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Rewards - Communication of Offer and Time of Acceptance

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commercial greenhouses and florists in the affected area influenced the court in its holding the ordinance to be unreasonable.[15]

It is suggested that the court correctly held the ordinance unreasonable as applied to plaintiff because commercial and "light industrial" uses are too similar to justify a differentiation in the absence of an "overriding" public interest.[16] Zoning ordinances should be passed to remedy some existing or foreseeable future evil, not merely to result in some remote or speculative advantage to the community.

Burrell J. Carter

REWARDS—COMMUNICATION OF OFFER AND TIME OF ACCEPTANCE

Appellant in an interpleader action claimed a reward for information leading to the arrest and conviction of the murderer of the offeror's wife. Some months prior to the murder which gave rise to the offer, appellant, acting as an informant for the F.B.I., had conveyed data to an agent concerning a pistol of the type later used in the murder. According to the appellant's testimony, on the day following a request published in news reports for information of the nature already given the F.B.I., he had met the agent, reminded him of the data concerning the pistol, and asked why it had not been given to the police. The agent, however, testified that he had given the information to the police prior to their meeting. *Held,* that since the appellant had not acted in response to the offer except to remind the agent that pertinent information collected several months before the murder was on file with the F.B.I. and, since rewards are contractual in nature, there was no meeting of the minds and consequently no acceptance which could give rise to a contract. The court considered the conflict in testimony to be of no importance. *Sumerel v. Pinder,* 83 So.2d 692 (Fla. 1955).

Offers of rewards may be divided into two principal classes: (a) Those made by private persons or corporations, and (b) those made by statute or under statutory authority. Reward offers by private persons are regarded at common law as con-

15. *Id.* at 828.

16. See Borough of West Caldwell v. Zell, 22 N.J. Super. 188, 91 A.2d 763 (1952), where the reduction of traffic congestion was held to justify the differentiation between auto repair businesses and truck repair terminals.

tractual in nature.[1] Most jurisdictions require both (a) knowledge of the offer,[2] and (b) substantial performance in compliance with its terms[3] in order for a claimant to recover. Insistence on knowledge of the offer logically necessitates performance subsequent to the time the claimant learns of the offer.[4] What may constitute performance is generally determined by interpretation of the terms of the offer.[5] Thus, offers for information leading to the arrest and conviction of a criminal have been viewed as requiring information which leads substantially to both his arrest and conviction.[6] Recovery of statutory rewards, however, is placed on a different basis. Performance, even without knowledge, is sufficient in these instances to vest a legal right in a claimant.[7] Only one jurisdic-

1. "The liability for a reward of this kind must be created, if at all, by contract. There is no rule of law which imposes it except that which enforces contracts voluntarily entered into. A mere offer or promise to pay does not give rise to a contract. That requires the assent or meeting of two minds and therefore is not complete until the offer is accepted." Broadnax v. Ledbetter, 100 Tex. 375, 377, 99 S.W. 1111 (1907); *accord*, Williams v. West Chicago Street R.R., 191 Ill. 610, 61 N.E. 456 (1901); Fitch v. Snedaker, 38 N.Y. 248, 97 Am. Dec. 791 (1868); Arkansas Bankers' Ass'n v. Ligon, 174 Ark. 234, 295 S.W. 4 (1927).

2. Lack of knowledge of the offer results in denial of recovery. Arkansas Bankers' Ass'n v. Ligon, 174 Ark. 234, 295 S.W. 4 (1927) (claimant arrested bank robber and delivered him to police with no knowledge of the reward); Taft v. Hyatt, 105 Kan. 35, 181 Pac. 561 (1919) (claimants delivered accused into custody solely for the latter's protection and with no knowledge of offered reward); *accord*, Fitch v. Snedaker, 38 N.Y. 248, 97 Am. Dec. 791 (1868); Broadnax v. Ledbetter, 100 Tex. 375, 99 S.W. 1111 (1907). 1 CORBIN, CONTRACTS § 59 (1950); RESTATEMENT, CONTRACTS § 53 (1932).

3. Williams v. West Chicago Street R.R., 191 Ill. 610, 61 N.E. 456 (1901); *accord*, Boyce v. Goodwin, 158 Ark. 475 (1923); Haskell v. Davidson, 91 Me. 488, 40 Atl. 330 (1898).

4. Williams v. West Chicago Street R.R., 191 Ill. 610, 61 N.E. 456 (1901); Smith v. Lancaster County, 29 Pa. Dist. 902 (1920): "The whole consideration requested by an offer must be given after the offeree knows of the offer." RESTATEMENT, CONTRACTS § 53 (1932); WILLISTON, SELECTIONS FROM WILLISTON ON CONTRACTS § 33a (1938). *But see* Hoggard v. Dickerson, 180 Mo. App. 70, 72, 165 S.W. 1135 (1914); Neville v. Kelly, 12 C.B.N.S. 740, 104 E.C.L. 740, 142 Eng. Rep. 1333 (1862); 1 CORBIN, CONTRACTS § 60 (1950). Corbin is much more lenient in his view, stating that the rule adopted by the *Restatement* should not necessarily be followed, and that where the performance is at least completed after communication of the offer, the offeree may be considered as having received the complete consideration he has requested.

5. Union County v. Hopkins, 95 N.J. Eq. 444, 450 (1924); *accord*, Henderson v. United States Fidelity & Guaranty Co., 298 S.W. 404 (Tex. Com. App. 1927); Hoggard v. Dickerson, 180 Mo. App. 70, 165 S.W. 1135 (1914).

6. Shuey v. United States, 92 U.S. 73 (1875); Kincaid Trust and Savings Bank v. Hawkins, 234 Ill. App. 64 (1924); Bloomfield v. Maloney, 176 Mich. 548 (1913); Genesee County v. Pailthorpe, 246 Mich. 356, 224 N.W. 418 (1929).

7. "It can hardly be said, we think, in a case of this kind, that any contractual relation is contemplated by the legislature, but rather that the right to the reward follows by operation of law, if a compliance with the provisions of the statute has been shown." Smith v. State, 38 Nev. 477, 481, 151 Pac. 512, 513 (1915); *accord*, Choice v. Dallas, 210 S.W. 753 (Tex. Civ. App. 1919); Auditor v. Ballard, 72 Ky. (9 Bush) 572, 15 Am. Rep. 728 (1873).

tion in the United States has seen fit to remove the tenuous distinction between statutory and private offers and to demand only substantial performance as a basis for recovery of either statutory or private rewards.[8] Under the civil law, varying position are found. In France, the importance of the element of consent in contract formation necessitates an acceptance in the case of offers to an indeterminate person or persons;[9] however, there is no discoverable discussion of the specific problem of knowledge of the offer at the time of performance as a requirement for recovery of rewards. The German Civil Code contains detailed provisions governing offers of rewards.[10] Article 657 specifically states that knowledge of the offer at the time of performance is not required.[11] Louisiana courts have never been faced squarely with the problem of knowledge at the time of performance as a prerequisite to recovery in reward cases; however, those cases which have arisen seem to reflect the view that reward offers are subject to the same rules as other contractual offers.[12]

8. Indiana is the only state which gives clear indication of following such a policy. It is to be noted that this policy may very well be the result of an erroneous interpretation of the English case of Williams v. Carwardine, 4 B. & Adol. 621, 110 Eng. Rep. 590 (K.B. 1833), which is inadequately reported, one report (*supra*) making no mention of knowledge on the claimant's part, and another, 5 Car. & Payne, 566, 172 Eng. Rep. 1101 (N.P. 1833) merely stating that as claimant lived in county in which reward was offered "she must have known of it." The interpretation stems from Dawkins v. Sappington, 26 Ind. 199, 201 (1866), in which a claimant was allowed to recover a reward for the return of a stolen horse. Claimant had no knowledge of the offer. The court stated in interpreting the English case above: "It [the decision] was put upon the ground that the offer was a general promise to any person who would give the information sought. . . . There are some considerations of morality and public policy which strongly tend to support the judgment in the case cited. If the offer was made in good faith, why should the defendant inquire whether the plaintiff knew that it had been made? Would the benefit to him be diminished by the discovery that the plaintiff, instead of acting from mercenary motives, has been impelled solely by a desire to prevent the larceny from being profitable to the person who had committed it?" See also Sullivan v. Phillips, 178 Ind. 164, 98 N.E. 868 (1912); Everman v. Hyman, 26 Ind. App. 165, 28 N.E. 1022 (1891); Monroe County v. Wood, 39 Ind. 345 (1872).

9. "*Quand l'offre s'adresse a des personnes indeterminees, l'acceptation qui vient s'y ajouter n'a meins pour resultat de former le contrat.*" ("When the offer is made to indeterminate persons, the acceptance which is added thereto has no less result in forming a contract.") 12 BAUDRY-LACANTINERIE ET BARDE, TRAITÉ THÉORIQUE ET PRATIQUE DE DROIT CIVIL, OBLIGATIONS 1, § 30 (3d ed. 1906).

10. GERMAN CIVIL CODE arts. 657-661 (Wang 1907).

11. GERMAN CIVIL CODE art. 657 (Wang 1907): "A person who by public notice announces a reward for the performance of an act, *e.g.*, for the production of a result, is bound to pay the reward to any person who has performed the act, even if he did not act with a view to the reward."

12. Louisiana courts have held that a person returning a portion of stolen property was entitled to recover a part of the reward proportionate to the value of the property as compared with the total value of the property lost, Deslondes v. Wilson, 5 La. 397 (1833); the wording of a reward offer determined its terms

In the instant case, the Florida court was faced with three essential questions: (a) Could appellant's conduct in delivering the information before the murder be regarded as performance? (b) Was the conflict of testimony between appellant and the F.B.I. agent of any import? (c) If so, and if the conflict were resolved in favor of the appellant, could his action in meeting the agent and reminding him of the information be viewed as performance? The court answered the first question in the negative, adopting the traditional contractual approach and stating that the rendering of the information prior to the offer could by no construction constitute an acceptance. The second issue was disregarded by the court. In so doing, the court may have felt that appellant's action could not have constituted performance anyway, but it departed from the contractual theory in its failure to resolve the question. The issue was of importance because appellant's action in reminding the agent of the information did occur after communication of the offer. If the agent's claim that he had conveyed the information to the police prior to the meeting with appellant had been accepted by the Florida court, appellant could not have recovered under the contractual view, for his action prior to the offer could not stand as performance, and his reminder to the agent would have occurred after the information he possessed had been given to the proper authorities. However, if the conflict of testimony were resolved in favor of the appellant, then the remaining question for decision would have been whether the reminder could constitute performance. It is not to be overlooked that the information whenever given did result in the arrest of the murderer by the police, not by the F.B.I., and if appellant's reminder resulted in the disclosure of the information to the police, this could have been considered as fulfilling the terms of the offer. By not reaching the third question the court may have denied appellant a fair chance of recovery. It seems to have been preoccupied with the fact that appellant came into possession of the information and delivered it to the F.B.I. prior to the commission of the crime. It might have been more properly concerned with whether his actions could be regarded as performance rendered with knowledge of the offer. The matter of when appellant ob-

rather than any secret intent of the offerer, Salbadore v. Crescent Mutual Ins. Co., 22 La. Ann. 338 (1870); the offeror of a reward may attach such conditions as he wishes, and may, if he wish, make himself the sole judge of what shall constitute performance, Protti v. American Bank and Trust Co., 179 La. 39, 153 So. 13 (1934).

tained the information should have been of no consequence, for facts in possession of a claimant before the commission of a crime may be easily divulged thereafter in response to an offer to pay a reward, thereby completing a contract. If the logic of this decision is rigidly followed, the result might be to deny claims which could be considered valid even under a strict contractual theory.

It is submitted that difficulties such as that encountered in the instant case could be avoided by adoption of a theory similar, in result at least, to that of the German code. This has been done, in effect, in the case of statutory offers of rewards. The strict adherence to the contractual theory in cases involving rewards for solution and punishment of crime is a survivial of an age when *consensus ad idem* was very nearly a judicial obsession. The German view is based upon sound public policy, and possibly upon a more enlightened view of the true purpose of rewards of this nature, which is to bring the guilty to justice, and not merely to contract with an individual. However the adoption of such a policy might be accomplished,[13] the law would be rid of an unnecessary source of complexity were it to impose upon the offeror of a reward of this type the obligation of paying the sum he has stipulated upon receipt of the service which he has requested, without inquiry into motive or knowledge.

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STATES — AMENABILITY OF STATE AGENCY TO SUIT

Plaintiff, basing his suit on breach of warranty, sought to recover from the Louisiana Board of Institutions the value of twenty registered breeding cows which died from eating al-

13. There are three possible methods by which this might be done in Louisiana: (1) Enact a statute similar to the German provision.

(2) It would be possible, unless specific terms to the contrary were contained in the offer itself, to interpret a reward offer as an offer to pay for a result rather than an offer to contract for a result, the only acceptance necessary being the submission of a claim after performance has been rendered.

(3) In addition, the proper result could be achieved by reliance on the concept of quasi-contract embodied in LA. CIVIL CODE art. 2294 (1870): "All acts, from which there results an obligation without any agreement, in the manner expressed in the preceding article, form quasi contracts. But there are two principal kinds which give rise to them, to wit: The transaction of another's business, and the payment of a thing not due." It is to be noted that payment in error and *negotiorum gestio* are definitely stated not to be the only types of quasi-contract. Thus, from a theoretical point of view, the introduction of such a policy as suggested would not have to be fitted into any rigid category, such as unjust enrichment, payment in error, or *negotiorum gestio*.