Buffalo Law Review

Volume 4 | Number 1 Article 27

10-1-1954

Contracts—Parol Evidence Rule

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cannot rebut this presumption by a showing of his violation of the registration statute.[50]

In *Switzer v. Aldrich*,[51] the Court of Appeals was once again confronted with a situation of this type. In a suit by the widow of a person killed by the negligent operation of a truck, the dealer who had sold the truck was made a defendant on the ground of his ownership of the vehicle. The trial court admitted evidence showing that the dealer was not the owner, but had sold the truck to the person who was driving it at the time of the accident. The Appellate Division unanimously affirmed the action of the trial judge, distinguishing *Reese v. Reamore*,[52] on the ground that in that case the dealer had allowed the use of his license plates over an extended period of time with the knowledge that the operator had no intention of applying promptly for a license. In the instant case there was an interval of only four days between the sale and the accident. The Court of Appeals unanimously reversed the Appellate Division and applied the doctrine of the *Reese* case strictly, holding that any deliberate violation of the statutory requirements is sufficient ground for an estoppel.

IV. Contracts

Parol Evidence Rule

In *Perlman v. Israel & Sons Co.*,[1] it appeared that an oral contract of the sale was made and confirmatory letters were exchanged which evidenced the contract. When the buyers sued for breach of contract, defendants alleged a valid tender. The Trial Judge excluded testimony of the defendant which offered to show the conversation at the time the agreement was consummated, and charged the jury that plaintiffs were not bound to accept goods allegedly tendered, so long as they were willing to take and pay for them before the contract term expired. The Court of Appeals, reversing a judgment for plaintiff held, that the exclusion of evidence was erroneous and a tender, if made and refused, resulted in a breach of contract excusing defendant from further performance.

The parol evidence rule applies only where the parties to an agreement reduce it to writing and intend that that writing shall

50. *Shuba v. Greendonner*, 271 N. Y. 189, 2 N. E. 2d 536 (1936).
51. *Switzer v. Aldrich*, 307 N. Y. 56, 120 N. E. 2d 159 (1954).
52. *Supra* note 48.

1. 306 N. Y. 254, 117 N. E. 2d 352 (1954).

be their agreement.[2] The writing need not be of a formal character; letters and telegrams are sufficient if the requisite intent is found.[3] Since the court stated the letters evidenced a contract, the rule that any relevant testimony may be admitted to prove that the document was not adopted as an integration,[4] does not apply. Evidence showing that no assent was made to a complete and accurate integration is still permitted under such circumstances,[5] and in fact the letters exchanged between the parties in the instant case contained some variance. Some parol evidence may have been appropriate to show the surrounding circumstances out of which the agreement arose,[6] if this would help clarify the meaning of the language used by the parties.

The court reinforced the rule that a seller is not restricted to tender the goods on any particular day, but may offer delivery at any time during the contract term,[7] so long as the seller does not offer the goods at an unreasonable hour[8] or under circumstances which may put the buyer in technical default.[9] Nor does the buyer's later willingness to accept delivery aid him, since the breach of contract excuses the seller from further performance on his part.[10]

Agreements to Arbitrate

a. In sales memorandum: Since arbitration is an inexpensive, expeditious method of adjusting controversies, it is the policy of the courts to encourage and uphold arbitration.[11] However, the intent to arbitrate must be clearly shown.[12] For the second time in two years, the court was presented with the vexing problem of whether such an intention was sufficiently evidenced by the signing of an agreement which referred to rules of a trade association including among them a mandatory arbitration clause. The

2. *Friedman & Co. v. Newman*, 255 N. Y. 340, 174 N. E. 703 (1931); *Chapin v. Dobson*, 78 N. Y. 74 (1879); 3 WILLISTON, CONTRACTS § 633, (Rev. ed. 1936).

3. RESTATEMENT, CONTRACTS, § 228, Comment (a) Illus. 2; 3 CORBIN, *op. cit.*, § 588 (1951).

4. 3 CORBIN, *op. cit.*, § 577.

5. *Id.* § 582. See *Hale, The Parol Evidence Rule*, 4 OR. L. REV. 91 (1925).

6. *St. Regis Paper Co. v. Hubbs*, 235 N. Y. 30, 138 N. E. 495 (1923); 3 CORBIN, *op. cit.*, § 579.

7. *Curtiss v. Howell*, 39 N. Y. 211 (1868); *Bahnsen & Co. v. Leaf*, 203 App. Div. 618, 197 N. Y. Supp. 160 (1st Dep't 1922); 2 WILLISTON, SALES, § 451 (1948).

8. PERSONAL PROPERTY LAW § 124 (4).

9. *Manners & Co. v. Hershenhorn & Sons*, 280 App. Div. 711, 116 N. Y. S. 2d 532 (1st Dep't 1952).

10. *Jardine, Matheson & Co. v. Huguet Silk Co.*, 203 N. Y. 273, 96 N. E. 449 (1911); *Gourd v. Healy*, 206 N. Y. 423, 99 N. E. 1099 (1912).

11. *Feuer Transportation, Inc. v. Local Union No. 445*, 295 N. Y. 87, 65 N. E. 2d 178 (1946).

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