Laclede Gas Co. v. Amoco Oil Co.

522 F.2d 33 (1975)

Ross, Circuit Judge.

The Laclede Gas Company (Laclede), a Missouri corporation, brought this diversity action alleging breach of contract against the Amoco Oil Company (Amoco), a Delaware corporation. It sought relief in the form of a mandatory injunction prohibiting the continuing breach or, in the alternative, damages. The district court held a bench trial on the issues of whether there was a valid, binding contract between the parties and whether, if there was such a contract, Amoco should be enjoined from breaching it.  It then ruled that the “contract is invalid due to lack of mutuality” and denied the prayer for injunctive relief. The court made no decision regarding the requested damages. Laclede Gas Co. v. Amoco Oil Co., 385 F.Supp. 1332, 1336 (E.D.Mo.1974). This appeal followed, and we reverse the district court's judgment.

On September 21, 1970, Midwest Missouri Gas Company (now Laclede), and American Oil Company (now Amoco), the predecessors of the parties to this litigation, entered into a written agreement which was designed to provide central propane gas distribution systems to various residential developments in Jefferson County, Missouri, until such time as natural gas mains were extended into these areas. The agreement contemplated that as individual developments were planned the owners or developers would apply to Laclede for central propane gas systems. If Laclede determined that such a system was appropriate in any given development, it could request Amoco to supply the propane to that specific development. This request was made in the form of a supplemental form letter, as provided in the September 21 agreement; and if Amoco decided to supply the propane, it bound itself to do so by signing this supplemental form.

Once this supplemental form was signed the agreement placed certain duties on both Laclede and Amoco. Basically, Amoco was to “(i)nstall, own, maintain and operate . . . storage and vaporization facilities and any other facilities necessary to provide (it) with the capability of delivering to (Laclede) commercial propane gas suitable . . . for delivery by (Laclede) to its customers' facilities.” Amoco's facilities were to be “adequate to provide a continuous supply of commercial propane gas at such times and in such volumes commensurate with (Laclede's) requirements for meeting the demands reasonably to be anticipated in each Development while this Agreement is in force.” Amoco was deemed to be “the supplier,” while Laclede was “the distributing utility.”

For its part Laclede agreed to “(i)nstall, own, maintain and operate all distribution facilities” from a “point of delivery” which was defined to be “the outlet of (Amoco) header piping.”  Laclede also promised to pay Amoco “the Wood River Area Posted Price for propane plus four cents per gallon for all amounts of commercial propane gas delivered” to it under the agreement.

Since it was contemplated that the individual propane systems would eventually be converted to natural gas, one paragraph of the agreement provided that Laclede should give Amoco 30 days written notice of this event, after which the agreement would no longer be binding for the converted development.

Another paragraph gave Laclede the right to cancel the agreement. However, this right was expressed in the following language:

This Agreement shall remain in effect for one (1) year following the first delivery of gas by (Amoco) to (Laclede) hereunder. Subject to termination as provided in Paragraph 11 hereof (dealing with conversions to natural gas), this Agreement shall automatically continue in effect for additional periods of one (1) year each unless (Laclede) shall, not less than 30 days prior to the expiration of the initial one (1) year period or any subsequent one (1) year period, give (Amoco) written notice of termination.

There was no provision under which Amoco could cancel the agreement.

For a time the parties operated satisfactorily under this agreement, and some 17 residential subdivisions were brought within it by supplemental letters. However, for various reasons, including conversion to natural gas, the number of developments under the agreement had shrunk to eight by the time of trial. These were all mobile home parks.

During the winter of 1972-73 Amoco experienced a shortage of propane and voluntarily placed all of its customers, including Laclede, on an 80% Allocation basis, meaning that Laclede would receive only up to 80% of its previous requirements. Laclede objected to this and pushed Amoco to give it 100% of what the developments needed. Some conflict arose over this before the temporary shortage was alleviated.

Then, on April 3, 1973, Amoco notified Laclede that its Wood River Area Posted Price of propane had been increased by three cents per gallon. Laclede objected to this increase also and demanded a full explanation. None was forthcoming. Instead Amoco merely sent a letter dated May 14, 1973, informing Laclede that it was “terminating” the September 21, 1970, agreement effective May 31, 1973. It claimed it had the right to do this because “the Agreement lacks ‘mutuality.’ ”

The district court felt that the entire controversy turned on whether or not Laclede's right to “arbitrarily cancel the Agreement” without Amoco having a similar right rendered the contract void “for lack of mutuality” and it resolved this question in the affirmative. We disagree with this conclusion and hold that settled principles of contract law require a reversal.

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A bilateral contract is not rendered invalid and unenforceable merely because one party has the right to cancellation while the other does not. There is no necessity “that for each stipulation in a contract binding the one party there must be a corresponding stipulation binding the other.”  James B. Berry's Sons Co. v. Monark Gasoline & Oil Co., 32 F.2d 74, 75 (8th Cir. 1929) . . .

The important question in the instant case is whether Laclede's right of cancellation rendered all its other promises in the agreement illusory so that there was a complete failure of consideration. This would be the result had Laclede retained the right of immediate cancellation at any time for any reason.  1 S. Williston, Law of Contracts s 104, at 400-401 (3d ed. 1957). However, Professor Williston goes on to note:

Since the courts . . . do not favor arbitrary cancellation clauses, the tendency is to interpret even a slight restriction on the exercise of the right of cancellation as constituting such legal detriment as will satisfy the requirement of sufficient consideration; for example, where the reservation of right to cancel is for cause, or by written notice, or after a definite period of notice, or upon the occurrence of some extrinsic event, or is based on some other objective standard.

. . .

Here Laclede's right to terminate was neither arbitrary nor unrestricted. It was limited by the agreement in at least three ways. First, Laclede could not cancel until one year had passed after the first delivery of propane by Amoco. Second, any cancellation could be effective only on the anniversary date of the first delivery under the agreement. Third, Laclede had to give Amoco 30 days written notice of termination. These restrictions on Laclede's power to cancel clearly bring this case within the rule.

A more difficult issue in this case is whether or not the contract fails for lack of “mutuality of consideration” because Laclede did not expressly bind itself to order all of its propane requirements for the Jefferson County subdivisions from Amoco.

While there is much confusion over the meaning of the terms “mutuality” or “mutuality of obligation” as used by the courts in describing contracts, . . . our use of this concept here is best described by Professor Williston:

Sometimes the question involved where mutuality is discussed is whether one party to the transaction can by fair implication be regarded as making any promise; but this is simply an inquiry whether there is consideration for the other party's promise.

1 S. Williston, supra, s 105A, at 423. (Footnote omitted.) . . .

Once Amoco had signed the supplemental letter agreement, thereby making the September 21 agreement applicable to any given Jefferson County development, it was bound to be the propane supplier for that subdivision and to provide a continuous supply of the gas sufficient to meet Laclede's reasonably anticipated needs for that development. It was to perform these duties until the agreement was cancelled by Laclede or until natural gas distribution was extended to the development.

For its part, Laclede bound itself to purchase all the propane required by the particular development from Amoco. This commitment was not expressly written out, but it necessarily follows from an intelligent, practical reading of the agreement.

Laclede was to “(i)nstall, own, maintain and operate all distribution facilities from the point of delivery as defined in Paragraph 3(b) . . . .” Paragraph 3(b) provided: “the point of delivery shall be at the outlet of (Amoco) header piping.” Also under Paragraph 3(b) Amoco was to own and operate all the facilities on the bulk side of that header piping. Laclede thus bound itself to buy all its requirements from Amoco by agreeing to attach its distribution lines to Amoco's header piping; and even if a change of suppliers could be made under the contract, Laclede could not own and operate a separate distribution system hooked up to some other supplier's propane storage tanks without substantially altering the supply route to its distribution system or making a very substantial investment in its own storage equipment and site. As a practical matter, then, Laclede is bound to buy all the propane it distributes from Amoco in any subdivision to which the supplemental agreement applies and for which the distribution system has been established.

When analyzed in this manner, it can be seen that the contract herein is simply a so-called “requirements contract.”  Such contracts are routinely enforced by the courts where, as here, the needs of the purchaser are reasonably foreseeable and the time of performance is reasonably limited. . . .

We conclude that there is mutuality of consideration within the terms of the agreement and hold that there is a valid, binding contract between the parties as to each of the developments for which supplemental letter agreements have been signed. . . .