De Cicco v. Schweizer

117 N.E. 807 (1917)

Cardozo, J.

On January 16, 1902, ‘articles of agreement’ were executed by the defendant Joseph Schweizer, his wife, Ernestine, and Count Oberto Gulinelli. The agreement is in Italian. We quote from a translation the part essential to the decision of this controversy:

‘Whereas, Miss Blanche Josephine Schweizer, daughter of said Mr. Joseph Schweizer and of said Mrs. Ernestine Teresa Schweizer, is now affianced to and is to be married to the above said Count Oberto Giacomo Giovanni Francesco Maria Gulinelli: Now in consideration of all that is herein set forth the said Mr. Joseph Schweizer promises and expressly agrees by the present contract to pay annually to his said daughter Blanche, during his own life and to send her, during her lifetime, the sum of two thousand five hundred dollars, or the equivalent of said sum in france, the first payment of said amount to be made on the 20th day of January, 1902.’

. . .

At the time of this case, a promise to marry was legally enforceable; therefore, since Blanche (the daughter) and Oberto (the Count) had each promised to marry the other, both were, at the time the above document was executed, legally obligated to marry.

On January 20, 1902, the marriage occurred. On the same day, the defendant made the first payment to his daughter. He continued the payments annually till 1912. This action is brought to recover the installment of that year. The plaintiff holds an assignment executed by the daughter, in which her husband joined. The question is whether there is any consideration for the promised annuity. That marriage may be a sufficient consideration is not disputed. The argument for the defendant is, however, that Count Gulinelli was already affianced to Miss Schweizer, and that the marriage was merely the fulfillment of an existing legal duty. For this reason, it is insisted, consideration was lacking.

Under the preexisting duty rule, a promise to do what one is already legally obligated to do cannot be consideration.

The argument leads us to the discussion of a vexed problem of the law which has been debated by courts and writers with much subtlety of reasoning and little harmony of results. . . .

The courts of this state are committed to the view that a promise by A. to B. to induce him not to break his contract with C. is void.  . .  . If that is the true nature of this promise, there was no consideration. We have never held, however, that a like infirmity attaches to a promise by A., not merely to B., but to B. and C. jointly, to induce them not to rescind or modify a contract which they are free to abandon. To determine whether that is in substance the promise before us, there is need of closer analysis.

. . . The consideration exacted is not a promise, but an act. The count did not promise anything. In effect the defendant said to him: If you and my daughter marry, I will pay her an annuity for life. Until marriage occurred, the defendant was not bound. It would not have been enough that the count remained willing to marry. The plain import of the contract is that his bride also should be willing, and that marriage should follow. The promise was intended to affect the conduct, not of one only, but of both. This becomes the more evident when we recall that though the promise ran to the count, it was intended for the benefit of the daughter. . . . In doing so, she made herself a party to the contract. . . . That she learned of the promise before the marriage is a legitimate inference from the relation of the parties and from other attendant circumstances. The writing was signed by her parents; it was delivered to her intended husband; it was made four days before the marriage; it called for a payment on the day of the marriage; and on that day payment was made, and made to her. From all these circumstances, we may infer that at the time of the marriage the promise was known to the bride as well as the husband, and that both acted upon the faith of it.

The situation, therefore, is the same in substance as if the promise had run to husband and wife alike, and had been intended to induce performance by both. They were free by common consent to terminate their engagement or to postpone the marriage. If they forebore from exercising that right and assumed the responsibilities of marriage in reliance on the defendant's promise, he may not now retract it. . . .

The defendant knew that a man and a woman were assuming the responsibilities of wedlock in the belief that adequate provision had been made for the woman and for future offspring. He offered this inducement to both while they were free to retract or to delay. That they neither retracted nor delayed is certain. It is not to be expected that they should lay bare all the motives and promptings, some avowed and conscious, others perhaps half-conscious and inarticulate, which swayed their conduct. It is enough that the natural consequence of the defendant's promise was to induce them to put the thought of rescission or delay aside. . . .

One other line of argument must be considered. The suggestion is made that the defendant's promise was not made a*nimo contrahendi*. It was not designed, we are told, to sway the conduct of any one; it was merely the offer of a gift which found its motive in the engagement of the daughter to the count. Undoubtedly, the prospective marriage is not to be deemed a consideration for the promise ‘unless the parties have dealt with it on that footing.’ Holmes, Common Law, p. 292; Fire Ins. Ass'n v. Wickham, 141 U. S. 564, 579, 12 Sup. Ct. 84 (35 L. Ed. 860). ‘Nothing is consideration that is not regarded as such by both parties.’  Philpot v. Gruninger, 14 Wall. 570, 577 (20 L. Ed. 743); Fire Ins. Ass'n v. Wickham, supra. But here the very formality of the agreement suggests a purpose to effect the legal relations of the signers. One does not commonly pledge one's self to generosity in the language of a covenant. That the parties believed there was a consideration is certain. The document recites the engagement and the coming marriage. It states that these are the ‘consideration’ for the promise. The failure to marry would have made the promise ineffective. In these circumstances we cannot say that the promise was not intended to control the conduct of those whom it was designed to benefit. Certainly we cannot draw that inference as one of law. Both sides moved for the direction of a verdict, and the trial judge became by consent the trier of the facts. If conflicting inferences were possible, he chose those favorable to the plaintiff.

The conclusion to which we are thus led is reinforced by those considerations of public policy which cluster about contracts that touch the marriage relation. The law favors marriage settlements, and seeks to uphold them. It puts them for many purposes in a class by themselves. Phalen v. U. S. Trust Co., 186 N. Y. 178, 181,78 N. E. 943,7 L. R. A. (N. S.) 734,9 Ann. Cas. 595.It has enforced them at times where consideration, if present at all, has been dependent upon doubtful inference. McNutt v. McNutt, 116 Ind. 545, 19 N. E. 115,2 L. R. A. 372;Appleby v. Appleby, 100 Minn. 408, 111 N. W. 305,10 L. R. A. (N. S.) 590, 117 Am. St. Rep. 709,10 Ann. Cas. 563.It strains, if need be, to the uttermost the interpretation of equivocal words and conduct in the effort to hold men to the honorable fulfillment of engagements designed to influence in their deepest relations the lives of others.

The judgment should be affirmed with costs.