

Contracts - Enforceability of a Promise of a
Conditional Gift - *Bredemann v. Vaughan
Manufacturing Company*, 40 Ill. App. 2d 232, 188
N.E. 2d 746 (1963)

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was equally a participant by his silence which constituted a tacit approval of Moquin's action.

On previous occasion the Supreme Court of New Hampshire, in the case of *State v. La Rose*,⁵⁴ described the plea of *nolo contendere* and its implications:

Under the plea of *nolo*, the defendant does not confess or acknowledge the charge against him as upon a plea of guilty . . . but waiving his right to contest the truth of the charge against him, submits to punishment. The plea is in the nature of a compromise between the state and the defendant—a matter not of right, but of favor. Various reasons exist why a defendant conscious of innocence may be willing to forego his right to make defense if he can do so without acknowledging his guilt. Whether in a particular case he should be permitted to do so, is for the court.

This holding in no way hinted that a defendant conscious of innocence so pleading is contemptuous of the court, much less his tacit approver. The New Hampshire Supreme Court in *Moquin* may have meant to adopt the convenient fiction of an old Illinois case:

The court will punish all acts calculated to impede, embarrass, or obstruct the court in the administration of justice. Such acts would be considered as done in the presence of the court.⁵⁵

In conclusion, the recognition of contempt power beyond the statutory grants, as inherent because of necessity, rests on questionable grounds.⁵⁶ It is submitted that the acts of the defendants, no matter how reprehensible they might appear, were not contempt of court.

⁵⁴ 71 N.H. 435, 439, 52 Atl. 943, 945 (1902).

⁵⁵ *Stuart v. People*, 3 Scam. (4 Ill.) 395, 405 (1842).

⁵⁶ A contrary argument could be made, if summary contempt powers were used during Colonial and early Statehood days in New Hampshire, in light of the New Hampshire Constitution (of 1784), Part II, Article 93, adopting, as the law of the land, "all the laws which have heretofore been adopted, used, and approved. . ."; but from realization of the need for caution in interpreting the article, as urged by *State v. Rollins*, 8 N.H. 550 (1837), (applying the article to common law crimes), from not wanting to reach the conclusion suggested by a critic of this work—but witchburning might thus find Constitutional approbation, and from an unavailability of the necessary materials for study, the matter was summarily dropped.

CONTRACTS—ENFORCEABILITY OF A PROMISE OF A CONDITIONAL GIFT

Marie Bredemann was employed by Vaughan Mfg. Company from 1929 to 1954 as a biller and traffic manager. In 1943, Mr. Vaughan, then president of the company, commended Mrs. Bredemann for her loyalty and told her not to worry because "we intend to—I intend to see that you

will be taken care of for the rest of your life.”¹ Mrs. Bredemann was compensated at \$375.00 per month when, in 1954, Mr. Grace, the succeeding president of the company, advised her that he had arranged a retirement pension for her at her full salary and that “I want you to take your retirement now, and we will—the company will pay you the full salary for the rest of your life.”² In reliance on this promise, Marie Bredemann retired forthwith. Two and one-half years later (June, 1957) she was informed that her pension would be cut in half as she had become eligible to receive Social Security benefits. The company gradually reduced the amount of the pension payments until February, 1961, when the payments were wholly terminated. Mrs. Bredemann then brought suit in the Circuit Court of Cook County seeking damages for the breach of an alleged oral contract and for a declaratory judgment holding the contract to be valid and enforceable. Summary judgment was entered in favor of the defendant employer. The Illinois Appellate Court reversed and remanded the matter on the ground that the plaintiff and defendant had entered into an enforceable contract since Mrs. Bredemann’s retirement constituted sufficient consideration for Mr. Grace’s promise. *Bredemann v. Vaughan Mfg. Company*, 40 Ill. App. 2d 232, 188 N.E. 2d 746 (1963).

The Court unequivocally stated that it had found sufficient consideration in the plaintiff’s retirement to render Mr. Grace’s promise binding, since

when she accepted the promise made to her by Grace on behalf of the defendant corporation and within two weeks retired from her position in the company, [she] did an act which even without the invocation of the theory of estoppel would constitute a sufficient consideration to support the contract.³

Had the plaintiff sacrificed a valuable right to remain in the employ of the defendant as a bargained-for exchange for a promised pension, her retirement would have constituted consideration and the promise would have been enforceable in the best traditions of contract law. Here, however, the defendant could have discharged the plaintiff at any time. The defendant’s promise, therefore, would appear to be a promise of a gift—a mere gratuity, and the plaintiff’s retirement merely a condition requisite to obtaining the gift, rather than a bargained-for consideration.

Consideration is essential to the transformation of a *nudum pactum* into a contract.⁴ It is the act, forbearance or return promise which, when

¹ *Bredemann v. Vaughan Mfg. Co.*, Circuit Court of Cook County, No. 61 C 17251, Record of Proceedings, p. 46.

² *Id.* at 48.

³ *Bredemann v. Vaughan Mfg. Co.*, 40 Ill. App. 2d 232, 245, 188 N.E. 2d 746, 753 (1963).

⁴ 2 BLACKSTONE, COMMENTARIES *445.

bargained for as an exchange, invests a promise with legal enforceability.⁵ The effects of consideration on the parties have been historically described as a detriment incurred by the promisee and/or a benefit received by the promisor at the request of the promisor.⁶

In cases where a promisor reasonably expected to induce the promisee to take action of a definite and substantial character and such action had in fact been taken in reliance on the promise, consideration has sometimes been excused to avoid injustice.⁷ The doctrine of promissory estoppel provides the theory for such enforcement of an otherwise *nudum pactum*.⁸ The wisdom of this doctrine, which estops a promisor from defending himself on the basis of lack of consideration, is the subject of probing investigation.⁹ The Illinois courts have touched on the doctrine in *dicta* but have not yet based a decision on the doctrine of promissory estoppel.¹⁰ The Appellate Court decided the instant case solely on the finding of consideration without the invocation of the doctrine of promissory estoppel. Whether Mrs. Bredemann's reliance resulted in such injustice as would render Vaughan Mfg. Company's promise enforceable under the doctrine, is, therefore, purely a matter for conjecture.¹¹

Would an employer bargain for the retirement of an employee, offering him a life pension in exchange for that retirement, if the employer were free to discharge him at will? Clearly not. To conclude, therefore, as the court did, that Mrs. Bredemann's retirement was a *quid pro quo* for Vaughan's promise, it was necessary to find that Mrs. Bredemann surrendered a valuable right to remain in the company's employ. In 1943 Mr. Vaughan said, "[Y]ou will receive your salary until you can't work

⁵ RESTATEMENT, CONTRACTS, § 75 (1932).

⁶ *Thomas v. Thomas*, 2 Q.B. 851, 114 Eng. Rep. 330 (1842); *Petroleum Refractionating Corp. v. Kendrick Oil Co.*, 65 F.2d 997 (10th Cir. 1933); 1 WILLISTON, CONTRACTS, §§ 99-103 (1936).

⁷ *Ricketts v. Scotchorn*, 57 Neb. 51, 77 N.W. 365 (1898).

⁸ RESTATEMENT, CONTRACTS, § 90 (1932). For a discussion of promissory estoppel, see 4 DEPAUL L. REV. 320 (1955).

⁹ *Compare*, 1A CORBIN, CONTRACTS, § 206 (1963) with 1 WILLISTON, CONTRACTS, §§ 139-40 (1936).

¹⁰ *Beatty v. Western College*, 177 Ill. 280, 52 N.E. 432 (1898); *Dewein v. Estate of Dewein*, 30 Ill. App. 2d 446, 174 N.E. 2d 875 (1961); *Laughlin v. Irwin*, 262 Ill. App. 40 (1931); *In re Estate of Switzer v. Gertenbach*, 122 Ill. App. 26 (1905).

¹¹ The decision in the instant case relied heavily upon the reasoning in *Feinberg v. Pfeiffer Co.*, 322 S.W. 2d 163 (Mo. App. 1959), which held for the plaintiff-employee on a similar set of facts. The Missouri Appellate Court, however, held clearly on the basis of promissory estoppel. *Contra*, *Bixby v. Wilson & Co.*, 196 F. Supp. 889 (N.D. Ia. 1961); 47 IOWA L. REV. 725 (1962), which held that relinquishing jobs, rejecting positions, and moving families do not support the invocation of the theory of promissory estoppel.

anymore.”¹² The court reasoned that the 1943 statement “makes her employment an employment as long as she could work. Consequently when she retired in reliance on Grace’s promise she suffered a detriment.”¹³ This conclusion invests Vaughan’s 1943 words with the attributes of a contractual offer.

If Vaughan’s promise constituted an offer for a unilateral contract to be rendered enforceable by the plaintiff’s continued employment,¹⁴ the promise would have had to be so definite in its terms and require such definite performance in its acceptance that the obligations of both the company and its employee would have been reasonably certain.¹⁵ The language here does not support such a conclusion; it fails to state either a definite remuneration or a certain period of employment.¹⁶

If the court concluded that Mr. Vaughan’s 1943 statement was an offer inviting a bilateral contract of permanent employment, the definite and mutual exchange of promises required for such an employment contract is not present.¹⁷

Mutuality is the contractual requirement that both parties are bound or neither is bound.¹⁸ It is well settled under Illinois law that “permanent employment” is considered to be “at will.”¹⁹ The Illinois Appellate Court has declared that

¹² *Bredemann v. Vaughan Mfg. Co.*, 40 Ill. App. 2d 232, 236, 188 N.E.2d 746, 749 (1963). Since Mr. Vaughan died in 1945 a question of admissibility of testimony was raised under ILL. REV. STAT. ch. 51, § 4 (the “Dead Man’s Act”). The court accepted the testimony both because defendant had made no objection to it at the time of its submission and because the defendant had included the testimony in its motion for summary judgment. *Cf. In Re Hershon*, 329 Ill. App. 328, 68 N.E.2d 482 (1946).

¹³ *Bredemann v. Vaughan Mfg. Co.*, 40 Ill. App. 2d 232, 246, 188 N.E.2d 746, 753 (1963).

¹⁴ *Scott v. Motor Lodge Properties, Inc.*, 35 Misc. 2d 869, 231 N.Y.S.2d 780 (1962). See RESTATEMENT, CONTRACTS, § 12 (1932).

¹⁵ *Mitchell Novelty Co. v. United Mfg. Co.*, 94 F. Supp. 612 (N.D. Ill. 1950). See RESTATEMENT, CONTRACTS, § 32 (1932).

¹⁶ IA CORBIN, CONTRACTS, § 153 (1963).

¹⁷ *Heuvelman v. Triplett Electrical Instrument Co.*, 23 Ill. App. 2d 231, 161 N.E.2d 875 (1959), requires that “such contracts extending for a long duration and resting entirely on parol should have for their basis definite and certain mutual promises. The words and the manner of their utterance should not be of that informal character which expresses only long continuing good will and hopes for eternal association.” *Id.* at 236, 161 N.E.2d at 878.

¹⁸ *People v. Davidson*, 411 Ill. 267, 103 N.E.2d 600 (1952); *Joliet Bottling Co. v. Brewing Co.*, 254 Ill. 215, 98 N.E. 263 (1912); *Higbie v. Rust*, 112 Ill. App. 218, *aff’d* 211 Ill. 333, 71 N.E. 1010 (1904).

¹⁹ *Davis v. Fidelity Fire Ins. Co.*, 208 Ill. 375, 70 N.E. 359 (1904); *Meadows v. Radio Industries, Inc.*, 222 F.2d 347 (7th Cir. 1955).

in this state it is well settled that an employment upon a monthly or annual salary . . . is presumed to be a hiring at will, which either party may at any time determine at his pleasure without liability for breach of contract.²⁰

It is, in fact, an accepted view that where an employee's salary is paid monthly with no definite period or duration of employment the relationship is a hiring at will.²¹ Therefore, when an employee who is free to terminate his employment at will, seeks to sustain a claim against an employer who discharged him, his claim must fail for want of mutuality.²² Thus, even if there had been an offer of permanent employment by the Vaughan Mfg. Company and an acceptance by Mrs. Bredemann, she would have been unable to enforce a claim because the alleged contract lacked mutuality of obligation.

Mrs. Bredemann, having no right to remain in the employ of the defendant company, sacrificed nothing in retiring; there could be no consideration for Grace's 1954 promise as Mrs. Bredemann sustained no detriment as promisee and defendant, promisor, received no benefit from her retirement. Mr. Grace promised Mrs. Bredemann a life pension on retirement and failed to keep his word, but there was no contractual bar preventing him from discharging her. The practices of business are often harsh, but for every critic of these practices there is a champion who would denounce paternalism in the commercial world.

It is basic that an offer is a promise conditional upon the exchange of a return promise or performance.²³ But a promise need not anticipate the reciprocal giving of consideration at all. In theory, any event may be named in a promise as fixing the moment, on the happening of which a promisor will perform a promise intended and understood to be gratuitous. Professor Williston suggests that an aid in determining whether a promise is a conditional gift or a contractual offer is "an inquiry whether the happening of the condition will be a benefit to the promisor. If so, it is a fair inference that the happening was requested as a consideration."²⁴ Obviously, the happening of a condition may merely be a factor enabling

²⁰ *Fuchs v. Weibert*, 233 Ill. App. 536, 538 (1924).

²¹ *Crawford v. Peabody Coal Co.*, 34 Ill. App. 2d 388, 181 N.E.2d 369 (1962); *Bixby v. Wilson & Co.*, 196 F. Supp. 889 (N.D. Ia. 1961); 47 IOWA L. REV. 725 (1962); *Watts v. Greater Bethesda Missionary Baptist Church*, 20 Ill. App. 2d 146, 154 N.E.2d 875 (1958); *Cummings v. Chicago, A. & E. Ry.*, 348 Ill. App. 537, 109 N.E.2d 378 (1952); *White v. American Electric Fusion Corp.*, 328 Ill. App. 128 (1946); *Skagerberg v. Blandin Paper Co.*, 197 Minn. 291, 266 N.W. 872 (1936), 21 MINN. L. REV. 748 (1937).

²² *Bixby v. Wilson & Co.*, 196 F. Supp. 889 (N.D. Ia. 1961); 47 IOWA L. REV. 725 (1962); *Hablas v. Armour & Co.*, 270 F.2d 71 (8th Cir. 1959); *Meadows v. Radio Industries, Inc.*, 222 F.2d 347 (7th Cir. 1955).

²³ Williston, *An Offer Is a Promise*, 23 ILL. L. REV. 100 (1928). See also RESTATEMENT, CONTRACTS, § 24 (1932).

²⁴ 1 WILLISTON, CONTRACTS, § 112 (1936).

the promisee to receive a gift. Certainly then the happening of such a condition, even though brought about as a direct result of the promisee's reliance on the promise, cannot be interpreted as consideration.²⁵

The courts have been careful to distinguish between sufficient consideration and conditions performed in conformance to offers of gratuities. In so distinguishing, the motives of the promisor and the circumstances under which the promise was made must be cautiously investigated. The plaintiffs in *Plowman v. Indian Refining Co.*²⁶ contended that the act of reporting to their former employer's office to pick up pension checks was sufficient consideration for the payments. The court rejected this, reasoning that

the act was simply a condition imposed upon them in obtaining gratuitous pensions and not a consideration. . . . Such acts were benefits to them and not detriments. They were detriments to defendant [employer] and not benefits. This is not consideration.²⁷

Because of the problems inherent in differentiating a promise which proposes a bargain and one which proposes a gift, courts have enforced both a promise of remuneration to a nephew who refrained from smoking²⁸ and a promise to defray expenses of a European trip.²⁹

Perhaps the landmark case in the area of conditional gifts is *Kirksey v. Kirksey*.³⁰ The defendant had written the widow of his brother, who was living sixty miles away, "if you will come . . . I will let you have a place to raise your family."³¹ She moved her family and belongings and after two years he required her to leave. It was held that an action would not lie as the promise was a mere gratuity and the change of residence was simply a condition to it.

Similarly, courts have not enforced a father's promised gift of land which induced his son to change residence³² or offers of permanent em-

²⁵ Professor Williston gives the following example: "If a benevolent man says to a 'tramp'—'if you go around the corner to the clothing shop there, you may purchase an overcoat on my credit,' no reasonable person would understand that the short walk was requested as consideration for the promise . . . [O]n a reasonable interpretation, it must be held that the walk was not requested as the price of the promise, but merely a condition of a gratuitous promise." *Ibid.*

²⁶ 20 F. Supp. 1 (E.D. Ill. 1937), 23 CORNELL L. Q. 310 (1938) and 27 KY. L. J. 345 (1939).

²⁷ 20 F. Supp. 1, 5 (E.D. Ill. 1937).

²⁸ *Hamer v. Sidway*, 124 N.Y. 538, 27 N.E. 256 (1891).

²⁹ *Devecmon v. Shaw & Devries, Ex'rs.*, 69 Md. 199, 14 Atl. 464 (1888).

³⁰ 8 Ala. 131 (1845).

³¹ *Id.* at 132.

³² *Forward v. Armstead*, 12 Ala. 124 (1847); but see *Burgess v. Burgess*, 306 Ill. 19, 137 N.E. 403 (1922), where a father's promise to give land to son in exchange for its occupation, improvement, and tax payment was enforced as the contract was established by clear, definite, and unequivocal proof.

ployment, which caused an engineer to reject a professorship³³ and a baker to become a cub reporter.³⁴ A plaintiff's changing her residence and enrolling in a beauty culture school were also held to be conditional acts rather than bargained-for consideration.³⁵

Analysis of the instant case discloses that Mr. Grace's promise was not of a contractual nature, anticipating consideration, but was rather the promise of a conditional gift. Mr. Grace made a promise of a pension to Mrs. Bredemann, an employee he was free to discharge. He contemplated no consideration but certainly a condition. It would, of course, be a condition to a promise of pension that the promisee retire. Illinois formerly adhered to a traditional interpretation of the law of contractual consideration. The decision in *Bredemann v. Vaughan Mfg. Company* circumscribes a shadowy border of doubt around an area once defined with clarity.

³³ *Skagerberg v. Blandin Paper Co.*, 197 Minn. 291, 266 N.W. 872 (1936), 21 MINN. L. REV. 748 (1937).

³⁴ *Fisher v. Jackson*, 142 Conn. 734, 118 A.2d 316 (1955).

³⁵ *Coder v. Smith*, 156 Kan. 512, 134 P.2d 408 (1943).

EVIDENCE—ADMISSIBILITY OF THE FACT AND AMOUNT OF A COMPROMISE SETTLEMENT WITH ONE JOINT TORT- FEASOR IN THE TRIAL OF A SECOND JOINT TORT- FEASOR

The plaintiff, John Burger, was a self employed contractor engaged in building and repairing gutters. The defendant, The Rock Island Lumber Co., a general contractor, contracted to replace roofing shingles and gutters on a two story residence in Milan, Illinois. The defendant lumber company then sublet the roofing work to the defendant, Henry Van Severn, and the gutter work to the plaintiff. Van Severn commenced work by building a scaffold from which to work on the roofing. The plaintiff arranged to borrow this scaffold to work on the gutters of the house (although there was some conflict in testimony regarding the exact arrangements agreed upon). While he was working on the gutters, one end of the scaffold gave way and the plaintiff fell sixteen feet, landing upon a large railroad tie, causing him severe injuries. The plaintiff then commenced suit against both the Rock Island Lumber Company and Van Severn under the Illinois Structural Work Act,¹ alleging negligent construction of the scaffold. Just prior to the trial, the plaintiff settled with

¹ ILL. REV. STAT. ch. 48, § 60 (1961).