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Contracts—Offer and Acceptance

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CONTRACTS

Offer And Acceptance

In *Valashinas v. Koniuto*¹ the partnership agreement provided that either partner might give written notice of intent to dissolve the partnership, stating the sum for which he would buy his partner's interest or sell his own, and that if within ninety days after receiving notice recipient failed to elect to buy or sell, the partner giving such notice might make such election. Defendant here gave such notice on December 12 and plaintiff elected on December 15 to accept the offer and sell his interest, expressing his readiness to close the transaction on or before December 31. Judge Desmond, speaking for the majority, affirmed the Appellate Division and Special Term in denying the defendant's motion to dismiss the complaint for specific performance for failure to state a cause of action.² The court held that reference to December 31 as a closing date was not a rejection of partner's offer and not a counter-offer.

It is a fundamental principle of the law of contracts that an acceptance must be positive and unambiguous. It must not change, add to or qualify the terms of the offer.³ Qualified or conditional acceptances are counter-offers which reject the original offer.⁴ However, an acceptance which states that a party will be ready to close at a certain time and place has been held to be a mere suggestion for the convenience of the parties rather than a conditional or qualified acceptance.⁵

The dissenters felt that the proposal of the closing date made time of the essence, and thereby placed an unjust burden on the offeror and rejected the offer. However, the more reasonable interpretation would seem to be that of the majority, that someone had to fix or suggest a closing date as the partnership agreement did not do so. Plaintiff's notice that he would be ready to close on December 31 should be regarded as a routine business detail rather than an express condition or a peremptory insistence on making time of the essence.

Account Stated

In *Sea Modes v. Cohen*,⁶ an employer sought to recover alleged overpayments to his salesman while the defendant salesman sued to recover commissions allegedly due him. The agreement by which the salesman was hired contained the following provision, "We will render to you statements monthly showing business done and

1. 308 N. Y. 233, 124 N. E. 2d 300 (1954).

2. Rules of Civil Practice, rule 106.

3. 1 WILLISTON, CONTRACTS, § 72 (Rev. ed. 1936).

4. *Ibid.*, § 77.

5. *Winslow v. Moore*, 30 Hun 311, 17 N. Y. Week Dig. 429 (1833).

6. 309 N. Y. 1, 127 N. E. 2d 723 (1955).