Buffalo Law Review

Volume 11 | Number 1 Article 95

10-1-1961

Property—Intervivos Gift of Stock Requires Transfer Prior to Donor's Death

Buffalo Law Review Board

the date of actual commencement is clearly invalid under the majority's interpretation of the statute.

The concurring judges found the second lease invalid because of the inclusion in the lease of additional space occupied at the time of the execution by another tenant, a point mentioned by neither the lower courts not the majority. If the second lease had not attempted to lease additional space, it would have been valid, the first lease being void *ab initio*; however, this was not the case. The landlord-plaintiff, in order to secure an order of eviction against the then occupying tenant, had to show "a bona fide offer to enter into a lease with a prospective tenant . . . for a term of five years or more";[82] however, the lease, in order to comply with Section 1377 of the New York Civil Practice Act, could not be for more than five years. In an effort to comply with both statutes, the parties stipulated that the old lease in existence should extend until the eviction of the occupying tenant, and that the new lease should then commence and run for five years. Such a provision, as the concurring judges held, is clearly violative of the five-year requirement of Section 1377, and the entire lease, contingent on the provision, is invalid.

Bd.

INTERVIVOS GIFT OF STOCK REQUIRES TRANSFER PRIOR TO DONOR'S DEATH

In re Szabo's Estate once again raises the issue whether a decedent had made a valid gift *inter vivos* to petitioner of stock assigned by decedent prior to her death to petitioner and herself as joint tenants.[83] Decedent was the owner of 122 shares of A.T. & T. stock. Upon being informed of a 3 for 1 split, she executed an assignment to petitioner and herself on the back of a certificate representing 50 shares. In addition, she directed her representative to have the company place petitioner's name as joint tenant with right of survivorship on all her shares. However, she also directed that the transfer of the stock was not to be made until the new certificate resulting from the split was available. Decedent died prior to that time and the transfer was not made until after her death.

Petitioner proceeded under Section 206-a of the Surrogate's Court Act to compel decedent's representative to turn over the certificate for 366 shares.[84] Had decedent made a valid *inter vivos* gift of any or all of the stock so that petitioner was entitled to ownership as a surviving joint tenant? The Court reiterated the old doctrine concerning the requisites for *inter vivos* gifts and concluded that the element of sufficient delivery was missing.[85] If the delivery vests the donee with control and dominion over the property it is sufficient.[86] In the case of stock certificates a symbolic delivery will suffice because as the

82. N.Y. Unconsol. Laws § 8528(kk) (McKinney 1953).
83. 10 N.Y.2d 94, 217 N.Y.S.2d 593 (1961).
84. N.Y. Surr. Ct. Act § 206-a.
85. Matter of Van Alstyne, 207 N.Y. 298, 100 N.E. 802 (1927).
86. Vincent v. Rix, 248 N.Y. 76, 161 N.E. 425 (1928).

Court stated, "it is the only kind of delivery that would be practicable under the circumstances where undoubtedly the donor would want to retain possession of the certificate." The Court, however, reasoned that in these circumstances the point of no return for a sufficient delivery can be reached only when there is a transfer of record on the stock books of the company. This is so because the donor does not relinquish control and dominion over the part interest until the transfer on the books is made, before which time he may change his mind. Since the transfer of record was not made in decedent's lifetime no valid gift *inter vivos* was completed as to any of the stock.

Bd.

MISCELLANEOUS PROPERTY CASES

In the area of eminent domain the Court of Appeals in the current term has ruled: (1) When property which had not been considered in the planning of the original project has increased in value as a result of the project, this enhanced value must be considered as part of the market value of the property;[87] (2) Where a value on property is set a) without taking into consideration the difference in property value between two adjoining locations, or, b) while considering the fact that the owners have failed to make the best use of the property, the determination of the value should be set aside;[88] (3) If there has been no change of grade in the by-ways abutting a piece of property, even though there has been a change in the access to the property and a diversion of traffic therefrom, the landowner shall not be entitled to damages resulting from a change in the highways.[89]

Andrews v. State of New York[90] involved a condemnation proceeding wherein the Court of Claims found that the property taken had not been considered within the scope of the original project but was found to be needed at a later date for the construction of transmission lines.[91] The property which was taken now had increased in value as a result of the initial project. The Court of Appeals found that where property is appropriated, which had not been considered as needed within the original project and which as a result of the project, had increased in value, then the market value must be determined so as to include the enhanced value of the property.

In *In re Clearview Expressway, City of New York*,[92] the city appraisers' value of the property taken was set at $750,000; whereas, the property owners' appraisal was set at $1,658,500. The property involved was a 19-acre parcel located in two adjoining zones of different and highly-conflicting values. The

87. Andrews v. State, 9 N.Y.2d 606, 217 N.Y.S.2d 9 (1961).
88. In re Clearview Expressway, City of New York, 9 N.Y.2d 439, 214 N.Y.S.2d 438 (1961).
89. Selig v. State, 10 N.Y.2d 34, 217 N.Y.S.2d 33 (1961).
90. Supra note 87.
91. 10 Misc. 2d 217, 188 N.Y.S.2d 854 (Ct. Cl. 1959).
92. Supra note 88.