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Bankruptcy—The Intervention of, Constitutes A Breach of Executory Contract

REVIEW OF RECENT DECISIONS

BANKRUPTCY — THE INTERVENTION OF, CONSTITUTES A BREACH OF EXECUTORY CONTRACT.

It is generally recognized, in the courts of this country, that where a party bound by an executory contract repudiates his obligations or disables himself from performing them before the time for performance, the promisee has the option to treat the contract as ended so far as further performance is concerned and maintain an action at once for the damages occasioned by such anticipatory breach. But a question of profound importance in this connection is whether or not the intervention of bankruptcy constitutes such a breach—and further—whether it gives rise to a claim provable in bankruptcy proceedings.

As a general rule there can be no anticipatory breach of a contract unless it result from the voluntary act of one of the parties. There are exceptions to this rule and a very pertinent question for the lawyer is whether or not the filing of an involuntary petition in bankruptcy is such an exception. If the filing of bankruptcy proceedings against a party causes a breach of an executory contract by that party, it certainly is not a breach resulting from a voluntary act. It is evident then that the filing of involuntary proceedings in bankruptcy is an exception to the above rule; or else there is no breach when a party is unable to perform his contract because of these proceedings.

Then, even though the filing of an involuntary petition in bankruptcy, preventing a party from performing his contract, be admitted a breach of the contract; does it give rise to such damages as may be proved in the proceedings?

Both of these points have been decided in the important case of Central Trust Co. v. Chicago Auditorium Association (240 U. S. 581). The Central Trust Co. was the trustee in bankruptcy for a transfer company, which before insolvency had entered into a contract with the defendants in error (a hotel company, plaintiffs in the original action) to handle all baggage for the guests of the hotel company for a period of five years and to pay them a monthly consideration for this privilege. Part of the contract had been performed up to the filing of the bankruptcy petition and the trustees (pls. in error) admitted the right of the Auditorium Association to recover money due on the contract up to the time the proceedings were filed; but maintained that the breach was due to operation of law, acting through the Bankruptcy Act, and that the transfer company was not liable for such breach, since it was not a voluntary act. The trustee argued further that even though it were a breach it did not give rise to damages provable in bankruptcy proceedings, inasmuch as only such debts may be proved that exist at the time of the filing of the petition and this debt did not rise until the petition was filed.

The court in a very well written opinion delivered by Mr. Justice Pitney decided that bankruptcy petitions, whether voluntary or involuntary, resulting in an adjudication of bankruptcy are the equivalent of an anticipatory breach of an executory contract so as to entitle the promisee to prove his claim in the bankruptcy proceedings.

CONTRACT—BUILDING CONTRACT—LANGUAGE TO BE CONSTRUED IN ITS PLAIN ORDINARY MEANING.

In the case of Wright-Dalton-Bell-Anchor Store Co. v. Barton, 232 S. W. 1088, (Mo.) involving the construction of a lease a decision is handed down by the Springfield Court of Appeals contrary to the view taken by the St. Louis Court of Appeals on the same point. In that case a Mrs. Knight leased a lot in Poplar Bluff, Missouri, to plaintiff for sixteen years, nine months and eight days at $40.00 per month plus general and special taxes. Later defendant purchased the lot from Mrs. Knight thus becoming responsible under the lease contract as she had been. Plaintiff erected a building on said leased lot and occupied the same under the contract until the expiration of the lease. It was for the value of this building, as limited by the lease contract for which this suit was brought.

The provision of the lease upon which plaintiff relied was to the effect that any buildings or improvements placed on said leased premises were to remain its property, and at expiration of lease *may* be sold to person owning lot (present defendant) if parties could agree upon the amount. *If not,* then the plaintiff is to have the right (1) to remove property from premises (2) to sell to some other person or (3) to release anew upon agreeable terms. Plaintiff construed this to mean that if he at the expiration of the lease elected to sell to defendant, defendant would be compelled to buy the improvements.

In the case of Knight v. Orchard, 92 Mo. App. 466, in which a provision similar to above was contained in a lease the St. Louis Court of Appeals used language which would seem to support plaintiff's contention in the case at bar. While it did not directly hold that defendant is bound to buy regardless of his wishes some such principle must have been in mind from the conclusion arrived at in the case. This decision did not, however, affect the decision in the case at bar for altho the plaintiff recovered in the court below, the Springfield Court of Appeals reversed the decision, holding that there was no absolute obligation on the lessor's successor to take and pay for the buildings at the lessee's election.

In the construction of a contract all of its provisions must be considered together and not mere fragmentary parts. The true intention of a contract is expressed by every term or provision so construed as to be consistent with every other part. 2 Elliott on Contracts, Secs. 1514 and 1510. It is ordinarily presumed that the intention of the parties is expressed by the words of the whole contract and the court cannot import words into a contract which would make it materially different in a vital particular from what it is. In Haysler