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Arbitration Award—Personal Service Contract.—*Stalinski v. Pyramid Ekaric Co.*

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CASE NOTES

Arbitration Award—Personal Service Contract.—*Staklinski v. Pyramid Electric Co.*¹—The parties entered into an employment contract whereby the company hired Staklinski as its production manager² for eleven years and two months. The agreement provided that if Staklinski was substantially unable to perform his duties for three months, respondent's board of directors was to decide if such disability was permanent or temporary. If they found the disability to be permanent, Staklinski's services could be terminated. The agreement further provided for arbitration of all disputes. A year and eight months from the date of the agreement, respondent's board of directors declared petitioner permanently disabled and terminated his services. As a result of arbitration he was found substantially able to perform his duties and his reinstatement was directed. The New York Supreme Court, Special Term, confirmed the award of the arbitrators and denied a cross motion to vacate.³ The Appellate Division affirmed in a three to two decision.⁴ HELD: Under the arbitration statute of New York⁵ the court is obligated to confirm this award since none of the grounds set forth in the statute warranting the vacating of such awards existed here.⁶ In prior cases New York courts have upheld arbitration awards directing the reinstatement and retention of employees under collective bargaining agreements.⁷ This appears to be the first instance in which a New York court has confirmed an award that directed the performance of a personal service contract.

"As a general rule, equity will not enforce specific performance of contracts for personal services. The execution of such contracts depends upon the skill, volition and fidelity of the person who has engaged to perform them; and it is impracticable, if not impossible, for a court to supervise their proper execution or to secure their faithful performance."⁸ These reasons for refusing to enforce personal service contracts become even stronger when the employee has a position comparable to Staklinski's which requires a high degree of skill and business judgment.

The statute, as construed by the court, has excised these considerations from the court's discretion and obliged the court to confirm the award directing Staklinski's reinstatement. As a result of this decision, the court has assumed the task of supervising the execution of this contract.

¹ 6 App. Div. 2d 565, 180 N.Y.S.2d 20 (1st Dep't 1958).

² Staklinski is the largest single stockholder in the company.

³ 10 Misc. 2d 706, 172 N.Y.S.2d 224 (Sup. Ct. 1958).

⁴ 6 App. Div. 2d 565, 180 N.Y.S.2d 20 (1st Dep't 1958).

⁵ N.Y. Civ. Prac. Act, Art. 84.

⁶ N.Y. Civ. Prac. Act §§ 1462 and 1462a.

⁷ Matter of Ruppert (Egelhofer), 3 N.Y.2d 576, 170 N.Y.S.2d 785 (Ct. of App. 1958); Matter of Devery (Daniels & Kennedy, Inc.), 266 App. Div. 213, 41 N.Y.S.2d 293 (1st Dep't 1943), aff'd 292 N.Y. 596, 55 N.E.2d 370; Goldman v. Cohen, 222 App. Div. 631, 227 N.Y.S. 311 (1st Dep't 1928); United Culinary Bar and Grill Employees v. Schiffman, 299 N.Y. 577, 86 N.E.2d 104 (1949).

The statute, therefore, is obliging the court to assume a task that courts have traditionally refused to undertake.

It is suggested that an amendment to the statute will eliminate this undesirable result. The legislature could adopt a statute similar to the arbitration statute of Illinois which expressly provides for retention of equitable jurisdiction by the court in the enforcement of awards.⁹ A less drastic approach would be to exempt awards directing personal service from the requirement of obligatory confirmation. Such amendments would allow the courts to use discretion in cases similar to the main case and thereby avoid the problems that arise when a court is obliged to confirm such awards.¹⁰

PAUL V. KENNEALLY

Conditional Sales—Rescission by Purchaser Allowed Where Contract Did Not Precisely Conform to Statutory Standard.—*Bratta v. Caruso Car Co.*¹—The plaintiff purchased a car from the defendant pursuant to a conditional sales contract purporting to be executed under the provisions of the California Civil Code, § 2982.² The contract recited a \$300 cash down payment. In reality, the plaintiff had insufficient funds to meet the down payment and a promissory note for the amount was then executed in favor of the defendant. The defendant referred the plaintiff to a finance company where he could obtain a \$300 loan and make the specified cash down payment. The plaintiff upon learning of the terms required by the finance company³ refused to negotiate the loan. He, thereupon, gave notice of rescission to the defendant who refused to agree to a rescission, and who, thereafter, repossessed the car upon the plaintiff's failure to make the specified payments. In a suit by the plaintiff for rescission the Superior Court, Los Angeles County, held for the defendant. On the plaintiff's appeal the District Court of Appeals, Second District of California, reversed, holding that since the purchaser did not make a cash payment of \$300 "in cash" as recited in the contract, but executed a note in such amount, the conditional sale contract was invalid under the California Civil Code, § 2982, and the purchaser was entitled to rescind.

The decision is in accord with recent California cases holding that the statute was enacted for the benefit of purchasers for the reason that they are not *in pari delicto* with sellers, and, therefore, conditional sale contracts which do not strictly conform with the statutory provisions are unen-

⁹ Ill. Rev. Stat. ch. 10, § 13 (1957).

¹⁰ See 34 N.Y.U.L. Rev. 961 for a comment on the main case.

¹ 333 P.2d 807 (Cal. Ct. App. 1958).

² The California Civil Code, § 2982, provides in effect that an exact copy of every conditional sales contract shall be delivered by the seller to the buyer at the time of execution and that certain items such as cash price, down payment, balance due, etc., shall be recited in the contract; moreover, the statute provides the exact order in which each item is to appear.

³ In addition to having a lien imposed on his household furniture, the plaintiff would have had to make 19 monthly payments of \$25 each. In other words, he would have had to pay \$475 for the privilege of borrowing \$300.