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Contracts—Material Elements of a Real Property Purchase Contract

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of the contract either fraud or mutual mistake.³⁸ Since the former is not an issue here plaintiff's claim is decided on the matter of mutual mistake. In order to show this plaintiff must establish his case by submitting something more than a mere preponderance of evidence in his favor.³⁹ The Court held that plaintiff's proof fell short of these requirements, as he did not show that the words sought to be added were the true intention of the parties.

It should be noted that defendant's President was reluctant to sign the covenant in question, but agreed only on the promise of one of the owners of the defendant corporation to pay him \$10,000 to do so. Also, since plaintiff had already received exclusive rights to the various trade names, trade-marks and copyrights in question, by the contract itself, *queare*, whether the only logical meaning of a restrictive covenant was to apply it to any trade name, not just the ones purchased.

MATERIAL ELEMENTS OF A REAL PROPERTY PURCHASE CONTRACT

An enforceable contract is not formed until the parties have agreed on all material elements of the contract.⁴⁰ Whether the questions left for future negotiation by the parties were material elements of the contract was the principal issue in *Willmott v. Giarraputo*.⁴¹ In this action for specific performance of a contract for the sale of real property, the Court of Appeals held that, in leaving the terms of payment of mortgage interest and of amortization of principal for future determination, the parties had failed to agree upon a material element of the contract, and for that reason the contract was unenforceable.⁴² Among other cases, the Court relied on *Pollak v. Dapper*,⁴³ a case in which the Court had reached the same decision on an almost identical state of facts. In view of the integral relationship of interest payments and principal amortization to real estate purchase contracts, there is no doubt as to the soundness of the Court's conclusion that these matters are material elements of such a contract.

38. *Metzger v. Aetna Insurance Co.*, 227 N.Y. 411, 125 N.E. 814 (1920).

39. *Amend v. Hurley*, 293 N.Y. 587, 59 N.E.2d 416 (1944).

40. *Ansorge v. Kane*, 244 N.Y. 395, 398, 155 N.E. 683, 684 (1927).

41. 5 N.Y.2d 250, 184 N.Y.S.2d 97 (1959).

42. In the lower court the defendant pleaded the Statute of Frauds. N.Y. REAL PROP. LAW § 259. By way of dicta the Court of Appeals upheld this defense on the ground that the parole evidence offered by the plaintiff did not sufficiently connect the signed and the unsigned papers, and did not show the defendant's assent to the unsigned papers.

43. 245 N.Y. 628, 157 N.E. 886 (1927), *aff'd* 219 App. Div. 455, 220 N.Y. Supp. 104 (1st Dep't 1927).