Louisiana Law Review

Volume 27 | Number 1
December 1966

Personal Obligations - Right of Obligee to Recover the Unearned Portion of the Contract Price When His Disability Makes Performance Impossible

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owner or mineral owner could, on a proper showing, have the mineral royalty declared extinguished if the shut-in well was in fact not capable of production. The problem is in developing testing standards high enough to be acceptable to the courts.

It may be concluded that there is a need for clarification of what is required to preserve the mineral royalty. At present the law seems to be that a well capable of producing, but shut-in for some reason, will prevent the running of liberative prescription. This seems to be true whether the shut-in well is located on the royalty tract or on acreage unitized with the royalty tract. But, more clarification is needed to stabilize royalty transactions.

Lawrence L. Jones

PERSONAL OBLIGATIONS — RIGHT OF OBLIGEE TO RECOVER THE UNEARNED PORTION OF THE CONTRACT PRICE WHEN HIS DISABILITY MAKES PERFORMANCE IMPOSSIBLE

Plaintiff, whose physical incapacity prevented her completion of dancing lessons purchased from defendant dancing studio, sued to recover the price paid for the uncompleted lessons. *Held,* plaintiff may recover the unearned portion of the purchase price. Article 2003 of the Civil Code, which states that heirs of an obligee of a personal obligation may recover from the obligor the equivalent he received in case of the death of the obligee, is applicable to the situation in which the obligee is physically incapable of performing his part of the contract. *Acosta v. Cole,* 178 So. 2d 456 (La. App. 1st Cir. 1965);[1] *writs refused,* 179 So. 2d 273, 179 So. 2d 274 (La. 1965).

The case presents two problems: the propriety of the court's interpretation of article 2003, and the propriety of the court's application of the article to the case.

Article 2003[2] first appeared in the Projet of the Civil Code of 1825 and has no counterpart in earlier Louisiana law[3] or in the Code Napoleon. French doctrinal writing demonstrates that

1. See Richardson v. Cole, 173 So. 2d 336 (La. App. 2d Cir. 1965); *The Work of the Louisiana Appellate Courts for the 1964-1965 Term — Obligations,* 26 LA. L. REV. 494, 501 (1966).

2. LA. CIVIL CODE art. 2003 (1870): "In like manner, if the obligation be purely personal as to the obligee who dies before performance, his heirs may recover from the obligor the value of any equivalent he may have received."

3. Projet of the Louisiana Civil Code of 1825 — Redactor's Comment 272: "The whole of this section is an addition to the Code. . . . The principles on which it is founded have long been established in the civil law . . . ."

the Louisiana courts, in interpreting article 2003, maintained the continuity of development which the principle had been afforded in France. Prior to 1825, Pothier, while not stating the rule of article 2003, recognized its principle:[4] "There are nevertheless certain debts which are extinguished by the death of the creditor, such as those which have for their object something which is personal to the creditor."[5] Though he does not discuss strictly personal obligations as such, Toullier seems to give tacit recognition to the basic concept.[6] Post 1825 commentators do not state the rule of article 2003, but tend to elaborate the basic principle. Aubry and Rau maintain that although contracts are not generally dissolved by the death of the parties or of one of them, "contracts are dissolved, finally, by the occurrence of an obstacle which renders impossible the performance of the engagement contracted by one of the parties when this engagement consists in an obligation to do or an obligation to deliver whose object is the transfer of a personal right of enjoyment."[7] Planiol, speaking in very general terms, provides a logical composition of the principle: "When the performance of an obligation has become impossible, the obligor is released . . . . The obligation could not have been formed if the impossibility existed from the beginning; when this impossibility follows later, the obligation is extinguished."[8] Also, "For obligations to do, the impossibility of performance admits other forms which vary according to the nature of the promised act. One cannot give a general definition, but it suffices to understand that circumstances which render impossible the performance of an obligation will often appear. It will be a matter of knowing if the obligation has really become incapable of being performed."[9]

4. *Ibid.*

5. *"Il y a néamoins certains créances qui s'eteignent par la mort du créancier, telles qui sont celles qui ont pour objet quelque chose qui est personnel au créancier."* 2 OEUVRES DE POTHIER, TRAITÉ DES OBLIGATIONS no 370 (2d ed. 1867).

6. 4 TOULLIER, LE DROIT CIVIL FRANÇA.S nos 333-356 (6th ed. 1846).

7. *"Les contrats se dissolvent enfin par la survenance d'un empêchement qui rend impossible l'accomplissement de l'engagement contracté par l'une des parties, lorsque cet engagement consiste, soit en une obligation de faire, soit en obligation de livrer qui n'a pour objet que la transmission d'un droit personnel de jouissance."* 4 AUBRY ET RAU, DROIT CIVIL FRANÇAIS no 574 (5th ed. 1902); 178 So. 2d at 463.

8. *"Lorsque l'exécution d'une obligation est devenue impossible, le débiteur est libéré . . . . L'obligation n'aurait pas pu se former si l'impossibilité avait existé dès le début; quand cette impossibilité survient plus tard, l'obligation s'éteint."* 2 PLANIOL, TRAITÉ ELEMENTAIRE DE DROIT CIVIL no 210 (10th ed. 1926).

9. *"Pour les obligations de faire, l'impossibilité d'exécuter revêt d'autres formes qui varient selon la nature du fait promis. On n'en peut point donner de définition générale, mais il est aisé de compredre qu'il se présentera souvent telle circonstance qui rendra l'exécution de l'obligation impossible. Ce sera une question de fait de savoir si l'obligation est réellement devenue inexécutable."* *Id.* at 211.

The rule of article 2003 is an extension of the principle that a personal obligation is discharged by the death of the obligee. Articles 1997,[10] 2000,[11] and 2001[12] define personal obligations generally and with respect to both the obligor and obligee. These articles are consonant with views espoused by the French writers in that they are only the rules derived from the basic principle. Articles 2002[13] and 2003[14] demonstrate applications of the principle in its logical context, stating that if the personal obligation was created by giving consideration which can be appreciated in money and either the obligor or the obligee dies before performance, the obligor is under a duty to return any payment he may have received in advance of that performance.

Richardson v. Cole[15] was the first instance in which a Louisiana court dealt with article 2003. The court's application of the article to the situation in which the obligee is disabled is consistent with the basic principle of the strictly personal obligations. The court's interpretation of the article in the *Richardson* and *Acosta* cases is quite sound, representing no deviation from either historical tradition or legislative mandate.

Though not delineated as such, there is extensive case law and commentary on personal obligations in the common law[16] with the conclusions reached the same as those reached by the French doctrinaires and the Louisiana courts, all allowing death to dissolve a personal obligation[17] and analogizing disability to death.[18]

10. LA. CIVIL CODE art. 1997 (1870): "An obligation is strictly personal, when none but the obligee can enforce the performance, or when it can be enforced only against the obligor. . . ."

11. *Id.* art. 2000: "The obligation shall be presumed to be personal on the part of the obligor, whenever, in a contract to do, he undertakes to perform any thing that requires his personal skill or attention . . . ."

12. *Id.* art. 2001: "The obligation shall be presumed to be personal as to the obligee, in a contract to do or to give, when that which was to be done or given, was exclusively for the personal gratification of the obligee, and could produce no benefit to his heirs."

13. *Id.* art. 2002: "In case of obligations purely personal as to the obligor, if he have received an equivalent that can be appreciated in money as a consideration, but dies before performance of his obligation, his heirs may be obliged to restore it or its value."

14. *Id.* art. 2003: "In like manner, if the obligation be purely personal as to the obligee who dies before performance, his heirs may recover from the obligor the value of any equivalent he may have received."

15. 173 So. 2d 336 (La. App. 2d Cir. 1965).

16. For an extensive review of an analogous problem see Annot., 69 A.L.R. 714 (1930).

17. 17 AM. JUR. 2d *Contracts* § 487 (1964).

18. *Id.* at § 412: Disabling illness of a party or other person who is to perform a contract is similar in its effect to death." See Annot., 84 A.L.R. 2d 49 (1962).

The court, in applying article 2003 to the circumstances of the present case, recognized there was no problem of capacity, and the contract was neither *contra bonos mores* nor unlawful. It also recognized there was no problem of consent.[19] If a person is of sound mind, the court will not concern itself with the judgment exhibited by him in entering into a contract[20] or with his failure to understand the contract signed.[21]

The basic problem facing the court was the fact that the contract was short, easily read, and unambiguous, obviating any suggestion that plaintiff had unwittingly signed away her money under the terms of an elusive standard form contract. The contract provided that Mrs. Acosta "shall not be relieved of my obligation to pay said tuition herein agreed upon, and that no deduction allowed or refunds for tuition paid and due under this agreement shall be made by reason of my absence or withdrawal. I understand that no refunds will be made under the terms of this contract."[22] The intent of the parties determinable from the language, article 1945[23] obliged the court to recognize this as the law of the parties. To avoid this mandate the court could reach either of two possible conclusions: First, such a forfeiture was an "absurd consequence"; or second, the plaintiff could not contract away the right granted by the article. The law in many instances provides for forfeitures of one type or another, so that clearly a forfeiture is not an absurdity. The latter conclusion itself presents two alternatives: First, the right cannot be contracted away at all; and second, the language of the contractual provision was not sufficiently explicit to have that effect. The language of the court suggests its conclusion was based on the former alternative:

"Conceding the validity of the principles that legal agree-

19. 178 So. 2d at 458.

20. *Id.* at 462.

21. One who can read, but does not read, a written instrument before signing it, cannot afterwards be heard to complain that he did not know its contents when he signed it. DeSoto Bldg. Co. v. Kohnstamm, Orl. App. No. 7627 (1919). Signatures to obligations are not mere ornaments. If a party can read, it behooves him to examine an instrument before signing it. Baker v. Myatt Dicks Motor Co., 12 Orl. App. 281 (La. App. 1915). A party to a contract cannot be released from the effects of the act merely by showing that he did not understand the language in which the contract is written. Boagni v. Fouchy, 26 La. Ann. 594 (1874).

22. 178 So. 2d at 459.

23. LA. CIVIL CODE art. 1945 (1870): "Legal agreements having the effects of law upon the parties, none but the parties can abrogate or modify them. Upon this principle are established the following rules: . . . *Second* — That courts are bound to give legal effect to all such contracts according to the true intent of all the parties; *Third* — That the intent is to be determined by the words of the contract, when these are clear and explicit and lead to no absurd consequences . . . ."

> ments have the effect of law as between the parties thereto, and the courts cannot concern themselves with the wisdom or folly of the contractual provisions, we are, nevertheless, of the opinion that the contracts here involved are personal and must be so interpreted both as to obligor and obligee. Under the specific provisions of LSA-C.C. Article 2000 the obligation on the part of defendant must be construed to be purely personal since she undertook to perform specific services that required her personal skill and attention."[24]

Adopting this language from the *Richardson* decision,[25] the court concluded the contract was not to be upheld. While it is correct to state that the obligation was personal, this does not answer the question presented, *i.e.*, whether article 2003 is mandatory so that it cannot be made inapplicable by agreement. This issue was met squarely by the judge of the lower court who decided:

> "Thus defendant [Mrs. Acosta] has closed the door on this argument with a positive contractual provision which is the law of the parties."[26]

It is submitted that the clearly permissive nature of the article supports his conclusion. To waive a right granted by the law, the courts have demanded explicit waiver. The lucidity of the contract in question would meet any waiver standard.

If the clause were susceptible of more than one construction, article 1958[27] would require that it be construed in favor of the plaintiff. But there is no obscurity; "no refunds" is susceptible of only one interpretation, *i.e.*, that no money will be returned under any circumstances. This conclusion is supported by the fact that the contract also contained a provision covering normal absences and excuses for illness.

Article 1965[28] demands consideration of equity and condemns that which at common law is called unjust enrichment. But two

24. 178 So. 2d at 462.
25. Richardson v. Cole, 173 So. 2d 336, 338 (La. App. 2d Cir. 1965).
26. 178 So. 2d at 459.
27. LA. CIVIL CODE art. 1958 (1870): "But if the doubt or obscurity arise for the want of necessary explanation which one of the parties ought to have given, or from any other negligence or fault of his, the construction most favorable to the other party shall be adopted, whether he be obligor or obligee."
28. *Id.* art. 1965: "The *equity* intended by this rule is founded in the Christian principle not to do unto others that which we would not wish others should do unto us; and on the moral maxim of the law that no one ought to enrich himself at the expense of another. When the law of the land, and that which the parties have made for themselves by their contract, are silent, courts must apply these principles to determine what ought to be incidents to a contract, which are required by equity."

factors are relevant in such consideration. First, its application is expressly limited to instances in which the law the parties have made for themselves by their contract is silent. Here such is not the case. Second, the basic equities of *Acosta v. Cole* tend to favor a strict interpretation of the contractual provision. While acknowledging the court's finding of fact in this case, this writer concludes the defendant did not, at any time, attempt to get something for nothing. By the terms of the contract defendant incurred the obligation to teach a given number of dancing lessons, and though his high pressure sales technique may be the subject of considerable inquiry and criticism, he at all times acknowledged this obligation and urged his readiness to perform.

The court's interpretation of article 2003 was well reasoned. However, it is submitted that the application of the article to the circumstances of the *Richardson* and *Acosta* cases was ill-founded. Unless a court can conclude that the circumstances of such a contract warrant a finding of lack of capacity[29] or that the contract itself is *contra bonos mores*,[30] the contractual stipulation, if unambiguous, should prevail over article 2003.

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TORTS — LIABILITY OF TAVERN OWNER TO INTOXICATED PATRON

Although under the influence of alcohol when he arrived at defendant's tavern,[1] plaintiff was rational and in control of his faculties. He immediately ordered several drinks, and later was repeatedly coaxed to drink and plied with drinks by defendant's barmaids. Consumption of some thirty to forty drinks rendered him, to the knowledge of defendant and his employees, almost totally helpless, both mentally and physically.[2] Nevertheless, defendant ejected plaintiff from the tavern on to grounds adjacent to U.S. Highway 80 at closing time. Plaintiff wandered on the highway and was injured by a passing motorist; he sought damages for personal injuries in an action ex delicto against the tavern owner and his insurer. Defendants filed an exception of no cause of action alleging plaintiff was contributorily negli-

29. *Id.* art. 1779: "Four requisites are necessary to the validity of a contract: (1) Parties legally capable of contracting . . . ." See also *id.* art. 1788.

30. *Id.* arts. 1779(4), 1893, 1895.

1. Sak's Lounge.

2. Plaintiff fell down several times, breaking his watch on one such occasion, all to the knowledge of the defendant and his employees.