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Contracts—Statute of Frauds—Contract not to be Performed Within Year

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has only the requirement of satisfying a "reasonable man" test.[12] The Court here holds that the goods shipped must "actually match" the sample. Thus the seller might satisfy the legal requirements with lower quality than expected in the sample, and in the same instance breach the agreement by supplying better than expected in the delivery of the bulk.

Statute Of Frauds — Contract Not To Be Performed Within One Year

In *Zupan v. Blumberg*,[13] the Court of Appeals unanimously held, reversing the Supreme Court[14] and the Appellate Division,[15] that an oral agreement whereby a free lance advertising solicitor was to receive a stated commission on any account which he procured for as long as it was active, was void under the Statute of Frauds since it could not be performed within one year.[16] The plaintiff sued for commissions on orders which he claimed were placed with the defendant by a customer whom he had procurred even though the orders were placed more than one year after the oral contract was made.

As a general rule a contract for services must be in writing if it is for an indefinite duration.[17] If the terms of the contract include an event which could terminate the contractual relationship within one year, the mere possibility that the parties' liabilities will endure beyond that time will not bring the contract within the Statute of Frauds.[18]

The lower courts and the respondent felt that this case did not come within the general rule but that it was akin to *Nat Nal Service Station v. Wolf*.[19] In that case the Court held that since neither party was obligated to do anything, there was just a continuing offer to contract and not a contract which would last for an indefinite duration.

However, in the instant case, plaintiff's right to his commission depended solely on the account, which he procured for the defendant, remaining active. It was not necessary for him to do anything further.

Therefore it could not be said that there was a continuing offer to contract within the meaning of the *Nat Nal Service Station* case for by the terms of the contract the plaintiff had fulfilled all of his obligations and the defendant was

12. See note 1 *supra*.
13. 2 N.Y.2d 547, 161 N.Y.S.2d 428 (1957).
14. 142 N.Y.S.2d 702 (1955).
15. 1 A.D.2d 203, 148 N.Y.S.2d 893 (1st Dep't 1956).
16. N.Y. PERSONAL PROPERTY LAW §31.
17. Choen v. Bartgis Bros. Co., 264 App. Div. 260, 35 N.Y.S.2d 206 *aff'd* 289 N.Y. 846, 47 N.E.2d 443 (1943).
18. Martocci v. Greater New York Brewery, 301 N.Y. 57, 92 N.E.2d 887 (1950).
19. 304 N.Y. 332, 107 N.E.2d 473 (1952).

obligated to pay him his commission, as long as the procured customer did business with the defendant. Clearly then this was not a contract which could be performed within a year and the Court properly held it to be within the statute.

Interpretation Of Escalator Clause

Bethlehem Steel Company v. Turner Construction Company[20] involved the interpretation of the meaning of words used in the price-adjusting (escalator) clause of a construction sub-contract. The Court proceeded on the theory that construction of contract terms is a matter of law where the language is plain and unambiguous.[21] Plaintiff, Bethlehem Company, agreed to furnish, erect and paint all structural steel work in a building which general contractor Turner Company was building for Mutual Company, the owner. While the contract in which the disputed clause appears was made by plaintiff with Turner Company that company was acting for Mutual and it is Mutual that is hereinafter referred to as defendant. The escalator clause provided:

> The price or prices herein stated are based on prices for component materials, labor rates applicable to the fabrication and erection thereof and freight rates, in effect as of the date of this proposal. If, at any time prior to completion of performance of the work to be performed hereunder, any of said material prices, labor rates and/or freight rates shall be increased or decreased, then in respect of any of said work performed thereafter there shall be a corresponding increase or decrease in prices stated.[22]

The dispute arose over the meaning of "component materials."

Part of the formula for computing changes in the contract price was based on the labor rates for fabricating and erecting the component materials, but made no mention of labor rates along the steel production line. Use of the word "thereof" in the above quoted clause indicated that the clause in its entirety related to the erection job and not to the manufacture of steel. Taking the language of the clause as a whole, the Court held, as a matter of law, that the intent of the parties was that "component materials" should mean steel products like bars and sheets that are used in the structural steel framework of a building.

Generally, the purpose of a price-adjusting clause is to protect against unanticipated or unpredictable changes in price which might render the bargain unduly harsh. However, in the instant case, the $10 per ton increase in the price of steel products seems to have been already in effect and known to both parties

20. 2 N.Y.2d 456, 161 N.Y.S.2d 90 (1957).
21. *Accord,* Brainard v. New York Central Ry., 242 N.Y. 125, 133, 151 N.E. 152 (1926).
22. See note 20 *supra* at 460, 161 N.Y.S.2d at 94.