

Louisiana Law Review

Volume 17 | Number 1

Survey of 1956 Louisiana Legislation

December 1956

Contracts - Offer Made in Newspaper Advertisement

Thomas A. Warner Jr.

Repository Citation

Thomas A. Warner Jr., *Contracts - Offer Made in Newspaper Advertisement*, 17 La. L. Rev. (1956)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol17/iss1/30>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

NOTES

CONTRACTS — OFFER MADE IN NEWSPAPER ADVERTISEMENT

Defendant automobile dealer advertised in a newspaper that persons purchasing 1954 automobiles before the end of the current month could exchange them for 1955 models, when new models arrived, by paying only the sales taxes and license fee.¹ In response to this advertisement, plaintiff purchased a 1954 model within the prescribed period, although at the time of purchase nothing was said by either party concerning the advertisement.² After the 1955 models were received by defendant, plaintiff tendered his 1954 model to defendant and demanded in exchange a new model automobile in accordance with the terms of the advertisement. When defendant refused to make the exchange of automobiles, plaintiff sued for specific performance on the ground that the advertisement constituted a valid offer which upon acceptance by his purchase of the 1954 model gave rise to a binding contract. Defendant denied the existence of a contract to exchange on the ground that no offer was made in the newspaper advertisement. On appeal from a decree ordering specific performance, the Court of Appeal for the First Circuit, *held*, affirmed. The newspaper advertisement constituted a valid offer which plaintiff accepted by purchasing the 1954 model

1. "TWO FOR ONE
.....For two weeks
BUY A NEW '54 FORD NOW
TRADE EVEN FOR A '55 FORD

Don't Wait — Buy a 1954 Ford now, when the 1955 models come out we'll trade even for your '54. You pay only sales tax and license fee. Your '55 Ford will be the same model, same body style, accessory group, etc. A sure thing for you — a gamble for us, but we'll take it. Hurry, though, this offer good only for the remainder of September.

The 1954 car must be returned with only normal wear and tear. Physical damage, such as dented fenders, torn upholstery, etc., must be charged to owner or repaired at owner's expense. No convertibles or Skyliners on this basis.

CAPITAL CITY FORD
CO., INC.
1849 North St. — Dial 3-1721

A GREAT WAY TO SAY, 'WE TRADE YOUR WAY' "

2. It is to be noted that when the negotiations for the purchase of the 1954 automobile were completed, a formal contract was signed by both parties. This contract contained a proviso to the effect that "the front and back of this order comprise the entire agreement pertaining to this purchase and no other agreement of any kind, verbal understanding or promise whatsoever, will be recognized."

automobile.³ The manifestation of the advertisement determines whether an offer has been made, even though the defendant may not have intended to make an offer. In dictum the court remarked that while the wording of the advertisement clearly evidenced an offer, even had the import of the advertisement been ambiguous it would resolve any doubt by finding that an offer had been made, since any ambiguity is to be resolved against the composer. *Johnson v. Capital City Ford Co.*, 85 So.2d 75 (La. App. 1955), *cert. denied*, March 26, 1956.⁴

At common law it is well settled that the test for determining the existence of an offer is whether under the circumstances the proposer has led another reasonably to believe that an offer was made to him.⁵ Under this rule newspaper advertisements of rewards⁶ or prize contests⁷ are usually held to be offers since, from the nature of such advertisements, it is understood that the advertiser wishes to motivate people to action without negotiation.⁸ Newspaper advertisements through which merchandise is sought to be purchased or sold, however, are of a character which normally do not lead a reader and potential acceptor reasonably to believe that an offer is being made,⁹ and hence are held to be mere invitations to deal.¹⁰ It is usually understood that the ad-

3. In addition to the issue of whether the advertisement constituted a valid offer, the court also considered the issue of the admissibility of parol evidence to vary the terms of the written purchase contract for the 1954 automobile. This latter issue is not included within the scope of the present note.

4. Lottinger, J., dissented on the ground that in the absence of an allegation of fraud or error the admission of parol evidence to prove an agreement to exchange was erroneous since it would vary the terms of the written contract signed at the time the 1954 model was purchased.

5. See 1 CORBIN, CONTRACTS § 23 (1950); 1 PAGE, CONTRACTS § 73 (2d ed. 1920); SIMPSON, CONTRACTS § 12 (1954); 1 WILLISTON, CONTRACTS § 21 (rev. ed. 1936).

6. See, e.g., *Williams v. West Chicago St. Ry.*, 191 Ill. 610, 61 N.E. 456 (1901); *Nill v. Pioneer Reserve Mutual Fire Ins. Co.*, 264 Mich. 355, 249 N.W. 888 (1933); *Russel v. Stewart*, 44 Vt. 170 (1872); *Carlill v. Carbolic Smoke Ball Co.*, [1893] 1 Q.B. 256. See also ANSON, CONTRACTS § 47 (1939); 1 CORBIN, CONTRACTS § 25 (1950); 1 PAGE, CONTRACTS § 158 (2d ed. 1920); SIMPSON, CONTRACTS § 14 (1954); 1 WILLISTON, CONTRACTS § 32 (rev. ed. 1936).

7. See, e.g., *Hertz v. Montgomery Journal Publishing Co.*, 9 Ala. App. 178, 62 So. 564 (1913); *Shorey v. Daniel*, 27 Ariz. 496, 234 Pac. 551 (1925); *Scott v. Peoples' Monthly Co.*, 209 Iowa 503, 228 N.W. 263 (1929); *Smead v. Stearns*, 173 Iowa 174, 155 N.W. 307 (1915); *Holt v. Rural Weekly Co.*, 173 Minn. 377, 217 N.W. 345 (1928). See also 1 CORBIN, CONTRACTS § 25 (1950); 1 PAGE, CONTRACTS § 158 (2d ed. 1920); SIMPSON, CONTRACTS § 14 (1954); 1 WILLISTON, CONTRACTS § 32 (rev. ed. 1936).

8. See 1 CORBIN, CONTRACTS § 25 (1950).

9. *Ibid.*; SIMPSON, CONTRACTS § 14 (1954); 1 WILLISTON, CONTRACTS § 27 (rev. ed. 1936).

10. See *Lonergan v. Scolnick*, 197 Cal. App.2d 179, 276 P.2d 8 (1954); *Georgian Co. v. Bloom*, 27 Ga. App. 468, 108 S.E. 813 (1921); *Meridian Star v. Kay*, 207 Miss. 78, 41 So.2d 30, 46 (1949); *Ehrlich v. Willis Music Co.*, 93 Ohio App.

vertiser to buy or sell merchandise is not willing to contract with any and all readers without the opportunity to negotiate and to determine his legal responsibilities in connection with the resulting transactions.¹¹ It appears to be well established, however, that an offer to buy or sell merchandise may validly be made in a newspaper advertisement if an intention to do so is clearly indicated.¹²

There are provisions in the Louisiana Civil Code which indicate that the existence of an offer is determined by the subjective intent of the proposer,¹³ as distinguished from the objective test used at common law. However, the Louisiana jurisprudence has not consistently followed these provisions of the Code, and on occasion has followed the common law in looking only to the manifestation of the proposer to determine whether an offer has been made.¹⁴

While cases involving newspaper advertisements of rewards¹⁵ and prize contests¹⁶ have been decided by the Louisiana courts, the instant case appears to be the first instance in which the Louisiana courts have been called upon to decide whether an advertisement to buy or sell merchandise may constitute an offer. Looking to the wording of the advertisement, the court found that the manifestation of defendant was sufficiently "certain and definite" to constitute a "legal offer."¹⁷ In dictum the court

246, 113 N.E.2d 252 (1952); *People v. Gimbel Bros., Inc.*, 202 Misc. 229, 115 N.Y.S.2d 857 (Spec. Sess. 1952); *Lovett v. Frederick Loeser & Co.*, 124 Misc. 81, 207 N.Y. Supp. 753 (Munic. Ct. 1924); ANSON, CONTRACTS § 47, n. 36 (1939); 1 CORBIN, CONTRACTS § 25 (1950); 1 PAGE, CONTRACTS § 84 (2d ed. 1920); SIMPSON, CONTRACTS § 14 (1954); 1 WILLISTON, CONTRACTS § 27 (rev. ed. 1936).

11. See 1 CORBIN, CONTRACTS § 25 (1950); SIMPSON, CONTRACTS § 14 (1954); 1 WILLISTON, CONTRACTS § 27 (rev. ed. 1936).

12. See *R. E. Crummer & Co. v. Nuveen*, 147 F.2d 3 (7th Cir. 1945); *Schmidt v. Marine Milk Condensing Co.*, 197 Ill. App. 279 (1915); *Seymour v. Armstrong & Kassebaum*, 62 Kan. 720, 64 Pac. 612 (1901); *Arnold v. Phillips*, 1 Ohio Dec. reprint 195 (1846); *Craft v. Elder & Johnston Co.*, 38 N.E.2d 416 (Ohio App. 1941); *Oliver v. Henley*, 21 S.W.2d 576 (Tex. Civ. App. 1929); 1 CORBIN, CONTRACTS § 25 (1950); 1 PAGE, CONTRACTS § 86 (2d ed. 1920); SIMPSON, CONTRACTS § 14 (1954); 1 WILLISTON, CONTRACTS § 27 (rev. ed. 1936).

13. See, e.g., LA. CIVIL CODE arts. 1798, 1800, 1819 (1870).

14. See *Salvadore v. Crescent Mutual Ins. Co.*, 22 La. Ann. 338 (1870). See also in this regard *Maginnis v. Union Oil Co.*, 47 La. Ann. 1489, 18 So. 459 (1895); *Schreiner v. Weil Furniture Co.*, 68 So.2d 149 (La. App. 1953); *Diaz Trucking Service v. Kramer's Transfer & Storage, Inc.*, 50 So.2d 71 (La. App. 1951); *Maritime & Merchants Protective Co. v. Crescent Paper Box Factory, Inc.*, 9 La. App. 600, 121 So. 674 (1928).

15. *Salvadore v. Crescent Mutual Ins. Co.*, 22 La. Ann. 338 (1870); *Cornelson v. Sun Mutual Ins. Co.*, 7 La. Ann. 345 (1852); *Van Buren v. Citizens Bank*, 6 Rob. 379 (La. 1844); *Deslondes v. Wilson*, 5 La. 397 (1833).

16. *Schreiner v. Weil Furniture Co.*, 68 So.2d 149 (La. App. 1953); *Youngblood v. Daily and Weekly Signal Tribune*, 15 La. App. 379, 131 So. 604 (1930).

17. *Johnson v. Capital City Ford Co.*, 85 So.2d 75, 79 (La. App. 1955).

pointed out that even if the defendant did not intend to make an offer in the advertisement, it is to be noted that "there is entirely too much disregard of law and truth in the business, social, and political world to-day. It is time to hold men to their primary engagements to tell the truth and observe the law of common honesty and fair dealing."¹⁸ The instant case may indicate the court's attitude toward misleading advertisements currently being used in the conduct of many businesses. It would appear that in future cases involving advertisements to buy or sell merchandise, even when the import of the advertisement is ambiguous or tending to mislead, the social desirability of promoting fair business practices will prompt the court to find that an offer has been made.¹⁹ It should be noted that when such an advertisement is ambiguous, or tends to mislead, a contrary result would be reached at common law.²⁰ The Court of Appeal for the First Circuit is apparently taking a realistic attitude toward curbing business practices which are not in good faith. It is submitted that the court's position is a desirable one.

Thomas A. Warner, Jr.

CRIMINAL LAW — GUILTY KNOWLEDGE AS AN ELEMENT OF
UNLAWFUL POSSESSION OF NARCOTICS

Defendant was convicted of the crime of unlawful possession of narcotics.¹ Over defendant's objections, the trial judge admitted evidence of a subsequent offense as tending to prove guilty knowledge. On appeal defendant contended that the admission of this evidence constituted reversible error on the ground that guilty knowledge is not an element of the offense, but that possession alone is sufficient to constitute the crime. The statute defining the crime of unlawful possession of narcotics contains no mention of guilty knowledge as an element of the offense.² The Supreme Court *held*, affirmed. Guilty knowl-

18. *Id.* at 81.

19. L.A. CIVIL CODE art. 1957 (1870), upon which the court relies to resolve any doubt against the advertiser, would appear to announce a rule of interpretation for completed contracts, and not one applicable to determining whether an offer has been made. The article reads: "In a doubtful case the *agreement* is interpreted against him who has contracted the obligation." (Emphasis added.)

20. See note 12 *supra* and the accompanying text.

1. L.A. R.S. 40:962 (1950).

2. *Ibid.*: "It is unlawful for any person to manufacture, possess, have under his control, sell, give, deliver, transport, prescribe, administer, dispense, or compound