Kentucky Law Journal

Volume 51 | Issue 1 Article 12

1962

Contracts--Consideration--Forbearance to Assert an Invalid Claim

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CONTRACTS — CONSIDERATION — FORBEARANCE TO ASSERT AN INVALID CLAIM.— Defendants leased oil and gas rights in a tract of land from plaintiff. Later, defendants took a lease in part of these same mineral rights by assignment from another. Plaintiff regarded this latter act as recognition of an adverse claim to his land and thought that it constituted a transfer of fealty which created a cause of action on his part. He threatened to sue. In consideration of plaintiff's forbearance to assert this claim, the parties entered into an agreement whereby plaintiff was guaranteed certain royalty interests. Plaintiff brought this action to enforce the agreement. Defendants contended that the plaintiff's forbearance was not sufficient consideration to support the agreement. The trial court entered judgment for the plaintiff. *Held*: Affirmed. Forbearance to sue on an invalid claim is sufficient consideration to support a promise if the claim is asserted in good faith, "unless the claim is so obviously unfounded that the assertion of good faith would affront the intelligence of the ordinary and reasonable layman."[1] *Hall v. Fuller*, 352 S.W.2d 559 (Ky 1962).

The court listed three views on the sufficiency of forbearance to sue as consideration: (1) the claim must be legally enforceable; (2) the claim must at least be doubtful, which view the court adopted; (3) the claim need only be made in good faith.

The first view, that the claim must be legally enforceable, was adhered to in the early English cases. The principle behind the view was that forbearance to assert a void claim was not legal detriment.[2] Although the claimant had the power to assert his claim at law, he was regarded as having a duty of imperfect obligation not to assert an unfounded claim.[3] Later the rule was relaxed, and forbearance to prosecute a suit already instituted was held to be sufficient consideration irrespective of its possible success or failure.[4] These cases were subsequently used in the development of the second view, *i.e.*, forbearance to assert a doubtful claim is sufficient consideration.[5]

This is the view adopted by the Kentucky court in the principal case. A doubtful claim, as the court uses it, means a claim asserted in *good faith* and with a *reasonable belief* in its validity This test is actually no more than the *good faith only* rule, the third view, qualified by an objective requisite. The Kentucky court has said "it is

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[1] Hall v. Fuller, 352 S.W.2d 559, 562 (Ky. 1962).
[2] 1 Williston, Contracts 471 (rev. ed. 1936).
[3] *Ibid.* See also 1 Corbin, Contracts 434-35 (1950).
[4] 1 Williston, Contracts 471 n.3 (rev. ed. 1936).
[5] 1 Williston, Contracts 471-72 (rev. ed. 1936). Today, it appears that the overwhelming majority of jurisdictions refuse to follow the early English rule. *But see* Renney v. Kimberly, 211 Ga. 396, 86 S.E.2d 217 (1955).

easier to decide whether the claim was a doubtful one than it is to ascertain whether the claimant was acting in good faith in asserting it."[6] A second reason in support of the *doubtful* rule is that the objective requirement tends to prevent vexatious or fraudulent claims.[7] The merit of the objective standard, however, should be considered in the perspective of the *good faith only* rule.

All courts recognize that to constitute sufficient consideration, the forbearance to assert an invalid claim must at least be made in good faith.[8] Anyone acting in good faith has the legal right to assert his claim, even if it is completely groundless. To say that a claim brought in good faith is groundless before it is adjudicated is to beg the question; "it can hardly be said that there is any case known to man in which a claimant has absolutely no chance of success."[9] Since one who asserts a claim in good faith has a legal right to prosecute it, relinquishing that right is a detriment,[10] which is sufficient consideration to support a contract. England[11] and many states[12] have adopted this approach. Since the benefit-detriment concept of consideration is satisfied with the *good faith only* rule, should a court also require that the claim be reasonable? Does this additional requisite make the rule easier to apply and tend to prevent vexatious or fraudulent claims?

The rule laid down in the principal case is that the claim must not be so obviously groundless that the assertion of good faith would affront the intelligence of the ordinary and reasonable layman. How much law does this objective standard require the layman to know? The Kentucky court has not been consistent in answering this question. In *Hardin's Adm'rs v. Hardin*,[13] the court points out that a doubtful claim "must be one about which well-informed lawyers and judges may easily differ, and about which the parties themselves do differ."[14] In an earlier case[15] the court held that the claim must be one about

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[6] Hardin's Adm'rs v. Hardin, 201 Ky. 310, 311, 256 S.W. 417, 418 (1923).

[7] Sellars v. Jones, 164 Ky. 458, 171 S.W. 449 (1915).

[8] 1 Corbin, Contracts 436 (1950).

[9] 1 Corbin, Contracts 439 (1950).

[10] "It is not the adequacy of consideration which controls in testing the validity of the compromise agreement, for legal sufficiency does not depend on comparative value. It is sufficient if there is something of detriment to one party or benefit to the other, however slight." Forsythe v. Rexroat, 234 Ky. 173, 176, 27 S.W.2d 695, 697 (1929).

[11] Callisher v. Bischoffsheim, [1870] 5 Q.B. 449; Cook v. Wright, 1 B. & S. 559, 121 Eng. Rep. 822 (K.B. 1861).

[12] *E.g.*, Mitchell v. Schulte, 142 Ark. 446, 222 S.W. 365 (1920); Reed v. Kansas Postal Tel. & Cable Co., 125 Kan. 603, 244 Pac. 1065 (1928); Butson v. Misz, 81 Ore. 607, 160 Pac. 530 (1916).

[13] 201 Ky. 310, 256 S.W. 417 (1923).

[14] *Id.* at 313, 256 S.W. at 419.

[15] Western & So. Life Ins. Co. v. Quinn, 130 Ky. 397, 113 S.W. 456 (1908).

which reasonable men at the time may have entertained a substantial doubt. In *Forsythe v. Rexroat*,[16] the court added to the confusion surrounding the application of the *doubtful* rule by stating it is not essential that the claim "be set up in particular terms sufficient to withstand a demurrer."[17]

With such inconsistent views of what constitutes a reasonable claim, certainly the *doubtful* rule is not easier to apply If these views were crystalized into one standard, the *doubtful* rule would be less difficult to apply Nevertheless, the reasonableness of the claim should not be questioned. A court should be satisfied that the claim which was withheld was reasonable because of the fact that the adverse party respected it enough to enter into the contract. The only question which should be presented to the court is whether the claim was in fact asserted in good faith. Under this rule, the reasonableness of the claim will necessarily become one of the factors in determining the good faith of the claimant.

The other reason urged in support of the *doubtful* rule is that it will prevent vexatious or fraudulent claims. However, there would be no practical difference if the *good faith only* rule were applied. These claims are, per se, not in good faith. By the use of this test the court in the principal case would have achieved the same result since the court indicated that the claim was treated seriously by all parties concerned, including their lawyers, and that the claim was of more than nuisance value.

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EVIDENCE—RES GESTAE—TIME ELEMENT IN RAPE.—The prosecutrix and her husband lived in a remote section of the state. Upon arriving home one day with his employer, the husband found his wife visibly nervous and excited. She told them she had been raped about an hour before their arrival. This was her first opportunity to tell anyone, and she told them immediately The trial court admitted the employer's testimony as substantive evidence and also permitted a police officer to read into the record a statement which the prosecutrix made to him about six hours after the event. Defendant appealed from the conviction for rape. *Held*: Reversed. While the employer's testimony is properly admissible as part of the res gestae,[1] the testi-

[16] 234 Ky. 173, 27 S.W.2d 695 (1929).
[17] *Id.* at 178, 27 S.W.2d at 698.

[1] Technically, this statement is dictum, but for all practical purposes it is holding.