Principal and Agent - Scope of Authority - Automobile Salesmen

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limitations as to all persons so liable who have knowledge of and assented to it. 37 C.J. 1160. The court felt that the Cottrell case was decisive of the case at issue. California, Kansas and New York have statutes limiting the period of liability of stockholders for corporate obligations. Under such a statute the mere extension of time to the corporation for the payment of a debt, does not extend the statutory liability of the stockholders. Redington v. Cornwall, 90 Cal. 49, 27 Pac. 40 (1891); Brigham v. Nathan, 62 Kan. 243, 62 Pac. 319 (1900). The giving of renewal notes by a corporation does not create a new obligation or extend the limitation period on stockholder's statutory liability. Hyman v. Coleman, 82 Cal. 650, 23 Pac. 62 (1890); Goodall v. Jack, 127 Cal. 258, 59 Pac. 575 (1899); Newman v. Nickell, 50 Cal. App. 138, 194 Pac. 710 (1920); Brown v. Ball, 123 Cal. App. 758, 12 P. (2d) 28 (1932). However, where the effect of the change in a corporation's obligation is to create a new obligation, the limitation period begins to run again on the new liability from the date of its creation. More v. Hutchinson, 187 Cal. 623, 203 Pac. 87 (1921).

Howard W. Eslin.

Principal and Agent—Scope of Authority—Automobile Salesmen.—The plaintiff approached a salesman at the defendant's garage to arrange a deal for one of the defendant's used cars. The car he wanted was a Ford. He wanted to turn his old car in on the newer one. The salesman consulted the defendant's sales manager, who was willing to allow the buyer $195 for his old car. The plaintiff, at first, left his car at the garage for the salesmen to sell at the highest figure they could get. Two days later he decided to accept the $195 offer. The sales manager confirmed the offer. The salesman made out the memorandum. The plaintiff made out and delivered his check for twenty dollars, signed the application for transfer and title which the salesman gave him, and executed the conditional sale agreement and application for financing which the salesman had prepared. Before the Ford was delivered to the plaintiff the president of the defendant company refused to let the company go through with the deal at the $195 figure. The plaintiff had not tendered the certificate of title for his own car to the representatives of the company but he did that immediately thereafter. The defendant sold the Ford a day or so later. The plaintiff took back his own car and turned it in to another dealer and was allowed $135 on another car. He sued to recover from the defendant the difference between $195 and $135. The trial was by the court who entered judgment against the plaintiff. On appeal, held, judgment affirmed; the plaintiff had acquiesced in the defendant's abandonment of the contract. Reader v. Frank H. Applegate, Inc., (Wis. 1937) 271 N.W. 839.

The court in the instant case found a simple answer for what might have been a difficult case. The trial judge had found for the defendant because he felt that neither the salesman nor the sales manager had the "authority" to close the deal on the terms specified. In two earlier cases the Wisconsin court has held that the automobile dealer must suffer when his salesman has negotiated with a purchaser, accepted payment and has failed to account. In Voell v. Klein, 184 Wis. 620, 200 N.W. 364 (1925), the salesman took the purchaser's old car in trade, accepted his check for the difference, cashed the check, delivered the dealer's car to the purchaser, and then absconded with the old car and the money. The court in that case made much of the fact that it is common knowledge that cars are taken in trade even in sales of used cars through automobile agencies, that this was a typical deal, and that payment by check is as
RECENT DECISIONS

good as payment in cash. Moreover, the court said that a provision in the memorandum of sale, which the purchaser had signed, that terms must be approved by the dealer, has little effect when the dealer permits the salesman to have the car for demonstration. No point was made in the case about the execution of any "title" documents. The purchaser kept the newer car and the dealer lost everything. See also Prah v. Ebener, 200 Wis. 40, 227 N.W. 256 (1929). Some courts in these automobile sale cases have made much of the proposition that the power to sell does not include the power to exchange. Eaton v. Hattiesburg Auto Sales Co., 151 Miss. 211, 117 So. 534 (1928); Sally v. Jones Motor Co., 12 La. App. 150, 125 So. 599 (1929). In the first case the car had been delivered to the purchaser through the agency, the purchaser had not yet paid for it, and in an action for the price the question arose as to the terms of the sale. The purchaser was compelled to accept what the dealer was willing to make as a reasonable allowance for the old car and not what the salesman had been willing to specify. To the same effect with slight variations in the facts, but where it was matter of recovering the purchase price which had not yet been paid, see Reo Motor Co. v. Barnes, (Tex. Civ. App. 1928) 9 S.W. 2d 274 and Davison v. Parks, 79 N.H. 262, 108 Atl. 288 (1919). In Sally v. Jones Motor Co., supra, the dealer refused to accept a trade supposedly made on his behalf and the third party had no recourse against him. But where a purchaser had paid cash and had turned over his old car in exchange for a new one to a salesman, whom the dealer had armed with a "customer's receipt," it was held, as in the Wisconsin cases, supra, that the dealer had no recourse against the purchaser if the salesman refused to account. Federal Supply Co. v. Wichita Sales & Supply Co., (Tex. Civ. App. 1921) 232 S.W. 879. Because of the employer-employee relationship between the dealer and his salesman, and particularly when the salesman is demonstrating a car in the usual course of business, a court may hold that a purchaser who has settled with the salesman can compel execution of the application for title by the dealer on the purchaser's behalf. But if the person having possession of the car for demonstration is no regular salesman, if the car owner is no professional dealer, if the demonstrator is permitted to have the car simply to find a prospective buyer, and if the car must be registered, it appears that the "agent" must also have possession of the registration transfer document, signed by the registered owner, before the "agent" can divest the owner of his interest in the car. Royle v. Worcester Buick Co., 243 Mass. 143, 137 N.E. 531 (1922).

In comparing the instant case with the earlier Wisconsin cases it would seem to be as plausible to find apparent authority with respect to the employees' functions in this case as it was in the earlier cases, particularly when here one of the employees was the sales manager. The court indicated that it would so hold. Had the plaintiff, after carrying out performance to the extent which he had done, chosen to stand on his bargain, he might have prevailed. In a case which is purely executory, where the purchaser seeks damages only, and particularly if there is a restrictive clause in the memorandum of sale about approval, the Wisconsin court might still deny relief in spite of the existing decisions. In the earlier cases there was presented the matter of imposing the burden of an actual out of pocket loss upon either the employer or the customer, and the burden resulting from the employee's misconduct was put upon the employer. Any sweeping language about common knowledge and scope of authority must be limited by those considerations.

VERNON X. MILLER.