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CONTRACTS

Reformation Available Where Fraud in Inducement Prevents Incorporation of All Terms of Agreement in Written Contract

Ordinarily a mere promise to do something in the future is not actionable in New York unless the elements necessary for a binding contract are present.[1] However, if a promise is made in order to induce the signing of a contract by another with a pre-conceived intention on the part of the promisor not to perform, the promise amounts to a misrepresentation of the promisor's state of mind and may be the basis for an action to rescind the contract which the promisee signed.[2] This is true even where the written agreement contains a statement that any verbal understandings not therein specified are not to bind either party.[3] The question presented by *Brandwein v. Provident Mutual Life Insurance Company*[4] is whether such an alleged misrepresentation may also be a basis for reformation.

The plaintiff alleged that he refused to sign a proposed employment contract with the defendant inasmuch as it did not contain a clause for the continued payment of commissions so long as premiums were paid on policies that he had sold. The defendant would agree only that the plaintiff should receive commissions so long as the employment contract remained in force. The plaintiff alleged further that the defendant informed him that it would be impossible to place such a term into the written contract but that the defendant would and did agree to the "vesting" of the commissions and would record this in the company records. It was the plaintiff's theory that a failure to record this agreement was a mistake of fact on his part and fraud on the part of the defendants and therefore a basis for reforming the written agreement to include the vesting of the commissions.

The majority of the Court of Appeals, reversing the lower courts, held that the complaint stated a cause of action in reformation. It based this decision on the authority that "unilateral mistake plus fraud" is a classic ground for reformation[5] and that neither the statute of frauds[6] nor the parol evidence rule forbids reformation of a written contract to include material orally agreed upon but not inserted in the writing.[7]

It is a basic principle of reformation, however, that a written agreement will

1. Adams v. Clark, 239 N.Y. 403, 146 N.E. 462 (1925).
2. Adams v. Gillig, 199 N.Y. 314, 92 N.E. 670 (1910).
3. Sabo v. Delman, 3 N.Y.2d 163, 164 N.Y.S.2d 719 (1957).
4. 3 N.Y.2d 491, 168 N.Y.S.2d 964 (1957).
5. Welles v. Yates, 44 N.Y. 525 (1871).
6. N. Y. PER. PROP. LAW §31(1).
7. 5 WILLISTON, CONTRACTS §1552 (Rev. ed. 1937); Friedman & Co. v. Newman, 255 N.Y. 340, 174 N.E. 703 (1931).

be reformed to include oral agreements only when the parties intended the terms of the oral agreement to be written into the written contract but failed to do so because of mutual mistake or unilateral mistake plus fraud[8] and does not apply to those oral agreements which were not intended to be written into the contract.[9] As the dissent pointed out in the instant case, the plaintiff, as he himself alleged, was authoritatively informed by the defendant that the oral agreement would *not* be incorporated in the written agreeement but would merely be entered in the company records and hence the majority decision seems to go well beyond the traditional holdings regarding the remedy of reformation.

Apparently the effect of the Court's decision is to extend reformation, on grounds of policy considerations, to plaintiffs who, but for the fraudulent inducement of the other party, *would have had* the intention to incorporate the terms in the written contract rather than restricting it to persons who actually entertained such an intention.

Suit for Real Estate Commissions Under Expired Contracts

Plaintiff broker sued defendant lessee on a management contract which provided in part that plaintiff was entitled to commissions on any sublease consummated after termination of the agreement if authorized negotiations looking toward that sublease were pending when the contract was terminated.[9]

After two years of authorized negotiations with the state of New York for a new sublease of space then occupied by the state, defendant notified the state and plaintiff that it would require possession of the premises upon expiration of the existing lease. Notwithstanding this notice, plaintiff continued to carry on negotiations with the state. A short time later, defendant rejected plaintiff's proposals for a new lease and, in accordance with the terms of the contract, defendant notified plaintiff that it elected to terminate the agreement.

When the state failed to vacate, defendant commenced proceedings in three courts.[10] Two years later, with the state still in possession, a settlement of the dispute was effected in the form of a new lease which was much more advantageous to defendant than anything proposed by plaintiff. Plaintiff claims its commission on this new lease.

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8. 5 WILLISTON, CONTRACTS §1549 (Rev. ed. 1937); Lewitt & Co. v. Jewelers' Safety Fund Soc., 249 N.Y. 217, 164 N.E. 29 (1928).

9. *Ibid.* Also see Greene v. Smith, 160 N.Y. 533, 55 N.E. 210 (1899).

9. Douglas Real Estate Management Corp. v. Montgomery Ward & Co., 4 N.Y.2d 33, 171 N.Y.S.2d 852 (1958).

10. Montgomery Ward asked injunctive relief in the County Court, filed notice of intention to file claim in the Court of Claims, and brought an action under Article 15 of the Real Property Law in the Supreme Court.