Buffalo Law Review

Volume 10 | Number 1 Article 92

10-1-1960

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perhaps incorrectly, stated the criterion to be used when picketing is carried on for an unlawful objective or by unlawful means, thus losing its protection under Section 7.[12] This does not, however, detract from the Court's achievement of its main objective in establishing and expounding the *Garmon* case doctrine as the guiding principle for preemption cases in labor disputes involving interstate commerce in New York.

MUNICIPAL CORPORATIONS

MUNICIPALITY CAN WAIVE A CONTRACTUAL LIMITATION ON BRINGING ACTION

In a contract action by a building contractor against a municipal corporation, *Planet Construction Corp. v. Board of Education of The City of New York*,[1] for extra labor and materials allegedly furnished in connection with a construction contract, the Court of Appeals in a four to three decision held, that even though the contract contained a provision limiting time for commencement of action on the contract to one year, and although the action was not brought within that time, the judge at Special Term erred in granting summary judgment for the defendant, Board of Education. Defendant's issuing of a change order after the one-year period of the contract limitation and deducting from the amount due under the contract at a time when it claimed plaintiff had lost its right to sue presented triable issues as to waiver of the contract limitation or estoppel to assert the contract limitation.

By statute,[2] a municipal corporation is forbidden to waive the *defense* of the Statute of Limitations.[3] In erroneously granting summary judgment, Special Term, and the Appellate Division,[4] held that because of defendant's unique position as a municipal corporation, it could not waive the *contract* provision limiting action on the contract to one year and hence defendant could

12. The Court of Appeals states that the conduct involved in the instant case might lose its protection under § 7 if it was carried on for an unlawful objective, and hence be subject to a state court injunction. The Court felt that the attempt on the part of the minority union to force recognition and thus to cause the employer to break his contract with the majority union was conduct that a state might enjoin. This would be erroneous for the state may only act where such conduct involves violence, (N.L.R.B. v. Fansteel, 306 U.S. 240—sit down strike) or an unlawful objective (Southern S.S. Co. v. N.L.R.B. 316 U.S. 31-mutiny). This is not the type of conduct involved in the instant case nor even approaching it. These are areas for the proper exercise of the police power, not labor regulation.

1. 7 N.Y.2d 381, 198 N.Y.S.2d 68 (1960).

2. N.Y. General City Law § 20(5) authorizes a municipality:

> To spend money for any public or municipal purpose; to pay or compromise claims equitably payable by the city, though not constituting obligations legally binding on it, *but it shall have no power to waive the defense of the statute of limitations* or to grant extra compensation to any public officer, servant or contractor. (Emphasis added.)

3. Six years is the ordinary limit for bringing an action on a contract [N.Y. Civ. Prac. Act § 48(1)].

4. 8 A.D.2d 781, 187 N.Y.S.2d 979 (1st Dep't 1959).

not be estopped from asserting the provision as a complete bar to plaintiff contractor's action.

The Statute of Limitations, however, does not apply when a shorter limitation is prescribed by the written contract of the parties,[5] and while that shorter limitation is still in effect. Thus in a similar situation, *Soviero Bros. Contracting Corp. v. City of New York*,[6] the city successfully took advantage of a contract provision limiting the time for bringing an action on the contract to one year. This type of contract provision can operate to the advantage of either party and, standing on no different ground than any other provision in the contract, may be waived by the action of a party to the contract either expressly or impliedly. Moreover, an estoppel may arise against a municipality the same as any other person.[7]

The decision in the instant case, *Planet Construction Corp. v. Board of Education of The City of New York*,[8] represents a refusal by the Court of Appeals to extend to privately and individually negotiated limitations the policy considerations which prompted the Legislature to prohibit a municipal corporation from waiving or being estopped from asserting the general provisions of the Statute of Limitations. In the present case the Statute will still limit the time within which the plaintiff can commence an action. Thus the pocket book of a municipality and ultimately its taxpayers is protected from the over-generosity or incompetence of its officials to the extent that they may not deprive a municipality of the benefit of the Statute of Limitations itself. However, in placing a municipality on the same footing as anyone else in so far as contract provisions for a shorter period of limitation are concerned, the municipality and the taxpayer are to that extent deprived of some protection. This is not necessarily a bad state of affairs, for, although the municipal officials are not allowed to challenge or evade the wisdom of the Legislature in setting up the extreme limit for bringing of an action, i.e., the Statute of Limitations, they may, albeit sometimes inadvertantly, waive those private and individual limitations set up by themselves and another party in the course of negotiating an individual contract. Since the source of the limitation is the will of the contracting parties, and not that of the Legislature, as in the case of Statute of Limitations, it seems far from inequitable that the parties to the contract may by mutual agreement, waiver, or estoppel alter this type of contract provision just as they might alter any other contract provision.

CONTRIBUTION DEFICIENCIES TO CITY PENSION FUND DUE TO EXTENSION OF BENEFITS

Plaintiffs in *Dunn v. City of New York*[9] are members of the fire depart-

5. N.Y. Civ. Prac. Act § 10(1).
6. 286 App. Div. 435, 142 N.Y.S.2d 508 (1st Dep't 1955).
7. Buffalo Library v. Wanamaker, 162 Misc. 26, 293 N.Y. Supp. 776 (Sup. Ct. 1937).
8. Supra note 1.
9. 7 N.Y.2d 232, 196 N.Y.S.2d 686 (1959).