Lingenfelder v. Wainwright Brewing Co.  
15 S.W. 844 (1891)

    This was an action by Phillip J. Lingenfelder and Leo Rassieur, executors of Edmund Jungenfeld against the Wainwright Brewery Company upon a contract for services as an architect. . . . [Jungenfeld had entered a contract with Wainwright to design and build a brewery.]  
  
        The controversy in the court below . . . turned upon the single question whether or not, upon the facts found by the referee and the evidence returned by him, the deceased was entitled to commissions on the cost of the refrigerator plant. In considering the subject it should be borne in mind that Jungenfeld's contract with the brewery company was made on or about the 16th of June, 1883; that under and by it he undertook to design the buildings; and superintend their erection to completion; that the superintending or placing of machinery in the building was no part of his contract, and that the claim for commissions on the cost of the refrigerator plant is based solely on a subsequent promise, the facts of which are thus found and stated by the referee: The refrigerator plant

"was ordered not only without Mr. Jungenfeld's assistance, but against his wishes. He was in no way connected with its erection. Plaintiffs' claim as to this item rests on a distinct ground, as to which I make the following finding of facts: Mr. Jungenfeld was president of the Empire Refrigerating Company, and was largely interested therein. The De la Vergne Ice-Machine Company was a competitor in business. Against Mr. Jungenfeld's wishes, Mr. Wainwright awarded the contract for the refrigerating plant to the De la Vergne Company. The brewery was at the time in process of erection, and most of the plans were made. When Mr. Jungenfeld heard that the contract was awarded he took away his plans, called off his superintendent on the ground, and notified Mr. Wainwright that he would have nothing more to do with the brewery. The defendant was in great haste to have its new brewery completed for divers reasons. It would be hard to find an architect to fill Mr. Jungenfeld's place, and the making of new plans and arrangements when another architect was found would involve much loss of time. Under these circumstances, Mr. Wainwright promised to give Mr. Jungenfeld five percent on the cost of the De la Vergne ice machine if he would resume work. Mr. Jungenfeld accepted, and fulfilled the duties of superintending architect till the completion of the brewery. . . . What was the consideration for defendant's promise to pay five percent on the cost of the refrigerating plant, in addition to the regular charges? . . .  Plaintiffs . . . contend that the original contract between the parties was abrogated; that a new contract was entered into between the parties, differing from the old only in the fact that the defendant was to pay a sum over and above the compensation agreed on in the discarded, original contract. The services to be performed (and thereafter actually performed) by Jungenfeld would, in this view, constitute a sufficient consideration. . . . find in the evidence no substitution of one contract for another. As I understand the facts, and as I accordingly formally find, defendant promised Mr. Jungenfeld a bonus to resume work, and complete the original terms. This case seems to me analogous to that of seamen who, when hired for a voyage, under threats of desertion in a foreign port receive promises of additional compensation. It has been uniformly held they could not recover. I accordingly submit that in my view defendants' promise to pay Mr. Jungenfeld five percent on the cost of the refrigerating plant was without consideration, and recommend that the claim be not allowed."

. . .

        Was there any consideration for the promise of Wainwright to pay Jungenfeld the 5 percent on the refrigerator plant? If there was not, plaintiffs cannot recover the $3,449.75, the amount of that commission. The report of the referee and the evidence upon which it is based alike show that Jungenfeld's claim to this extra compensation is based upon Wainwright's promise to pay him this sum to induce him, Jungenfeld, to complete his original contract under its original terms. It is urged upon us by respondents that this was a new contract. New in what? Jungenfeld was bound by his contract to design and supervise this building. Under the new promise he was not to do any more or anything different. What benefit was to accrue to Wainwright? He was to receive the same service from Jungenfeld under the new, that Jungenfeld was bound to render under the original, contract. What loss, trouble, or inconvenience could result to Jungenfeld that he had not already assumed?No amount of metaphysical reasoning can change the plain fact that Jungenfeld took advantage of Wainwright's necessities, and extorted the promise of 5 percent on the refrigerator plant as the condition of his complying with his contract already entered into. Nor was there even the flimsy pretext that Wainwright had violated any of the conditions of the contract on his part. Jungenfeld himself put it upon the simple proposition that "if he, as an architect, put up the brewery, and another company put up the refrigerating machinery, it would be a detriment to the Empire Refrigerating Company," of which Jungenfeld was president. To permit plaintiff to recover under such circumstances would be to offer a premium upon bad faith, and invite men to violate their most sacred contracts that they may profit by their own wrong.

"That a promise to pay a man for doing that which he is already under contract to do is without consideration" is conceded by respondents. The rule has been so long imbedded in the common law and decisions of the highest courts of the various states that nothing but the most cogent reasons ought to shake it. . . .

        . . .  Nothing we have said is intended as denying parties the right to modify their contracts or make new contracts, upon new or different considerations, and binding themselves thereby. What we hold is that, when a party merely does what he has already obligated himself to do, he cannot demand an additional compensation, therefor, and although by taking advantage of the necessities of his adversary he obtains a promise for more, the law will regard it as nudum pactum, and will not lend its process to aid in the wrong. So holding, we reverse the judgment of the circuit court of St. Louis to the extent that it allows the plaintiffs below (respondents here) the sum of $3,449.75, the amount of commission at 5 percent on the refrigerator plant, and at the request of both sides we proceed to enter the judgment here which, in our opinion, the circuit court of St. Louis should have entered, and accordingly it is adjudged that the report of the referee be in all things approved, and that defendant have and recover of plaintiffs, as executors of Edmund Jungenfeld, the sum of $1,492.17, so found by the referee, with interest from March 9, 1887. 