

1960

Keith D. Bullock v. Deseret Dodge Truck Center, Inc. : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Bullock v. Deseret Dodge Truck Center, Inc.*, No. 9193 (Utah Supreme Court, 1960).
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In the
Supreme Court of the State of Utah

FILED

MAR 25 1960

KEITH D. BULLOCK,

vs.

DESERET DODGE TRUCK CENTER,
INC., a corporation,

Appellant,

Respondent.

Clerk, Supreme Court, Utah

Case No.
9193

BRIEF OF APPELLANT

BEAN AND BEAN,

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ARROW PRESS, SALT LAKE

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KEITH D. BULLOCK,

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DESERET DODGE TRUCK CENTER,
INC., a corporation,

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Respondent.

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BRIEF OF APPELLANT

STATEMENT OF FACTS

This is an appeal from a Summary Judgment entered in favor of respondent who was the defendant below.

Prior to his employment with the respondent, appellant was employed with Chrysler Corporation in the sale and distribution of Dodge Trucks, stationed at Dallas, Texas.

After attending a meeting in Detroit where a truck center program was outlined, appellant wrote John S. Hinckley a letter concerning the desirability of preparing to obtain a truck center for Salt Lake City (R. 39, 41).

When Hinckley's Inc. made application for a truck center franchise, the application was sent to appellant at Dallas, Texas, for his opinion (R. 41). Appellant reported favorably on the Hinckley application, and by personal effort and interest gave assurance to the representatives of Dodge Truck Division that Hinckley's, Inc. could handle the truck center (R. 41).

Appellant traveled to Salt Lake City on at least three separate occasions to discuss the organization of the truck center and to work out an agreement for his employment as manager of the truck center (R. 39).

On the representation of Hinckley's, Inc. that adequate management would be obtained, they were granted the truck center franchise (R. 42). A new corporation was formed, and titled Deseret Dodge Truck Center, Inc., the respondent herein. Appellant wrote the original stock orders for the truck center in a hotel room in Detroit (R. 42).

Hinckley's, Inc. and Deseret Dodge Truck Center, Inc., represented to appellant that the oral agreements between the parties would be put into writing in accordance with appellant's request (R. 40). The first draft of the employment Agreement was rejected by appellant because it failed to provide for all of the stock options and rights which had been discussed. The subsequent draft was presented at the first directors' meeting in January, 1958, and all the parties signed.

Appellant resigned his position with Chrysler Corporation upon the representation that he would be a participating owner by virtue of stock options in a business which he

particularly wanted to be in, and that he would have a management position in that business for at least an eight year period (R. 40). He moved his family from Dallas, Texas, and took a cut in annual salary.

The success of the business depended almost entirely upon appellant's management skills and abilities (R. 3). A wholesale truck business was launched, dealers were cultivated, contacts were made, financing and bookkeeping procedures were set up, all under the management and direction of the appellant. Having established a going and successful wholesale truck business, appellant was suddenly approached by an officer of the respondent corporation, who was also an officer of Hinckley's, Inc. and told that he would henceforth be working for Hinckley's, Inc. selling trucks retail. No stock option was offered and appellant was to lose his management position with the respondent corporation (R. 39). Appellant then had the choice of being eased out of the company he helped organize or relying upon the Agreement to maintain his position in the respondent corporation. Appellant refused to be transferred and was immediately dismissed by respondent's president (R. 40).

Appellant filed suit alleging an employment Agreement for a period of not less than eight years. Appellant's deposition was taken (R. 20) and appellant then made a motion pursuant to the discovery procedures under Rule 34, U. R. C. P. The Court refused to grant appellant's motion and offered to entertain a Motion for Summary Judgment, and respondent amended its answer to plead the Statute of Frauds, 25-5-4, U. C. A. 1953.

STATEMENT OF POINTS

POINT I.

DOUBTFUL OR AMBIGUOUS PORTIONS OF A CONTRACT OR AGREEMENT SHOULD BE CONSTRUED AGAINST THE PARTY PROVIDING THE AGREEMENT.

POINT II.

THE RESPONDENT SHOULD BE ESTOPPED FROM PLEADING AND RELYING UPON THE STATUTE OF FRAUDS.

POINT III.

FOR THE PURPOSES OF THIS APPEAL THE AGREEMENT IS SUFFICIENT AS A MATTER OF LAW AND IS NOT SUBJECT TO THE STATUTE OF FRAUDS.

POINT IV.

APPELLANT WAS NOT OBLIGATED TO ACCEPT ANY OTHER TYPE OF EMPLOYMENT OFFERED BY THE RESPONDENT OR ITS AFFILIATES.

ARGUMENT

POINT I.

DOUBTFUL OR AMBIGUOUS PORTIONS OF A CONTRACT OR AGREEMENT SHOULD BE

CONSTRUED AGAINST THE PARTY PROVIDING THE AGREEMENT.

The Agreement here sued upon attached to the Appellant's complaint was drafted by respondent's attorneys. It was redrafted on at least one occasion made necessary by the fact that the original Agreement did not give appellant the right to purchase stock which Hinckley's, Inc. may offer for sale. The language of the Agreement and all of the implications arising therefrom should be construed most strongly against the defendant, especially in view of the circumstances surrounding the making of the Agreement. *Huber & Roland Construction Company v. City of South Salt Lake*, 7 Utah 2d 273, 323 P. 2d 258 (1958) ; *Continental Bank & Trust Company v. Bybee*, 6 Utah 2d 98, 306 P. 2d 773 (1957).

Additionally, all of the facts and surrounding circumstances in the pleadings and deposition upon which this case was submitted at the Motion for Summary Judgment, must be viewed in the light most favorable to the appellant. *In re Williams' Estates*, ... Utah ..., 348 P. 2d 683 (1960).

POINT II.

THE RESPONDENT SHOULD BE ESTOPPED FROM PLEADING AND RELYING UPON THE STATUTE OF FRAUDS.

The complaint alleges appellant was hired by respondent for a period of not less than eight years, at an annual salary of \$10,200.00 per year, but the Agreement relied upon

by appellant does not expressly state these terms. At 3 CORBIN ON CONTRACTS, Sec. 684, p. 685, it is said:

“There is much litigation in service contracts over the length of the term of employment. This is due to the fact that employment contracts, even when by correspondence, are usually very informal, with brevity in wording, and much uncertainty in meaning. Neither party may have any definite period of service in mind; in which case it is natural for them to say nothing about it, and the employment is terminable at the will of either party. On the other hand, both of them may understand that the hiring is for a definite period. The circumstances may be evidential of such an understanding, even though the express words standing alone would not bear such an interpretation. Thirdly, one of the parties (usually the employee) may have had in mind a definite period of employment and the other party had not. Here there is no actual ‘meeting of the minds’; and yet there may be a valid contract. Interpreting the elliptical expressions of the parties, the court may find that the expressions, interpreted in the light of the surrounding facts, made the understanding of one of the parties reasonable and made it unreasonable for the other party not to know that such would be the first party’s understanding. In such a case, there is a contract in accordance with that understanding. The second party, having negligently or intentionally misled the first, is bound by estoppel.”

And at page 687 it is said:

“If the circumstances are such that a termination of the relation by one party will result in great hardship or loss to the other, as they must have known it would when they made the contract, this is a factor of great weight in inducing a holding that the parties agreed upon a specific period. The avoid-

ance of such hardship is not the sole reason that influences the court; such proof indicates the kind of agreement that the parties probably would have made. This is illustrated by cases in which the employee is caused to give up another good position or to incur difficulty and expense in moving to a new location."

A landmark case and one which parallels the case at bar very closely is *Seymour v. Oelrichs*, 156 Cal. 782, 106 P. 88 (1909). In that case plaintiff gave up a permanent position with the detective force of the County and City of San Francisco to accept employment offered by one Charles L. Fair for a period of ten years. The oral Agreement was to be put in writing as soon as Fair returned from a European trip. He was killed in Europe and did not return and the oral Agreement was never put into writing, and after a period of approximately two years, the heirs discharged the plaintiff. The Statute of Frauds was raised as a defense and was met head-on by the doctrine of equitable estoppel in what has proved to be a landmark opinion. The court stated at 106 P. 94:

"The presence of fraud is, of course, essential. It is established by a multitude of cases that to constitute fraud sufficient to serve as the foundation for estoppel by acts or conduct an actual intent to mislead is not essential. Mr. Pomeroy in his work on Specific Performance says that the fraud essential in such cases is not necessarily an antecedent fraud, consciously intended by a party in making the contract, but a fraud inhering in the consequence of thus setting up the statute."

Respondent cites *Collett v. Goodrich*, 119 Utah 662, 281 P. 2d 730, to the effect that all of the essential elements of

a contract or agreement must be set out in the memorandum to avoid the operation of the statute, but also, in that case the court was explicit in stating that equitable estoppel might have been applicable had it been properly raised and presented.

In this case, appellant filed affidavits (R. 39, 41) which presented facts sufficient to show a drastic change of position on the part of the appellant in reliance upon this Agreement, and authorities were quoted affirming the application of the doctrine of equitable estoppel where such facts exist (R. 27, 33 and 52).

At 2 RESTATEMENT OF AGENCY 2d, Sec. 442, it is said :

“Unless otherwise agreed, mutual promises by principal and agent to employ and to serve create obligations to employ and to serve which are terminable upon notice by either party.

“(a) Promises by a principal to employ and by an agent to serve are interpreted as promises to employ and to serve at the agreed rate, only so long as either party wishes, if no time is specified and no consideration for entering into the relation is given other than the promise in general terms to employ or serve, in the absence of manifestations indicating otherwise. The specific terms of the Agreement, the fact that the consideration has been given for entering into this relation distinct from the promise to pay for the service, or the circumstances surrounding the employment may, however, indicate that the parties have contracted with reference to a period of time during which the employment is to continue.
* * *

“(c) If the principal receives for his promise to employ the agent, consideration other than a mere

promise to serve, and no time is specified by the terms of the agreement, the principal's promise is interpreted as a promise to employ the agent for a time which is reasonable in view of the purposes of the party giving the consideration."

Respondent has launched a two-pronged attack upon the Agreement alleging that the period of employment is an essential element not expressly stated and secondly, that it is not an employment contract at all, but merely a stock option, and that the reference to employment is incidental. The foregoing quotations from authorities indicate that the doctrine of equitable estoppel has been applied as to the first point of the attack.

As to the second point, if respondent's assumption is correct, the doctrine of equitable estoppel should bar the pleading of the Statute of Frauds. They are simply stating that there was no written memorandum of the Agreement, and that therefore, the Agreement alleged is a parol Agreement, subject to the Statute of Frauds. In *Ravarino v. Price*, 123 Utah 559, 260 P. 2d 570 (1953), this Court after reviewing the language of *Seymour v. Oelrichs*, stated at 260 P. 2d 576:

"The binding thread which runs through these cases distinguishing them from the general rule that a mere promise as to future conduct will not work an estoppel, is that the promise designedly made to influence the conduct of the promisee, tacitly encouraging the conduct, and although the conduct of the promisee constitutes no actual performance of the oral contract itself, it is something that 'must be done by plaintiff before he can begin to perform as was shown to the defendants.' *Kraft v. Rooke*, 103 Cal. App. 552, 284 P. 935, 937."

Respondent's officers and agents knew that appellant would have to terminate his employment with Chrysler Corporation and move from Dallas, Texas, to Salt Lake City, Utah, in order to accept the management position respondent offered to him.

Appellant had no intention of terminating his employment with Chrysler Corporation until he was offered an employment contract, or until respondent represented to him that a contract for employment would be forthcoming (R. 39, 42). In this respect the facts are similar to those of *Alaska Airlines, Inc. v. Stevenson*, 217 F. 2d 295 (9th Cir. 1954). In that case it was held that where an oral employment agreement provided that within six weeks to three months after employment began the employer would work out a long range agreement in writing, and the employee moved his family from California to Alaska and relinquished his rights with his former employer, employee's right to recover was not barred by the Alaska Statute of Frauds. After examining RESTATEMENT OF CONTRACTS, Sec. 90, the Court states at page 297:

"The foregoing section, not mentioning promissory estoppel, is addressed not to the Statute of Frauds, but to promissory estoppel as a substitute for consideration. However, when one considers the part Samuel Williston took in the formulation of the Restatement of Contracts, and then examines section 178, comment F., one must conclude that there was an intention to carry promissory estoppel (or call it what you will) into the Statute of Frauds if the additional factor of a promise to reduce the contract to writing is present * * *

The circumstance of Stevenson's relinquishing his

rights with Western, the promise to make a written contract on the future condition, we think, meets the test of the restatement."

In concluding the matter, the Court states that the rule set down in *Seymour v. Oelrichs*, 156 Cal. 782, 106 P. 88, is generally followed throughout the country. See also *Fibre-board Products, Inc. v. Townsend*, 202 F. 2d 180 (9th Cir. 1953 reh. den.).

That appellant was led to rely upon the Agreement as representing an employment Agreement is evident from the record (R. 40) and the respondent has produced no evidence to show the contrary. In the case of *Easton v. Wycoff*, 4 Utah 2d 386, 295 P. 2d 332 (1956) this Court quoted with approval from RESTATEMENT OF CONTRACTS, Sec. 178 (Comment F) :

"Though there has been no satisfaction of the statute, an estoppel may preclude objection on that ground in the same way that objection to the non-existence of other facts essential for the establishment of a right or a defense may be precluded. A misrepresentation that there has been such satisfaction if substantial action is taken in reliance on the representation precludes proof by the party who made the representation that it was false and a promise to make a memorandum, if similarly relied upon, may give rise to an effective promissory estoppel if the statute would otherwise operate to defraud."

The general rules applicable to oral contracts where the Statute of Frauds is set up as a defense are outlined at 49 AM. JUR. STATUTE OF FRAUDS Sec. 579-583. In as-

serting that the Agreement is simply a stock option and that the reference to employment is entirely incidental (R. 49), respondent is impaled upon the language of 49 AM. JUR. Sec. 580, the second paragraph of page 887, as follows:

“* * * The fraud against which the Courts grant relief, notwithstanding the Statute of Frauds, consists in a refusal to perform an agreement upon the faith of which the plaintiff has been misled to his injury or made some irretrievable change of position, especially where the defendant has secured an unconscionable advantage, and not in the mere moral wrong involved in the refusal to perform a contract which by reason of the statute cannot be enforced. When one party induces another on the faith of a parol contract to place himself in a worse situation than he could have been if no agreement existed, and especially if the former derives a benefit therefrom at the expense of the latter, and avails himself of his legal advantage, he is guilty of a fraud, and uses the statute for a purpose not intended—the injury of another—for his own profit. In such cases equity regards the case as being removed from the Statute of Frauds.”

POINT III.

FOR THE PURPOSES OF THIS APPEAL THE AGREEMENT IS SUFFICIENT AS A MATTER OF LAW AND IS NOT SUBJECT TO THE STATUTE OF FRAUDS.

Appellant's deposition shows that the signatures were not affixed to the Agreement until the end of the directors' meeting at which the Agreement was signed (Appellant's deposition page 22, line 12). Appellant's annual salary was

agreed upon at that same directors' meeting and could not have been included in the Agreement when it was prepared.

By the use of discovery procedures provided by our Utah Rules, appellant attempted to obtain photostats or make copies of respondent's minutes (R. 12). For some unaccountable reason this discovery procedure was not allowed by the Court and appellant was subjected to the outcome of the Motion for Summary Judgment. This is exactly opposite to the spirit and intent of Rule 56 U. R. C. P. Had appellant been allowed to copy respondent's minutes for that first directors' meeting, respondent's objection that the Agreement nowhere provides for a stated salary may have been abortive.

Of somewhat more concern to the respondent is the fact that the Agreement nowhere expressly provides for an employment period. By the terms of the Agreement appellant was given two separate and distinct stock options. The third clause provides that appellant shall have the opportunity to purchase stock at stated periods up to and including January, 1966. Should the appellant exercise this option, he would purchase stock from the respondent corporation. In the sixth clause of the Agreement, appellant is given the privilege of purchasing stock from a completely different corporation which by the terms of the Agreement is the majority stockholder, namely, Hinckley's, Inc. As set out in the Agreement, these options are separate and independent. Appellant claims no special significance to the fact that the first option as set forth in the third clause is dependent upon appellant's continued employment with respondent corporation. This provision, in fact, is essential

to avoid controversy which may arise later and to show adequate consideration for the stock option plan. *Kerbs v. California Eastern Airways, Inc.*, 33 D. Ch. 69, 90 A. 2d 652 (1952). However, the fact that this option ran for an eight year period is significant because respondent chose the length of time that the option was to run and led appellant to believe that his employment was assured for that length of time.

By the terms of the second option contained in the sixth clause, appellant has the right to purchase from Hinckley's, Inc. regardless of his employment with the respondent company. As Hinckley's, Inc. is a separate legal entity and the majority stockholder, appellant is not obligated to remain employed to avail himself of this option. Yet the parties contemplated that in 1966 appellant would still be employed with respondent corporation (R. 35). There is no language indicating it, and there is no necessity for it in terms of consideration, yet respondent admits that the contemplation was that appellant would then be employed to avail himself of that option. This interpretation is absolutely untenable. Suppose, for example, appellant had worked three or four years, and had purchased stock pursuant to the option contained in the third clause, and had then been terminated by respondent. As a minority stockholder, he would certainly have an interest in exercising any option to purchase stock in the corporation he helped organize and set up, and this interest has nothing to do with his being employed with the respondent corporation, but is simply a matter of further investment and control of the corporation.

The case of *Magness v. Madden*, 212 Ark. 646, 207 S. W. 2d 714 (1948), involves similar issues. There plaintiff was employed by defendant as manager of a milling company at a stated salary, plus 30% of net profits, and an option to buy one-third of the business on or before five years. At the end of four months, plaintiff was discharged by defendant under the view that it was a month to month employment as set forth in the salary arrangement. Plaintiff claimed his employment was for five years as set forth in the option clause. Defendant raised the Statute of Frauds as a defense. A trial court allowed extrinsic testimony to show the intention of the parties because of the uncertainty of the duration of employment, and sent the issue to the jury. A verdict for plaintiff resulted, and in affirming the trial court, the Supreme Court of Arkansas said:

“While appellant argues that the following clause in the contract was an option to appellee to purchase at any time within the five year period we think that the jury might have found as they evidently did that this clause furnished a clue to the real intention of the parties which was that the contract should continue for a five year term.”

The authorities are nicely summarized at 4 WILLISTON Sec. 1027 A (3) 1936 Ed.:

“It is the settled law of agency that if the agent or employee furnishes a consideration in addition to his mere services, he is deemed to have purchased the employment for at least a reasonable time where the duration of the employment is not otherwise defined.”

Respondent supplied the contract and set out the eight year option and by their actions and representations, led

appellant to rely on that eight year period. A jury would have a perfect right to also rely on the eight year period as the length of the employment.

Respondent interprets the *Madden* case as giving an unequivocal option to an employee to buy a one-third interest in a business within five years, from which it could be implied that he was to be employed at least for the duration of the option. The present case is distinguished on the point that appellant could only exercise the option during the time that he was employed. Respondent fails to distinguish the fact that the *Madden* case dealt with a partnership and not with a corporate structure as in this case (R. 49). Respondent apparently had an opposite view when the Motion for Summary Judgment was called on for hearing (R. 35).

The seventh clause of the Agreement provides that respondent shall employ appellant Keith D. Bullock as its general manager. While there is no express language stating the period of employment, appellant earnestly contends that in the light of the entire Agreement and the circumstances surrounding the making of the Agreement, the employment period is not less than eight years. Granted, there is an ambiguity, but that ambiguity is resolved by the language of the Agreement, and the intention expressed in the recitals. But assuming the ambiguity survives the four corners test, the appellant should still have the opportunity of producing extrinsic evidence as to surrounding circumstances, and the actions and intentions of the parties as expressed prior to the commencement of this action. In *Continental Bank and Trust Company v. Bybee*, 6 Utah 2d

98, 306 P. 2d 773 (1957), this Court stated at 6 Utah 2d 101:

“If the ambiguity can be reconciled from a reasonable interpretation of the instrument, extrinsic evidence should not be allowed. * * * If the instrument on its face, remains ambiguous in spite of the reasonable construction, the intent may be ascertained in the light of all written instruments which were a part of the same transaction. * * * If the intent is ambiguous still, then parol evidence may be admitted, * * * and rules of construction may be invoked to declare the intention of the parties.”

See also *In re Williams' Estates*, . . . Utah . . . , 348 P. 2d 683 (1960).

A significant clue as to the intent of the parties with respect to the Agreement and the permanency of appellant's employment is the fact that appellant was both a director and a vice president in respondent corporation, and was listed as one of the incorporators. While these facts standing alone are not significant, taken in the light of all the other surrounding circumstances, the conclusion forced upon the mind is that both parties and especially the appellant considered this employment to be for at least an eight year period.

The seventh clause is not in that Agreement just incidentally as respondent suggests. A stock option Agreement could have been written absent that seventh clause, and achieved all of the purposes respondent claims for this Agreement. The seventh clause ought not to be ignored as an incidental appendage to this Agreement, but ought to

be given full meaning in accordance with the purposes and intent of the parties as evidenced by the surrounding circumstances.

The fact that respondent's president did not dare terminate appellant or remove him from the position guaranteed by the Agreement without first offering other employment within his power, is indicative of the fact that prior to the commencement of this action respondent understood and interpreted the Agreement in a much different light. Otherwise, appellant would have been terminated without any other offer of employment.

POINT IV.

APPELLANT WAS NOT OBLIGATED TO ACCEPT ANY OTHER TYPE OF EMPLOYMENT OFFERED BY THE RESPONDENT OR ITS AFFILIATES.

Prior to the 13th day of January, 1959, appellant and respondent's president, John S. Hinckley, had some differences of opinion with regard to the management of respondent corporation. On the 13th day of January, 1959, appellant was told that he would either sell trucks retail for Hinckley's, Inc., or he would be terminated by respondent corporation (R. 40). This choice has the same potentialities as that expressed by the old mountain man when he said he didn't know whether he would rather be bit by a cotton mouth or a diamond-back rattler. Should appellant choose to be employed with Hinckley's, Inc. respondent would be safe in assuming that appellant had voluntarily

abandoned his rights under the Agreement. Appellant chose the alternative and his employment was terminated and he was then forced to test his rights under the Agreement. Thus having put appellant between a rock and a hard place, respondent now contends that appellant was obligated to choose the other alternative to mitigate any damages he might have suffered at the hands of the respondent (R. 36, 37).

Appellant was not hired to sell trucks retail for Hinckley's, Inc. He was hired by the terms of the Agreement to manage the respondent corporation. The respondent corporation is the legitimate though somewhat errant offspring of Hinckley's, Inc. and while the two are separate legal entities, they are one in interest. Appellant, having been terminated by respondent corporation, was not obligated to accept employment with Hinckley's, Inc. no matter how attractive the offer, if it was not the job he was hired to perform. And additionally, appellant was not obligated to accept the employment offered when it involved a sacrifice of his rights under the Agreement here sued upon, and the taking on of a position of lesser importance and no comparable benefits. At 3 CORBIN ON CONTRACTS, Sec. 683, page 684 and 685 it is said:

“Likewise, in commercial employment an employee may have been promised a place of dignity and privilege, so that it is a breach of contract, and an essential one, to reduce him to an inferior status. One who has been hired to be superintendent or general sales manager would generally be justified in quitting if he is ordered to act as floor walker or sales clerk, even though his salary is not reduced.

Such an order would also frequently be held to be a wrongful discharge by the employer.

"Of course, the refusal of an employee to perform a service or to accept a compensation different from that required by his promise, even though demanded by his employer in the belief that it is so required, is not wrongful and does not justify discharge. It all depends upon reasonable interpretation of the Agreement, often a difficult matter."

Appellant did not want to sell trucks retail for Hinckley's, Inc. That type of employment had been offered to appellant previously and he had refused it (R. 41).

At 5 CORBIN ON CONTRACTS, Sec. 1043, page 232, it is said:

"One is not required to mitigate his losses by accepting an arrangement with the repudiator if that is made conditional on his surrender of his rights under the repudiated contract. He is not required to do that which will operate as a rescission, compromise, or an accord and satisfaction. He may in some cases be able to enter into the new arrangement while at the same time expressly reserving his rights under the first contract; but he certainly is not required to do this if the new proposal is so made that an acceptance may possibly be held to operate in discharge of his former rights.

"An employee who has been wrongfully discharged is not required to accept an offer of re-employment by the repudiator if the circumstances are such that returning to the same employ will involve humiliation or undesirable personal relations. Whether the degree of discomfort involved in such re-employment would be unreasonable is a jury question; in most cases the repudiating employer would be unable to sustain such a defense."

CONCLUSION

It is axiomatic that a contract or agreement shall be construed most strongly against the party who provided the document.

All of the authorities hold that the doctrine of estoppel shall prevent an unconscionable use of the Statute of Frauds where the following elements are present:

a. Where a party has given consideration in addition to that promised in the Agreement, such as the giving up of other employment and removal to another city.

b. Where the employee in reliance upon the Agreement has suffered great loss and irretrievably changed his position.

c. Where there has been the promise of a written Agreement to protect the employee's rights.

Most of the cases require only the first two. Some of the closer cases require all three. *Pruitt v. Fontana*, 143 Cal. App. 2d 675, 300 P. 2d 371, 379 (1956); *Moore v. Day*, 123 Cal. App. 2d 134, 266 P. 2d 51 (1954); *Le Blonde v. Wolfe*, 83 Cal. App. 2d 282, 188 P. 2d 278 (1948). The facts in the case at bar contain all three situations, and equitable estoppel should be a bar to the pleading of the Statute of Frauds in this case.

The Agreement as a whole, in light of the surrounding circumstances, is not even subject to the Statute of Frauds, and the period of employment should be a jury question. All

of the authorities so hold and cases applying this rule have been cited. Appellant should have the right to cross examine respondent's officers to ascertain their interpretation of the Agreement prior to the commencement of this action.

Finally, the appellant was not obligated to accept any other employment offered by respondent corporation or by Hinckley's, Inc.

For these reasons the judgment should be reversed, and the case remanded for trial on its merits.

Respectfully submitted,

BEAN AND BEAN,
Attorneys for Appellant.