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Obligations - Duration and Revocability of an Offer

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OBLIGATIONS—DURATION AND REVOCABILITY OF AN OFFER—Defendant subcontractor defaulted on an alleged contract with the plaintiff to do the roofing work on a house for which the plaintiff had the general contract. The defendant contended that he had withdrawn on October 9, 1941, the offer which he had made to the plaintiff on August 15, 1941. On August 23, 1941, the owners of the proposed residence had accepted the plaintiff's general bid, into which the defendant's bid for the roofing had been incorporated. The written contract between the owners and the plaintiff was recorded on August 25, 1941. The plaintiff allegedly mailed the defendant a formal acceptance of his offer on or about September 1, 1941, but the defendant denies ever receiving the acceptance. After considering all the conflicting testimony, the judge of the lower court held that the plaintiff's testimony should prevail, and that a contract had been created. The appellate judge found no error in this conclusion, but went on to state that in accordance with the custom prevailing in the building trade in New Orleans, an offer by a subcontractor to a general contractor to do work is irrevocable after the contractor has used the subcontractor's estimate as a basis for his offer to the owner and the owner has accepted it. *Harris v. Lillis,* 24 So. (2d) 689 (Orl. App. 1946).

Since the evidence established that the plaintiff had accepted the defendant's bid before he had attempted to withdraw, no other basis was necessary for the decision. However, the additional finding by the court of the custom in the New Orleans building trade that a subcontractor's bid becomes irrevocable when the general contractor's bid, if based upon the subcontractor's, is accepted by the owner provokes further consideration. Although the court referred to the trade practice as a "custom," it would have been more accurately described as a "usage." These terms are commonly used interchangeably; but, nevertheless, there is a well-recognized distinction between their meanings. Usage is a habitual or customary practice, which may exist in a specific trade or geographical area, or among a certain class or segment of people.[1] It derives its efficacy from the assent of the parties who are deemed to have contracted with reference to it, thereby manifesting an intention to conduct themselves accordingly. Custom is usage that has attained the force of law through long and uniform practice. Unlike usage, custom does not depend on a supposed assent between the contracting parties. "Us-

1. Restatement, Contracts (1932) § 245.

ages may have the effect of adding to the argument or manifestations of intention provision in accordance with the usage, and not inconsistent with the argument or manifestations of intention."[2] In other words once a usage has been established, the contracting parties are presumed to have knowledge thereof and to have intended to give it operative effect, unless either knows that the other has an inconsistent intention.[3]

By making this finding as to the New Orleans trade usage, the court indicated that in its opinion the subcontractor intended to be irrevocably bound at the time the owner accepted the general contract, if the principal contractor had used his bid as a basis for his own. In effect the court found that an offer may be rendered irrevocable through a manifestation of such intention by the offeror either expressly or impliedly. The court therefore was actually giving effect to Article 1809 of the Revised Civil Code, even though no mention of it was made. Article 1809 reads as follows:

> "The obligation of a contract not being complete, until the acceptance, or in cases where it is implied by law, until the circumstances, which raise such implication, are known to the party proposing; he may therefore revoke his offer or proposition before such acceptance, *but not without allowing such reasonable time* as from the terms of the offer he has given, or from the circumstances of the case he may be supposed to have intended to give to the party, to communicate his determination."[4] (Italics supplied.)

Prior Louisiana jurisprudence[5] on the subject of the duration

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2. Id. at §246 (b).

3. Id. at §247 (c). See also id. at §248.

4. Although the French Civil Code contained no counterpart of Article 1809, the principle expressed therein was a settled part of French doctrine. Presumably Article 1809 was based on the writings of Toullier. For good discussions of Article 1809 and the other articles on offer and acceptance see Comment (1939) 1 LOUISIANA LAW REVIEW 182; Comment (1931) 5 Tulane L. Rev. 632; Comment (1935) 9 Tulane L. Rev. 590; and Schwenk, *Culpa in Contrahendo* in German, French and Louisiana Law (1940), 15 Tulane L. Rev. 87, 95.

5. Villère v. Brognier, 3 Mart. (O.S.) 326 (La. 1814); Des Boulets v. Gravier, 1 Mart. (N.S.) 420 (La. 1823); Bloeker v. Tillman, 4 La. 77 (1832); Curtis v. Moss, 2 Rob. 367 (La. 1842); Sturgis and Wright v. Arcenaux, 9 La. Ann. 16 (1854); Boyd v. Cox, 15 La. Ann. 609 (1860); Wolf v. Mitchell, Craig and Co., 24 La. Ann. 433 (1872); Fernandez v. Soulie, 28 La. Ann. 31 (1876); Fredericks v. Fasnacht, 30 La. Ann. 117 (1878); Arendano v. Arthur, 30 La. Ann. 316 (1878); Gordon v. Stubbs, 36 La. Ann. 625 (1884); Miller v. Douville and Gallagher, 45 La. Ann. 214, 12 So. 132 (1893); Laroussini v. Werlein, 52 La. Ann. 424, 27 So. 89, 78 Am. St. Rep. 350 (1899); Ferre Canal Co. v. Burgin, 106 La. 309, 30 So. 863 (1901); Nickerson v. Allen Bros., 110 La. 194, 34 So. 410 (1903);

of an offer has often tended to lose sight of the principle established by this article. The reluctance of the court to apply Article 1809 in its exact terms has been due perhaps to the influence of the common law where the doctrine of consideration[6] prevails. Since the common law requires consideration to render an offer irrevocable, without it, even an express intention on the part of the offeror to confer an irrevocable power of acceptance would not be binding. *A fortiori* an intention to confer an irrevocable power of acceptance found through the existence of a usage would be ineffectual to dispense with the requirement of consideration.

Although Article 1809 does not impose a requirement of consideration, a body of doctrine showing the influence of the common law principle of consideration has developed around Article 2462,[7] which pertains to offers to buy and sell. The supreme court has said[8] that until Article 2462 was amended to provide for the purchase of an option to buy or sell for any consideration stipulated therein there existed a hiatus in Louisiana law. But under a proper application of Article 1809 such a thing as an irrevocable offer to buy and sell did exist prior to 1910, for Article 1809 provides that intention alone, whether expressed or inferred from the circumstances of the case, is sufficient to disable the offeror from revoking his offer for the period of time intended. Article 1809 deals with offers in general and may be extended to offers to buy and sell as well as to any other offers. However, since the 1920 amendment to Article 2462, the court seems to be firmly

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Levy v. Levy, 114 La. 239, 38 So. 155 (1905); In re Woodville, 115 La. 810, 40 So. 174 (1905); Union Sawmill Co. v. Lake Lumber Co., 120 La. 106, 44 So. 1000 (1907); Blanks v. Sutcliffe, 122 La. 448, 47 So. 765 (1908); Riley v. Union Sawmill Co., 122 La. 863, 48 So. 304 (1909); Union Sawmill Co. v. Mitchell, 122 La. 900, 48 So. 317 (1909); Vermilion Sugar Co. v. Vallee, 134 La. 661, 64 So. 670, Ann. Cas. 1916A, 695 (1914); Miller v. Oden, 149 La. 771, 90 So. 167 (1921); Picou v. St. Bernard Parish School Board, 132 So. 130 (La. App. 1924); Howard v. Faciane, 3 La. App. 593 (1926); Haskins Trade Co. v. Cook, 3 La. App. 770 (1926); Hanemann v. Uhrey, 8 La. App. 534 (1928); Times-Picayune Pub. Co. v. Harang, 10 La. App. 242 (1929); Foster v. Morrison, 145 So. 13 (La. App. 1933).

6. Williston, Contracts (rev. ed. 1936) 317, §99 et seq.

7. Art. 2462, La. Civil Code of 1870: "A promise to sell, when there exists a reciprocal consent of both parties as to the thing, the price and terms, and which, if it relates to immovables, is in writing, so far amounts to a sale as to give either party the right to enforce specific performance of same.

"One may purchase the right, or option to accept or reject, within a stipulated time, an offer or promise to sell, after the purchase of such option, for any consideration therein stipulated, such offer, or promise can not be withdrawn before the time agreed upon; and should it be accepted within the time stipulated, the contract or agreement to sell, evidenced by such promise and acceptance, may be specifically enforced by either party."

8. Moresi v. Burleigh, 170 La. 270, 274, 127 So. 624, 625 (1930).

wedded to the notion that consideration is a requisite to irrevocability. This jurisprudence, nevertheless, has no necessary application to offers of a different nature and the instant case may constitute some indication that Article 1809 will be given its intended meaning to such extent. NINA NICHOLS

REMOVAL OF A MORTGAGED CHATTEL FROM THE PARISH OF RECORDATION—EFFECT—Plaintiff claimed a privilege under the provisions of Act 209 of 1926[1] for the cost of repairing a truck seized in Rapides Parish. Intervenor alleged that he was the holder of unpaid notes secured by a chattel mortgage on the truck recorded in Grant Parish. Plaintiff resisted the intervention on the ground that he was not affected by a chattel mortgage recorded only in Grant Parish. *Held,* the effect of recordation of a chattel mortgage in the parish where the property is to be located and in the parish of the mortgagor's domicile, in compliance with Act 172 of 1944,[2] is to give the mortgage effect anywhere in the state without further recordation. *Sinclair v. Crew,* 26 So. (2d) 331 (La. App. 1946).

Recordation of chattel mortgages was required in the original chattel mortgage act of 1912.[3] The act provided criminal sanctions for removing the property from the parish of original recordation.[4] But in 1924,[5] when the question was raised as to enforceability of the mortgage after removal to another parish without consent of the mortgagee, the court held that the mortgage was not enforceable in the parish to which the property had been removed without local recordation. In 1936[6] the statute was amended to provide that a mortgage recorded where it was executed and where the mortgagor was domiciled was effective

1. Dart's Stats. (1939) §§5047-5048. This act creates a lien in favor of owners or operators of garages, or any place where automobiles or other machinery is repaired. The act gives those persons the right of provisional seizure to enforce the lien.

2. La. Act 172 of 1944, § 3 [Dart's Stats. (1939) § 5022.3]: "In order to affect third persons, every chattel mortgage must be by authentic act. . . . A multiple original . . . shall be filed in the office of the Recorder of Mortgages of the parish where the mortgaged property is to be located . . . and also in the office of the Recorder of Mortgages of the parish of the mortgagor's domicil . . ."

Section 4: ". . . filing shall be notice to all parties of the existence of the mortgage. . . ."

3. La. Act 65 of 1912.

4. La. Act 65 of 1912, §§ 6, 9.

5. Wilson v. Lowrie, 156 La. 1062, 101 So. 549 (1924). This position was later affirmed in Gulf Finance and Securities 5025, Co. v. Taylor, 160 La. 945, 107 So. 705 (1926).

6. La. Act 178 of 1936 [Dart's Stats. (1939) §§ 5023, 5025, 5026].