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Contract for Lifetime Employment Held Void for Indefiniteness of Subject Matter - Baltimore and Ohio Railroad Company v. King

CONTRACT FOR LIFE-TIME EMPLOYMENT HELD VOID FOR INDEFINITENESS OF SUBJECT MATTER—*BALTIMORE AND OHIO RAILROAD COMPANY V. KING*[1]

Plaintiff-appellee was injured while employed as brakeman by the defendant-appellant company. An officer of the company urged plaintiff not to enter suit, saying: "We are going to give you a job for life, if you listen to me; there is something you can have at Baltimore or at Washington, as switchman, lots of jobs." After recovering from his injury, plaintiff was employed by the defendant as switchman for twenty-two years with only a single interruption of three months when plaintiff was "on call". In 1931 the job was abolished, plaintiff was discharged and he brought suit for damages for the breach of the oral contract of the defendant to employ him for life in consideration of his forbearance to sue on the claim. Judgment was given for the plaintiff in the lower court and defendant appealed. *Held*: Judgment reversed. Since neither the type of work to be done, nor the wages to be received were specified, the contract was too indefinite to be enforced.

The problem raised by the principal case is not entirely new in Maryland. It was first considered in *Heckler v. Baltimore & Ohio Railroad Company*,[2] where the injured

[1] 168 Md. 142, 176, Atl. 626 (1935).
[2] 167 Md. 226, 173 Atl. 12 (1934).

employee was promised a job for life or for so long as he was able to do work of any kind about the shops or railroad. Defendant railroad demurred to the declaration on the ground that it failed to express authority in the agent from the board of directors to make the contract sued on. The demurrer was sustained in the lower court. On appeal the Court of Appeals held unanimously that the demurrer should have been overruled, but by a majority of six to two the Court affirmed the judgment of the lower court on the ground that the contract was unenforceable for lack of definiteness as to work and pay.

That contracts for employment for life will be sustained in the proper case admits of no dispute, *Heckler v. B. & O. R. R. Co.*[3] But it is equally true that such contracts will be closely scrutinized, the courts, as a general rule, looking with disfavor on such contracts due to certain inequities to which reference will be made later in this note.

A distinction has been generally noted by the courts in life employment contracts between those in which the promise of employment for life is given for an outside consideration as in the principal case and those in which it is not.[4] In cases included in the latter group the contention is frequently made that such contracts for permanent employment are void for lack of mutuality because the employee has made no binding promise and is privileged to quit at any time. But this rule is not applicable to contracts contained in the former category, because there is consideration for the employer's promise outside and in addition to any promise on the part of the employee to serve for any definite time. A release or a forbearance to bring suit is ample consideration for the return promise even though the employee has an unlimited option between serving and not serving.[5]

It is clear that contracts for life employment are not within that section of the Statute of Frauds as to contracts

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[3] Ibid.
[4] 18 R. C. L. 509; 35 A. L. R. 1432.
[5] Corbin, Selected Readings in the Law of Contracts, 439; 50 L. R. A. (N. S.) 453; Hartle v. Stahl & wife, 27 Md. 157, 171 (1867).

not to be performed within a year since the time is indefinite and it is possible for complete performance to take place within a year.[6] Likewise, it is generally held that such contracts are not against public policy as tending to impair the efficiency of public service corporations by restricting their future management.[7]

Some courts have considered the impossibility of accurately establishing the damages as a ground for denying relief due to the fact that the length of the employment could not be fairly ascertained because of the option which the employee had of quitting at any time,[8] but the weight of authority has accepted the logical and reasonable view that the employee must be considered to have exercised his option to continue for life in the employment promised him. Therefore, it is held that the measure of damages for breach of a contract for permanent employment is the amount which the employee would have earned up to the time of trial together with the present worth of what he would be able to earn in the future in the course of the probable duration of his life or ability to perform the services, less any sums which he would be able to earn in other employments.[9]

It can readily be seen from the foregoing discussion that contracts such as the one illustrated in the principal case are, in the absence of other evidential factors, valid unless held to be unenforceable on the ground taken by the Court of Appeals.

In considering the question of uncertainty it is essential, in the first instance, to recognize certain fundamental propositions: (1) "In order to constitute a valid verbal or written agreement, the parties must express themselves in such terms that it can be ascertained, to a reasonable degree of certainty, what they mean. And if an agreement be so vague and indefinite that it is not possible to collect from it the full intention of the parties, it is void; for neither the court nor the jury can make an agreement for the parties. Such a contract can neither be enforced in equity nor sued

[6] See Cole v. Singerly, 60 Md. 348, 354 (1883).
[7] 50 L. R. A. (N. S.) 454; 35 L. R. A. 513.
[8] 35 L. R. A. 516.
[9] 50 L. R. A. (N. S.) 453.

upon in law",[10] (2) The law does not favor, but leans against, the destruction of contracts on account of uncertainty; therefore, the courts will, if possible, so construe the contract as to carry into effect the reasonable intent of the parties, if it can be ascertained.[11] (3) This intent may be determined at times by reference to extrinsic facts relevant to the inquiry.[12]

There are three possibilities as to the terms of employment contracts. First, the duration may be indefinite. Second, the wages to be paid may be indefinite. Third, the work to be done may be indefinite. Or there may be combinations of the above.

Suppose *A* for consideration promises to give *B* a job. It is clear that no court would recognize a binding contract.[13] Suppose *A* for consideration promises *B* a job as chauffeur. Again, it would seem that the overwhelming weight of authority would refuse to enforce the contract.[14] Suppose *A* for consideration promises to give *B* a job at five dollars per day. For the same reasons as in the last cited hypothesis the courts would in the great majority of instances refuse to enforce the contract.[15] Suppose *A* promises for consideration to give *B* a job for life. In the absence of other factors, the majority of the courts would agree with the principal case and refuse enforcement on the ground of uncertainty.[16]

It is to be noted that in those cases in which the duration of the employment is indefinite, the rule is well settled in the great majority of states[17] and in Maryland that, although there may be a quantum meruit recovery on services

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[10] Thomson v. Gortner, 73 Md. 474, 482, 21 Atl. 371 (1891). See also, Restatement of Contracts, Sec. 32 and I Williston, Contracts (Rev. Ed.) sec. 37.

[11] 6 R. C. L. 645; Middendorf, Williams & Co. v. Milburn Co., 134 Md. 385, 387, 107 Atl. 7 (1919).

[12] I Page, Contracts (2nd Ed.) sec. 101. See also Milske v. Steiner Mantel Co., 103 Md. 235, 246, 63 Atl. 471 (1906); Sherley v. Sherley, 118 Md. 1, 24, 84 Atl. 160 (1912).

[13] Restatement of Contracts, Sec. 32, comment (a).

[14] See W. B. & A. R. R. Co. v. Moss, 127 Md. 12, 96 Atl. 273 (1915); McCullough Iron Co. v. Carpenter, 67 Md. 554, 11 Atl. 176 (1887).

[15] See cases cited in preceding footnote.

[16] 48 L. R. A. (N. S.) 435.

[17] See (1925) 38 Har. L. R. 834.

already performed, the contract will not be enforced. As was said in *W. B. & A. Railroad Co. v. Moss*[18], "It is equally well settled that no action will lie on the breach of a contract of employment unless there is a definite time fixed for the continuance of the employment. The reason for the rule is that the hiring would be one merely at will and could be terminated at the pleasure of either party".[19] It is generally held that the doctrine of reasonable time does not apply to personal service contracts, although in England the rule was otherwise and where an employment contract was indefinite as to time, it was presumed to be for a year.[20] But modern cases in England assert that the employment is terminable upon reasonable notice.[21] It is suggested, that the English view has the balance of both logic and justice on its side,[22] but the rule is well settled to the contrary. However, the courts have made an important distinction in applying this rule, for it seems to be different in cases where the employee purchases the employment with a valuable consideration outside the services which he renders from day to day.[23] In a number of cases contracts by railroad companies to furnish "steady and permanent employment" to employees in consideration of the relinquishment of claims by the employees against the companies have been construed to show an agreement on the part of the company to furnish the employee with employment as long as the latter is able, ready, and willing to perform such services as the company may have for him to perform.[24]

The wisdom of this exception to the general rule is manifest both as to fixing the duration of a specific contract and as to establishing the enforceability of such contracts in general. "Contracts providing employment to laborers who have been injured in the service of the employer do not interfere in any substantial way with the employer's control over his business. They are reasonable, in that they enable

[18] Supra note 14.
[19] See also McCullough Iron Co. v. Carpenter, supra note 14.
[20] 100 A. L. R. 835.
[21] I Williston, Contracts (Rev. Ed.) 39.
[22] For criticism of the American rule see Ibid.
[23] 18 R. C. L. 509; 35 A. L. R. 1432.
[24] 35 A. L. R. 1434; 8 Am. & Eng. Ann. Cas. 283.

the employer to obtain release from claims for damages which may prove expensive to him, while providing a livelihood to employees who have been injured in his service, and who, because of such injury, may have difficulty in finding employment elsewhere. They are not unusual, as the reported cases abundantly witness; and it would be a harsh rule which would deny validity to them and thus enable employers, in disregard of their provisions, to discharge with impunity employees who had surrendered claims for damages in reliance upon them. To say that, where the employer does this, the employee is relegated to his original claim for damages, does not meet the hardship suggested. The employee is still confronted with the release which he has signed; and it may well happen that with the passage of time he may have lost the means of proving his case for damages or may find it barred by the statute of limitations.''[25] The existence of this distinction was recognized by the Maryland court in the *Heckler* case,[26] but the Court refused to follow or reject it.

The remaining discussion will be confined to the hypothetical case, already mentioned, where *A* for consideration promises to give *B* a job for life, and the contract is attacked on the ground of uncertainty. At the outset it is necessary to distinguish two variations of that case. In the first, *A* company injures *B*, an utter stranger. In consideration for *B*'s releasing his claim for damages, *A* company promises to give *B* a job for life. In the second, *B* is injured in the course of his employment with *A* company and in consideration for *B*'s releasing his claim for damages, *A* company promises to give *B* a job for life. Stripped of all but the essential contractual elements, it would appear that the above cited illustrations were identical. In each the duration of the employment is fixed, but neither the wage nor the kind of employment is established. Granting, therefore, that the two set-ups are objectively similar, there are, nevertheless, important distinctions of degree which render the second illustration more capable of certainty than the first.

[25] Royster Guano Co. v. Hall (C. C. A. 4th) 68 F. (2d) 533, 536 (1934).
[26] Supra note 2, 167 Md. 226, 231.

Applying the maxim, "Id certum est quod certum reddi potest" (that is certain which may be rendered certain) and the rule that the courts should endeavor to attach a sufficient meaning to indefinite contracts, we are met with immediate difficulties. In the first illustration, conceding that a binding contract was intended by the parties and conceding that if the contract is held unenforceable it will work an injustice on the promisee, it nevertheless, remains a problem to ascertain or fix the terms of the agreement. By what standards, it may be asked, can the court arrive at a conclusion as to what constituted the agreement. In the second case, the fact that *B* had worked for *A* company in the past offers a definite clue as to both the work and the wages contemplated in the agreement in question. If *B* in the past worked as an unskilled laborer, then it is reasonable and probable to suppose that a relatively similar employment was intended for the future both as to rate of pay and nature of work. If *B* in the past had been a skilled worker then the employment contemplated in the future would have as its basis a contemplation and consideration of the status of *B* in the past both as to wages and nature of work. To the general statements expressed above there would necessarily be two qualifications. First, the nature of *B*'s injuries might permanently impair his ability to do work similar to that which he had done prior to his injury. If such were the case, then the rule would have to be modified so as to allow for such elasticity as would be occasioned by the extent of *B*'s injuries. Second, and closely related to the first, would be the occasion of *B*'s injury rendering him less fit to produce value for his employer. In other words the impairment of his physical condition might lessen his productive capability, even though he were physically able to perform the work which he was formerly accustomed to perform. If such happened to be the case, then the wage rate under the future agreement could be determined in the nature of the reasonable worth of *B*'s services. If *B* were badly injured testimony could be taken as to what work he would be able to perform and the pay he would receive for

such work would be reckoned by its fair value to the company.

Our discussion thus far has been occasioned by situations in which suit is brought by *B* when immediately upon his recovery, employment is refused him by *A* company. The situation in the principal case and in the *Heckler* case is somewhat distinguishable. In those cases after recovery from his injury, *B* has been given employment by the company, in one instance for twenty-three years, and in the other for fourteen years. It is submitted that these facts make the cases even stronger, for in the light of the work which *B* has performed since the injury, it is unreasonable to say that the court cannot determine the nature and the wages of the employment contemplated by the contract.

In this discussion we have been contending for a more flexible rule than that laid down by the Court of Appeals. It is conceded that the factors mentioned above are far from absolute but they are valuable and essential in determining the intention of the parties where neither the wage nor the work is specified. Recognition of their availability should enable the courts to fix the rights of the parties. A restatement of the rule would be that where an otherwise valid employment contract has been entered into and neither the wage nor the work is definite, it is presumed that the parties contemplated employment in the same or similar work, and at a living wage (as ascertained by past employment) or at a wage equal to the reasonable value of the work performed.

It is suggested that the trend of modern decisions on this question is in the direction of refusing to invalidate the contract on the ground of uncertainty.[27]

As was said earlier in this comment the courts, generally speaking, view life employment contracts with disfavor,[28] and although the courts in many instances invoke the rule of uncertainty,[29] as justifying a refusal to enforce the contract, it is submitted that the controlling grounds for these decisions is not uncertainty but rather evidential difficulties

[27] Royster Guano Co. v. Hall, supra note 25; Fisher v. Roper Lumber Co., 183 N. C. 485, 111 S. E. 857 (1922).
[28] Heckler v. B. & O., supra note 2.
[29] 48 L. R. A. (N. S.) 435.

which seem invariably to accompany such litigation. Among the factors which would appear to be largely responsible are: (1) an abundance of evidence that the defendant has treated the plaintiff with all honesty and fairness, (2) the often debatable question whether the person promising the employment for life had the authority to bind the corporation, (3) evidence of bad faith on the part of the plaintiff of a reasonable offer of employment. A study of the two recent Maryland cases directly in point reveals the presence of some one or more of these factors although in *W. B. & A. Railroad Co. v. Moss*,[30] a case involving among other things an indefinite employment contract, none of the above factors would seem to have been present. In holding the contract too indefinite for enforcement, the court said:[31] "We are conscious of the feeling that apparently the enforcement of these rules of law under the facts of this case, does not do full justice to the parties, yet it is not for courts to make contracts for parties, but to maintain, unimpaired, the established rules of law." But the court added in the following paragraph that the plaintiff had another remedy.

The most distressing thing about the principal case is that the plaintiff allowed himself to be lulled into a false sense of security and allowed limitations to run on his claim against the defendant for the original injury. Perhaps the best solution of this unfortunate type of problem lies in statutory reform of the statute of limitations to provide that when a plaintiff forbears to sue because of an unexecuted inducement that limitations shall commence to run only from the time when the consideration for this forbearance fails.