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# Contracts—Construction of Words of the Parties

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his arbitration right in his answer or otherwise.[32]

In *Terminal Auxiliar Mari v. Winkler Cr. Corp.*[33] defendant terminated its contract with plaintiff due to the latter's supposed breach of the contract. The contract broadly provided for arbitration of any dispute arising under it. Plaintiff, believing that defendant breached the contract, brought a court action and defendant, a foreign corporation, agreed to fully submit to the court's jurisdiction, such submission to be "without prejudice to the . . . remedies . . . available to the parties," and to "pertain . . . only to the matter of the jurisdiction of this court and to the posting of security." Shortly thereafter, defendant sought an order directing arbitration and staying plaintiff's action. Plaintiff opposed the motion, contending that: (1) no arbitrable issue existed since defendant had terminated the charter contract, and (2) defendant waived his right to arbitration by submitting to the court's jurisdiction.

In upholding the granting of the motion by the trial court, the Court concluded that since the dispute arose under and subsequent to the charter agreement, the contract's broad arbitration clause brought it within the authority of Section 1450. They reasoned that to hold otherwise would be to nullify the broad purpose of the statute, since most issues between parties stem from supposed breaches by one party or the other. Therefore, the termination of the contract did not extinguish the parties' right to arbitrate claims accruing prior thereto. The Court further held that although the defendant had submitted to the court's jurisdiction, the agreed upon stipulation with the plaintiff clearly evinced defendant's preservation of its right to compel arbitration.

CONSTRUCTION OF WORDS OF THE PARTIES

In *Hempstead Theatre Corp. v. Metropolitan Playhouses Inc.*, plaintiff corporation leased its theatres to Metropolitan, Inc., which in turn sublet to defendant.[34] The rent to be paid was a fixed minimum plus a graduated percentage of gross receipts. The lease stated that these receipts should include, among others, "all box office receipts, excluding taxes on admissions and all income derived from . . . concessions." The only question involved is whether the "income" received from the candy concession is to be gross receipts, or gross receipts less the cost of candy and refreshments sold? Plaintiff brought this action for rental due, claiming the former interpretation. The Supreme Court entered judgment for plaintiff, as did the Appellate Division, but the Court of Appeals reversed in favor of defendants.

Each clause of a contract must be given its intended purpose in the promotion of the primary and dominant purpose of the contract.[35] As to what the rent should be, the lease stated when referring to the box office that

32. Zimmerman v. Cohen, 236 N.Y. 15, 139 N.E. 764 (1923).
33. 6 N.Y.2d 294, 189 N.Y.S.2d 655 (1959).
34. Hempstead Theatre Corporation v. Metropolitan Playhouses Inc., 6 N.Y.2d 311, 189 N.Y.S.2d 837 (1959).
35. Empire Properties Corporation v. Manufacturers Trust Co., 288 N.Y. 242, 43 N.E.2d 25 (1942).

receipts should be the base, but when referring to the concession, the word "income" was used. Placing themselves in the position of the parties,[36] the Court reasoned that the parties must have intended a different conclusion by changing the base to "income" for the concession, *viz*: income used to denote that costs were first to be deducted from gross receipts.

It should be noted, however, that the lease, when referring to the sale of admissions or coupons outside the box office, stated that "net receipts" was to be the applicable base there. Thus, at various places in the lease, the words "gross receipts," "income" and "net receipts" were used. The Court, in effect, equated "net receipts" and "income." They did so, however, on the basis that since "income" was used instead of "gross receipts," their meanings must have been intended to be different. *Queare* whether the same argument could not be used in favor of a conclusion that "income" should be equated to "gross receipts," *i.e.*, since the word "income" was used instead of "net receipts," was it not just as likely that the parties intended a different meaning when comparing those two?

The case at hand shows how two completely adverse interpretations may be given a word that supposedly has but one traditional meaning in the business world. It should be concluded, then, that no definitive label will be placed upon certain words, but that their meanings will be determined solely in the context in which they were written.

REFORMATION OF RESTRICTIVE COVENANT

In *Ross v. Food Specialties Inc.*[37] plaintiff-appellant contracted with defendant Corporation for the purchase of certain of the latter's trade names, trademarks, copyrights, designs and formulas, for some of its products. Among the items sold was a line of Chinese condiments, as to which a restrictive covenant was signed by defendant's President. The covenant provided that defendant's President would not "engage directly or indirectly in any capacity whatsoever in the business of manufacturing or selling Chinese condiments under any trade name heretofore employed by [defendant's President], anywhere in the United States for a period of two (2) years." Defendant's President was actively connected with another corporation, which corporation, immediately after the contract in question was signed, began competing with plaintiff by processing Chinese condiments under various other brand names. Plaintiff brings this action to reform the restrictive covenant in the original contract to apply to not only the brand names sold to plaintiff, but to "any other brand name," claiming that to be the true intention of the parties and that its omission was by mutual mistake. The Supreme Court reformed the contract, but the Appellate Division reversed, the Court of Appeals affirming.

In order to have reformation of a contract there must exist at the time

36. *Ibid.*
37. Ross v. Food Specialties Inc., 6 N.Y.2d 336, 189 N.Y.S.2d 857 (1959).