contractor for breaches of warranty and of contract. The defendant contractor moved to dismiss plaintiff's amended complaint on the ground of release. The Appellate Division reversed[38] Special Term's dismissal of the motion.[39] The Court of Appeals was faced with the question whether on the record there were "facts tending to obviate" the "objection."[40] Defendant contended that under the subcontract the "making and acceptance of the final payment shall constitute a waiver . . . of all claims by the subcontractor, except those *previously made* and *unsettled*." (Emphasis supplied.) Were the claims at bar "previously made" and "unsettled" at the time of final payment? The Court referred to an affidavit given by plaintiff company's president in opposition to the defendant's motion. This affidavit averred that conferences were held during the course of work under the subcontract and that at these meetings the plaintiff's claims, such as delay by the defendant, were made known. The plaintiff's affidavit also stated that the defendant urged it to finish the work at which time adjustments would be made, but they never were. Final payment was made on the completion of the contract. In a reply affidavit the defendant's vice-president averred that "There *were no unsettled* . . ." claims of plaintiff at the time final payment was made. Defendant had made the same assertion in his moving affidavit. In spite of this, defendant argues that there is no factual dispute.

In addition to the above the Court noted that as the result of plaintiff's requests for relief from the defendant, the defendant itself wrote to the owner, General Aniline and Film Corp., asking it to make good plaintiff's loss for reasons of equity and fairness. This request was subsequently refused. The Court was of the opinion that the import of this letter was not resolved by

36. Supra note 26.
37. 9 N.Y.2d 595, 217 N.Y.S.2d 1 (1961).
38. 11 A.D.2d 980, 205 N.Y.S.2d 426 (1st Dep't 1960).
39. 23 Misc. 2d 349, 198 N.Y.S.2d 998 (Sup. Ct. 1960).
40. N.Y. Rules Civ. Prac., Rule 108; see generally Zimmer v. Whiting-Buick, 274 App. Div. 967, 84 N.Y.S.2d 839 (4th Dep't 1948).