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Contracts - Defense to Third Party Beneficiary Rights Not Available under Collective Bargaining Agreement in Absence of Express Provision - Lewis v. Benedict Coal Corp., 80 S.Ct. 489 (1960)

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tence was imposed for the *last crime*. While forgery was the only crime charged there, the court failed to enter a specific term for it and the life sentence was allowed to stand. The logical inference from *Witte* is that the court recognized the double sentencing aspect of §9-2209 of the Act to be a procedural implementation of §9-2208 and not as determinative of substantive rights. The imposition of separate sentences does serve to emphasize the disparity between the punishment accorded habitual criminals in Indiana and that accorded first or second offenders. First or second offenders would, of course, receive only the specific term and not the life sentence.

Another constitutional attack on an habitual criminal statute is thus repulsed. It is felt here that these statutes are vincible only by repeal. And repeal is incomprehensible unless and until legislators begin to doubt the punitive and deterrent values of long-term imprisonment.

CONTRACTS–DEFENSE TO THIRD PARTY BENEFICIARY RIGHTS NOT AVAILABLE UNDER COLLECTIVE BARGAINING AGREEMENT IN ABSENCE OF EXPRESS PROVISION

The United Mine Workers of America entered into a collective bargaining contract with nine coal operators, one of which was the Benedict Coal Corporation. The agreement provided that a union welfare fund was to be established and maintained from royalties on each ton of coal produced by the corporation for sale or use. The trustees of the fund brought suit as third party beneficiaries for a portion of the royalties which the corporation failed to pay under the collective bargaining agreement. The Benedict corporation cross-claimed for a larger amount as damages sustained from strikes and stoppages by the union in violation of the collective bargaining contract, and claimed that payment to the welfare fund was excused in proportion to the violation of the agreement by the union. The jury returned a verdict for the trustees, but also found in favor of the corporation on the cross-claim. The district court gave effect to Benedict's defense by refusing immediate execution and payment of interest on the trustees' judgment. Instead, it ordered that the judgment be satisfied only out of the proceeds collected by Benedict on its judgment against the union and paid into the registry of the court by the union.

Both the union and trustees prosecuted separate appeals to the Court of Appeals for the Sixth Circuit. The court of appeals affirmed the district court, except that it held the amount of the damages awarded to

Benedict on its cross-claim to be excessive.[1] The United States Supreme Court, on certiorari, modified the judgment in favor of the trustees to allow immediate and unconditional execution and interest, on the full amount of the trustees' judgment. *Lewis v. Benedict Coal Corporation,* 80 S.Ct. 489 (1960).

Since the time of *Lawrence v. Fox,*[2] the third-party beneficiary has been allowed to sue on a contract as if he were a party to the contract. Such action does not, however, change the contract rights or equities between the original parties.[3] One of these rights is that of set-off.[4] The third-party beneficiary has been thought of as standing in the shoes of the promisee.[5] The established principle is stated in the Restatement of Contracts at Section 140, that is, upon the:

> [P]resent or prospective failure of the promisee to perform a return promise which was the consideration for the promisor's promise, the rights of a donee beneficiary or creditor beneficiary under the contract is subject to the same limitations.[6]

The Supreme Court in the instant case has concluded that the principle quoted above rests upon the logical inference of "an intention of the promisor and promisee that the third party's rights be so limited."[7] *Benedict* involves a third-party beneficiary contract which is *not typical,* and in which no intent to limit can be inferred. First, the corporation's interest in the trust fund established under the Taft-Hartley Act[8] is equal

[1] "The judgment in favor of the trustees will then be amended by the district court to allow execution and interest on that part of the said judgment which is in excess of the set-off in favor of Benedict as so redetermined." Lewis v. Benedict Coal Corporation, 259 F.2d 346, 355 (C.A. 6th, 1958).

[2] 20 N.Y. 268 (1859). Massachusetts, Exchange Bank of St. Louis v. Rice, 107 Mass. 37 (1871) and England, Tweddle v. Atkinson, 1 B.&S. 393 (K.B., 1861) do not follow Lawrence v. Fox.

[3] Rouse v. United States, 215 F.2d 872 (C.A.D.C., 1954); Gennett v. Smith, 278 N.Y.S. 478 (1935).

[4] Cf. Kynes v. Clark, 29 F.2d 545 (C.C.A.8th, 1928), in which the court stated: "It is a general rule that the grantee who has assumed and agreed to pay a mortgage indebtedness when sued on such contract by the mortgagee or one claiming under him may set up any defense which he could assert against an action on such contract by the promisee, his grantor." Ibid., at 546, 547.

[5] McLean Construction Co. v. Globe Indemnity Co., 168 F.Supp. 318 (W.D. Mo., 1958). "It is clear that plaintiff, as third party beneficiary, has no more rights under the contract than Brown, and that any defense available to Globe so far as Brown is concerned, is equally available to it with McLean." Ibid., at 321. Accord: Fulmer v. Goldfarb, 171 Tenn. 218, 101 S.W.2d 1108 (1937); Dunning v. Leavitt, 85 N.Y. 30 (1881).

[6] Consult: Williston, Contracts, §§ 394, 395 (stud. ed. rev., 1938); 4 Corbin, Contracts §§ 819, 822 (Supp., 1959).

[7] Lewis v. Benedict Coal Corporation, 80 S.Ct. 489, 494 (1960).

[8] Labor Management Relations Act, 1947, § 302(c)(5), 29 U.S.C.A. § 186(c)(5) (Supp., 1959).

to the interest of the union, since they have an equal responsibility of administration. Second, the trust fund is an additional form of compensation to the employees, similar in nature to wages. Thus, protection of the trust fund is of concern to both promisor and promisee, and in the absence of an express provision therefor, the Court will not infer an intention to protect the promisor corporation.

This is especially so, according to the Court, in view of the fact that the *Benedict* contract is an industry-wide agreement. An intention to thus protect the promisor would require that the "parties to the agreement were willing to risk the threat of diminution of the fund in order to protect those of their number who might have become involved in local labor difficulties."[9]

Considerations of "National Labor Policy" are further employed by the Court to distinguish the *Benedict* contract from an ordinary third-party beneficiary contract. Section 301(b) of the Taft-Hartley Act protects individual members from liability for a money judgment rendered against the union.[10] The same policy, reasoned the Court, would seemingly dictate that the member beneficiaries of the welfare fund be protected from the penalties incurred by union conduct, which in this case would be the right of the corporation to refuse to contribute to the fund.

Perhaps this decision must be most accurately viewed as promulgating a principle belonging to a newly emerging body of law fashioned for the purpose of enforcing collective bargaining agreements. Section 301(a) of the Taft-Hartley Act grants federal jurisdiction over collective bargaining agreements.[11] *Textile Workers Union v. Lincoln Mills*[12] held that Congress anticipated that the courts would provide "some effective method of assuring freedom from economic warfare,"[13] obviously the most effective method being the power of a district court to decree specific performance of an agreement to arbitrate a grievance dispute.

[9] Lewis v. Benedict Coal Corporation, 80 S.Ct. 489, 495 (1960).

[10] Labor Management Relations Act, 1947, § 301(b), 29 U.S.C.A. § 185(b) (Supp., 1959) provides: "Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets and shall not be enforceable against any individual member or his assets."

[11] Labor Management Relations Act, 1947, § 301(a), 29 U.S.C.A. § 185(a) (Supp., 1959) provides that: "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

[12] 353 U.S. 448 (1957).

[13] S. Rep. No. 105, 80th Cong., 1st Sess. p. 16, quoted in *Lincoln Mills*, 353 U.S. 448, 454 (1957).

Justice Frankfurter had dissented in *Lincoln Mills*, expressing a fear of the legislative power exercised by virtue of "judicial inventiveness"[14] creating a body of law peculiar to collective-bargaining agreements. Justice Frankfurter dissented again in *Benedict*, stating that Section 301 (b) of the Taft-Hartley Act specifically protects individual members from *money judgments* rendered against them solely by "virtue of their union membership,"[15] while Section 302(c)(5) of the same Act was passed to insure that welfare agreements be couched in specific terms assuring receipt of the benefits by union members.[16]

In conclusion, Justice Frankfurter fails to find any justification, either in the nature of the agreement or in legislative policy expressed in the Taft-Hartley Act for "jettisoning principles of fairness and justice"[17] applicable to *all contracts*. In his view a "new law of collective bargaining agreements"[18] has been created.

[14] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 465 (1957). Justice Frankfurter's opinion that § 301 is a strictly procedural provision is set out in great detail in Employees v. Westinghouse Corporation, 348 U.S. 437, 441 to 449, 452 to 459 (1955).

[15] Lewis v. Benedict Coal Corporation, 80 S.Ct. 489, 497 (1960).

[16] Justice Frankfurter quotes at 498 from Arroyo v. United States, 359 U.S. 419 (1959).

[17] Lewis v. Benedict Coal Corporation, 80 S.Ct. 489, 498 (1960).

[18] As was prophesized in Cox, The Legal Nature of Collective Bargaining Agreements, in Collective Bargaining and the Law (Univ. of Mich. Law School), pp. 121–122, and quoted by Justice Frankfurter in *Benedict* at 498, 499.

CONTRACTS—UNIQUE TRI-PARTY PROMISE: "I PROMISE THAT X WILL DRAIN THE MARSH" HELD BINDING

Plaintiff was in the market for a new home. A real estate salesman directed him to a lot fronting on a marsh. The salesman assured plaintiff that the original developer of that area intended to convert the marsh into a lake and that the realty company was "going to see it was done" because the company owned other lots in the vicinity. Similar assurances came from Barcroft Woods, Inc., owner of the lots in question, and defendant in the ensuing litigation. Plaintiff and the real estate dealer both testified that the original developer of the subdivision orally indicated his firm intention that he would lower the marsh water. The developer denies this.

All references to the anticipated lake culminated in provision for it in a contract between defendant Barcroft Woods, Inc., and plaintiff purchaser, for the sale of a lot improved by a newly constructed house and a forty-foot beach. The contract provided: "It is further understood that the lake