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Miscellaneous—Contracts—Interpretation

Robert Miller

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A relativistic approach, apparent in the language of *Meserole*, would involve an exception from the prohibition of the statutes, of discounts which are part of a commercial transaction, as, for instance, the practice of factors who for over 130 years have been discounting the notes of their consignors, in conjunction with the consignment transaction.¹⁹ The *Meserole* holding, however, went beyond this and excepted also preexisting notes given for what practically was a loan. The instant case refuses to carry this extension to notes created for the purposes of the loan.

Under the present test, then, it appears that if the transaction in *Discount Factors* were carried on with prior notes of the maker, and the loan were made not directly to the maker but to the plaintiff, the latter would be a "seller" and although the loan would go through him to the maker, so that the net effect would be the same as that which did result, the notes would have been valid. Although the line between purchase and loan has been recognized as sometimes difficult to draw,²⁰ an attempt such as this might be pierced by the court. The line, however, is apparently that only of the court, and will continue to be drawn on a case by case basis until the legislature sees fit to finally clarify the applications of these sections.

Contracts—Interpretation

When the words of a contract are unequivocal, a court should give them their full effect.²¹ Extrinsic evidence will not be allowed to change the meaning, where the words are plain and clear, and convey a distinct idea.²² Such contracts leave little room for interpretation and the courts construe the contracts accordingly. The question then arises as to what should be done with ambiguous terms in a contract. The answer lies in a well known rule of construction that is applicable to instruments of doubtful meaning. A construction should be given to a contract that will consider all the words and phrases rather than a construction that will render some terms nugatory.²³ Words should not be ignored or considered surplusage unless they clearly conflict with the intention and purpose of the contract.²⁴ Thus the interpretation that gives effect to all the words and terms in the contract, should be preferred over an interpretation that ignores some words in the contract.²⁵

19. *Meserole Securities Co. v. Cosman*, 253 N. Y. 130, 136, 170 N. E. 519, 521 (1930).

20. *Meserole Securities Co. v. Cosman*, *supra* at 147, 170 N. E. at 525.

21. *Rockcliffe Realty Corp. v. Mutual Life Ins. Co. of N. Y.*, 50 N. Y. S. 2d 851 (Sup. Ct. 1944).

22. *Matter of Western Union Tel. Co.* 299 N. Y. 177, 86 N. E. 2d 162 (1949).

23. 2 CLARK, NEW YORK LAW OF CONTRACTS §808 (1922); *Fleischman v. Furguson*, 223 N. Y. 235, 119 N. E. 400 (1918).

24. *Gail v. Gail*, 127 App. Div. 892, 112 N. Y. Supp. 96 (4th Dep't 1908).

25. *Buffalo East Side R.R. Co. v. Buffalo Street R.R. Co.*, 111 N. Y. 132, 19 N. E. 63 (1888).

In the instant case²⁶ the Court of Appeals applied this rule of construction to find that the defendant, under his agreement with the plaintiff, must continue to pay a monthly license fee for the use of the plaintiff's radio equipment, even though he gave a formal notice to the plaintiff of his intent to terminate. The Court held that in spite of the notice of termination, as long as the defendant used the equipment, he had to pay the license fee, because the provision for the continuation of such fee controlled over the more general termination provision. Thus by the agreement, giving every word a proper meaning and effect, the defendant was obligated to pay such license fee and could not terminate that obligation merely by a formal notice.

The Court's holding appeared to be in harmony with the intention of the parties as determined by the agreement made between them. An opposite holding would have the effect of the Court's rewriting the contract and a court cannot make a new contract for the parties, under the guise of interpreting a writing.²⁷

Agreement to Arbitrate

New York law requires that every submission to arbitration of an existing controversy is void unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent.²⁸ In the case of *Arbitration Between Writers Guild of A. E. and Prockter P.*,²⁹ the Court was called upon to construe the sufficiency of a memorandum which was initialed by the parties. The memorandum enumerated the questions to be resolved. There were no actual words of agreement to submit the questions to arbitration, nor was there any commitment to be bound by the decision of the arbitrators. No mention was made of the number of arbitrators, or who they were to be. It was also made clear that the parties did not intend to leave the selection of the arbitrators to the Supreme Court.³⁰

The Court held the memorandum was not definite enough to constitute an agreement. In so far as arbitration is a substitute for resorting to judicial tribunals,³¹ a party to a contract cannot be compelled to submit to arbitration unless he has clearly agreed in writing to do so.³² Arbitration being a matter of contract between the parties thereto,³³ it appears that the majority rightfully applied the

26. *Muzak Corp. v. Hotel Taft Corp.*, 1 N. Y. 2d 42, 133 N. E. 2d 688 (1956).

27. *Heller v. Pope*, 250 N. Y. 132, 164 N. E. 881 (1928).

28. N. Y. CIV. PRAC. ACT §1449.

29. 1 N. Y. 2d 305, 135 N. E. 2d 204 (1956).

30. N. Y. CIV. PRAC. ACT §1452.

31. *Matter of Arthur Philip Exp. Corp.*, 275 App. Div. 102, 87 N. Y. S. 2d 665 (1st Dep't 1949).

32. *Matter of Lehman v. Ostrovsky*, 264 N. Y. 130, 190 N. E. 208 (1934).

33. *I. Miller and Sons v. United Office and Professional Workers Local 16 C. I. O.*, 195 Misc. 20, 88 N. Y. S. 2d 573 (Sup. Ct. 1949).