SCUDDER & ROBICHEAUX

Attorneys at Law

Memorandum

Re: Lotus Garage

To: Alex Associate

From: Mary Russell Holmes

You may be aware that the firm does some collection work for local businesses. One of them is the Lotus garage of Burlington, Rhode Island. Yesterday, I spoke on the phone with Ron Walton, owner of Lotus. According to my notes, when Lotus opened one morning last spring, a 1983 Porsche 911SC automobile was parked at the garage door. A note was on the windshield. It read:

> My friend, William Kauzlarich, asked me to drop off his car to you for storage while he is in England. You are to start it and drive it a short distance every week. He says to tell you that the clutch is slipping and the car is backfiring loudly.
>
> Jim Jorgeson

Walton stored the car for three months, during which time he rebuilt the clutch and replaced the heater box, which was causing the backfires. Kauzlarich returned from England on a Monday. On Tuesday, he went to the Lotus Garage but it was closed for the funeral of a former employee. The Porsche was there, locked. Kauzlarich unlocked it with a spare key and drove it home, after slipping a note under the Lotus office door saying he was taking the car.

Lotus billed Kauzlarich $3020, attaching a copy of the Jorgeson note to the bill. Kauzlarich refuses to pay for the repairs. He told Walton that he would not pay because:

> 1. The note on the car does not order the repairs.
>
> 2. Jorgeson was not authorized to order any repairs.
>
> 3. Kauzlarich cannot ascertain, except at great expense, whether genuine Porsche parts were used for the repair.

I asked a paralegal to compile some information, and a memo is attached. Normally we charge 30% of the amount we recover on collection cases. The firm reserves the right, however, to turn down particular collections, or to increase the fee, if the collection raises legal issues of arguable merit. What do you think about this one?

The Lotus Garage

1407 Midfield Highway
Burlington, Rhode Island

Customer order number. 1224 Date. August 14

Name, William Kauzlarich

Address. 3318 Oxford, East Burlington, Rhode Island

Description: Storage of 1983 Porsche

Parts.
Labor
Total 300

Description: Repair of clutch

Parts.
Labor
Total 1250

Description: Repair of heater box

Parts.
Labor
Total 1470

Total 3020

Memorandum

Re: Lotus Garage

To: Alex Associate

From: Perry Paralegal

At your request, I found out the following by calling the Porsche dealer and Mr. Walton of Lotus.

The Porsche automobile is of German manufacture. A new Porsche 911 sells for more than $70,000. A 1983 Porsche sells for between $10,000 and $18,000, depending on condition.

There is only one Porsche dealer in Burlington: Transderm Automotive. A representative of Transderm says that it would have charged the following for the repairs:

Clutch	$1500
Heater box	$1750

The Lotus garage has been in business for 12 years. It regularly repairs domestic cars, and occasionally German cars. In the last five years, it has made repairs of one kind or another on Porsches on an average of twice per year.

Kauzlarich appeared at the garage 2 weeks before the storage. He said that he might be going to England for several months and wondered if Lotus had car storage with regular driving. Walton said that it did, at a rate of $100 per month.

Kauzlarich said that he would let them know. During the conversation, according to Walton, Kauzlarich complained about the high price of Porsche repairs at Transderm, and said "Lotus ought to get into this business." Walton replied, "Well, we do every chance we get." “I didn’t know that, look for some business from me,” said Kauzlarich.

Repair parts manufactured by Porsche are more expensive than similar parts (called "after-market" parts) manufactured by other companies. For example, Porsche lists brake pads for a Porsche 911 at $86, whereas three other manufacturers of brake pads for Porsches charge an average of $57. Transderm installs Porsche parts unless the customer specifies after-market parts.

BAILEY v. WEST

105 R.I. 61, 249 A.2d 414
Supreme Court of Rhode Island, 1969

PAOLINO, J.

This is a civil action wherein the plaintiff alleges that the defendant is indebted to him for the reasonable value of his services rendered in connection with the feeding, care and maintenance of a certain race horse named "Bascom's Folly" from May 3, 1962 through July 3, 1966. The case was tried before a justice of the superior court sitting without a jury, and resulted in a decision for

the plaintiff for his cost of boarding the horse for the five months immediately subsequent to May 3, 1962, and for certain expenses incurred by him in trimming its hoofs. The cause is now before us on the plaintiff's appeal and defendant's cross appeal from the judgment entered pursuant to such decision.

The facts material to a resolution of the precise issues raised herein are as follows. In late April 1962, defendant, accompanied by his horse trainer, went to Belmont Park in New York to buy race horses. On April 27, 1962, defendant purchased "Bascom's Folly" from a Dr. Strauss and arranged to have the horse shipped to Suffolk Downs in East Boston, Massachusetts. Upon its arrival defendant's trainer discovered that the horse was lame, and so notified defendant, who ordered him to reship the horse by van to the seller at Belmont Park. The seller refused to accept delivery at Belmont on May 3, 1962, and thereupon, the van driver, one Kelly, called defendant's trainer and asked for further instructions. Although the trial testimony is in conflict as to what the trainer told him, it is not disputed that on the same day Kelly brought "Bascom's Folly" to plaintiff's farm where the horse remained until July 3, 1966, when it was sold by plaintiff to a third party.

While "Bascom's Folly" was residing at his horse farm, plaintiff sent bills for its feed and board to defendant at regular intervals. According to testimony elicited from defendant at the trial, the first such bill was received by him some two or three months after "Bascom's Folly" was placed on plaintiff's farm. He also stated that he immediately returned the bill to plaintiff with the notation that he was not the owner of the horse nor was it sent to plaintiff's farm at his request. The plaintiff testified that he sent bills monthly to defendant and that the first notice he received from him disclaiming ownership was ". . . maybe after a month or two or so" subsequent to the time when the horse was left in plaintiff's care.

In his decision the trial judge found that defendant's trainer had informed Kelly during their telephone conversation of May 3, 1962, that ". . . he would have to do whatever he wanted to do with the horse, that he wouldn't be on any farm at the defendant's expense . . . ." He also found, however, that when "Bascom's Folly" was brought to his farm, plaintiff was not aware of the telephone conversation between Kelly and defendant's trainer, and hence, even though he knew there was a controversy surrounding the ownership of the horse, he was entitled to assume that ". . . there is an implication here that, I am to take care of this horse." Continuing his decision, the trial justice stated that in view of the result reached by this court in a recent opinion[1] wherein we held that the instant defendant was liable to the original seller, Dr. Strauss, for the purchase price of this horse, there was a contract "implied in fact" between the plaintiff and defendant to board "Bascom's Folly" and that this contract continued until plaintiff received notification from defendant that he would not be responsible for the horse's board. The trial justice further stated that ". . . I think there was notice given at least at the end of the four months, and I think we must add another month on there for a reasonable disposition of his property."

In view of the conclusion we reach with respect to defendant's first two contentions, we shall confine ourselves solely to a discussion and resolution of the issues necessarily implicit therein, and shall not examine other subsidiary arguments advanced by plaintiff and defendant.

I

The defendant alleges in his brief and oral argument that the trial judge erred in finding a contract "implied in fact" between the parties. We agree.

---

[1] See Strauss v. West, 100 R.I. 388, 216 A.2d 366.

The following quotation from 17 C.J.S. Contracts § 4 at pp. 557-560, illustrates the elements necessary to the establishment of a contract "implied in fact":

> . . . A "contract implied in fact," . . . or an implied contract in the proper sense, arises where the intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, or, as it has been otherwise stated, where there are circumstances which, according to the ordinary course of dealing and the common understanding of men, show a mutual intent to contract.

It has been said that a contract implied in fact must contain all the elements of an express contract. So, such a contract is dependent on mutual agreement or consent, and on the intention of the parties; and a meeting of the minds is required. A contract implied in fact is to every intent and purpose an agreement between the parties, and it cannot be found to exist unless a contract status is shown. Such a contract does not arise out of an implied legal duty or obligation, but out of facts from which consent may be inferred; there must be a manifestation of assent arising wholly or in part from acts other than words, and a contract cannot be implied in fact where the facts are inconsistent with its existence.

Therefore, essential elements of contracts "implied in fact" are mutual agreement, and intent to promise, but the agreement and the promise have not been made in words and are implied from the facts. Power-Matics, Inc. v. Ligotti, 79 N.J. Super. 294, 191 A.2d 483 (1963); St. Paul Fire & M. Ins. Co. v. Indemnity Ins. Co. of No. America, 32 N.J. 17, 158 A.2d 825 (1960); St. John's First Lutheran Church v. Storsteen, 77 S.D. 33, 84 N.W.2d 725 (1957).

In the instant case, plaintiff sued on the theory of a contract "implied in law." There was no evidence introduced by him to support the establishment of a contract "implied in fact," and he cannot now argue solely on the basis of the trial justice's decision for such a result.

The source of the obligation in a contract "implied in fact," as in express contracts, is in the intention of the parties. We hold that there was no mutual agreement and "intent to promise" between the plaintiff and defendant so as to establish a contract "implied in fact" for defendant to pay plaintiff for the maintenance of this horse. From the time Kelly delivered the horse to him plaintiff knew there was a dispute as to its ownership, and his subsequent actions indicated he did not know with whom, if anyone, he had a contract. After he had accepted the horse, he made inquiries as to its ownership and, initially, and for some time thereafter, sent his bills to both defendant and Dr. Strauss, the original seller.

There is also uncontroverted testimony in the record that prior to the assertion of the claim which is the subject of this suit neither defendant nor his trainer had ever had any business transactions with plaintiff, and had never used his farm to board horses. Additionally, there is uncontradicted evidence that this horse, when found to be lame, was shipped by defendant's trainer not to plaintiff's farm, but back to the seller at Belmont Park. What is most important, the trial justice expressly stated that he believed the testimony of defendant's trainer that he had instructed Kelly that defendant would not be responsible for boarding the horse on any farm.

From our examination of the record we are constrained to conclude that the trial justice overlooked and misconceived material evidence which establishes beyond question that there never existed between the parties an element essential to the formulation of any true contract, namely, an "intent to contract." Compare Morrissey v. Piette, R.I., 241 A.2d 302, 303.

II

The defendant's second contention is that, even assuming the trial justice was in essence predicating defendant's liability upon a quasi-contractual theory, his decision is still unsupported by competent evidence and is clearly erroneous.

The following discussion of quasi-contracts appears in 12 Am. Jur., Contracts, § 6 (1938) at pp. 503 to 504:

> A quasi contract has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of, their intention. For a quasi contract neither promise nor privity, real or imagined, is necessary. In quasi contracts the obligation arises, not from consent of the parties, as in the case of contracts, express or implied in fact, but from the law of natural immutable justice and equity. The act, or acts, from which the law implies the contract must, however, be voluntary. Where a case shows that it is the duty of the defendant to pay, the law imputes to him a promise to fulfil that obligation. The duty, which thus forms the foundation of a quasi-contractual obligation, is frequently based on the doctrine of unjust enrichment. . . .
>
> The law will not imply a promise against the express declaration of the party to be charged, made at the time of the supposed undertaking, unless such party is under legal obligation paramount to his will to perform some duty, and he is not under such legal obligation unless there is a demand in equity and good conscience that he should perform the duty.

Therefore, the essential elements of a quasi-contract are a benefit conferred upon defendant by plaintiff, appreciation by defendant of such benefit, and acceptance and retention by defendant of such benefit under such circumstances that it would be inequitable to retain the benefit without payment of the value thereof. Home Savings Bank v. General Finance Corp., 10 Wis. 2d 417, 103 N.W.2d 117, 81 A.L.R.2d 580.

The key question raised by this appeal with respect to the establishment of a quasi-contract is whether or not plaintiff was acting as a "volunteer" at the time he accepted the horse for boarding at his farm. There is a long line of authority which has clearly enunciated the general rule that ". . . if a performance is rendered by one person without any request by another, it is very unlikely that this person will be under a legal duty to pay compensation." 1 A Corbin, Contracts §234.

The Restatement of Restitution, §2 (1937) provides: "A person who officiously confers a benefit upon another is not entitled to restitution therefor." Comment a in the above-mentioned section states in part as follows:

Policy ordinarily requires that a person who has conferred a benefit . . . by way of giving another services . . . should not be permitted to require the other to pay therefor, unless the one conferring the benefit had a valid reason for so doing. A person is not required to deal with another unless he so desires and, ordinarily, a person should not be required to become an obligor unless he so desires.

Applying those principles to the facts in the case at bar it is clear that plaintiff cannot recover. The plaintiff's testimony on cross-examination is the only evidence in the record relating to what transpired between Kelly and him at the time the horse was accepted for boarding. The defendant's attorney asked plaintiff if he had any conversation with Kelly at that time, and plaintiff answered in substance that he had noticed that the horse was very lame and that Kelly had told him: "That's why they wouldn't accept him at Belmont Track." The plaintiff also testified that he had inquired of Kelly as to the ownership of "Bascom's Folly," and had been told that "Dr. Strauss made a deal

and that's all I know." It further appears from the record that plaintiff acknowledged receipt of the horse by signing a uniform livestock bill of lading, which clearly indicated on its face that the horse in question had been consigned by defendant's trainer not to plaintiff, but to Dr. Strauss's trainer at Belmont Park. Knowing at the time he accepted the horse for boarding that a controversy surrounded its ownership, plaintiff could not reasonably expect remuneration from defendant, nor can it be said that defendant acquiesced in the conferment of a benefit upon him. The undisputed testimony was that defendant, upon receipt of plaintiff's first bill, immediately notified him that he was not the owner of "Bascom's Folly" and would not be responsible for its keep.

It is our judgment that the plaintiff was a mere volunteer who boarded and maintained "Bascom's Folly" at his own risk and with full knowledge that he might not be reimbursed for expenses he incurred incident thereto.

The plaintiff's appeal is denied and dismissed, the defendant's cross appeal is sustained, and the cause is remanded to the superior court for entry of judgment for the defendant.

Charles Pharol, Contract Law Basics

Margee Pub. Company

The American court system is made up of two branches: the state courts and the federal courts. One could say, being more precise, that there are more than 50 separate systems: one federal and one in each state.

The law of contracts is found in state court decisions. Federal courts decide contract law issues only when they apply state law, or enforce a specialized federal statute, such as one regulating government contracts.

Each state has its own system of trial and appellate courts. The names of the trial courts vary from state to state. Some states have but one appellate court: if a case is appealed, it will proceed from a trial court to the highest court in the state. Other states have intermediate appellate courts situated between the trial courts and the highest court in the state. Many, but not all, states name their highest court the "Supreme Court." But in New York, for instance, the highest state court is called the "Court of Appeals."

When a state appellate court decides a case, its decision is ordinarily, but not invariably, published. In many states, the decisions are collected in bound volumes printed by the state. Thus the decision consists of an outcome and of stated reasons in support of it. A private company, the West Publishing Company, also publishes state court decisions. It groups several states together and publishes them as a regional reporter.

Consider this citation,

230 Minn. 246, 41 N.W.2d 561.

This is a case decided by the Supreme Court of Minnesota. It is found in volume 230 of the state court reporter. It is also published in volume 41 of the Northwest Reporter, second series, produced by the West Publishing Company.

Appellate courts often sit in panels of judges. If the highest court in the state has nine judges, all nine may hear a case; or state procedures may provide that only a panel of three judges will hear the case unless the court votes to hear it en banc (by the entire court). Sometimes a judge will disagree with the result in the case and will dissent. When a judge disagrees with part of the supporting reasons, or when the judge wants to add an additional reason, the judge will concur in the majority opinion, but write a separate opinion.

Trial courts in a particular state are bound to follow the precedents handed down by the highest court in the state. (For convenience, I will refer to this court as the state supreme court.) When a case comes before a trial court, one set of lawyers may argue that the result in the case is governed by a state supreme court precedent. The lawyers on the other side are likely to contend that the precedent is sufficiently different from the case before the trial court that it does not apply. This is called "distinguishing" the case.

A state supreme court is not required to follow its own precedents. If it were, the law could only be changed by the legislature. Nevertheless, courts quite routinely do follow their precedents. The role of the lawyer when a contracts case is on appeal and precedent is against her is to “distinguish” the case, or, failing that, argue that the precedent was wrongly decided or ought to be changed in light of subsequent events. It is easier to distinguish a case than to reverse a precedent.

* * *

With Professor Samuel Williston as its Reporter and Professor Arthur Corbin as an advisor, the American Law Institute (ALI) published the Restatement of the Law of Contracts in 1932. The American Law Institute was and is an organization made up of distinguished law professors, practicing attorneys, and judges, formed for the purpose of "restating" the law in a variety of subject matters. The Restatement was not intended to be enacted as a statute. Instead, the Restatement was written to assist courts in determining the patterns of judicial decisions in the developing common law of contracts. The ALI has revised the Restatement, adopting the Restatement (Second) of Contracts in 1979.

In addition to its “sections,” the Restatement also includes comments prepared by the Reporter. Illustrations are given, often drawn from actual cases.

In the 1940s, a group of scholars and practitioners headed by Professor Karl Llewellyn and working under the auspices of the ALI and the National Conference of Commissioners on Uniform State Laws drafted the Uniform Commercial Code (UCC). Article 2 of the UCC applies to the sale of goods. Rather than restating the law, Article 2 was an ambitious effort to simplify, modernize and standardize the various state laws governing the sale of goods. Every state except Louisiana has enacted Article 2 as a state law statute. Article 2 has often influenced the development of contract law in areas beyond its official limitation to the sale of goods.

The Comments to the UCC are not part of the statute, they are prepared by the ALI to explain and illustrate the statutory sections.

Restatement (Second) of Contracts

§ 1. Contract Defined

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

§ 2. Promise; Promisor; Promisee; Beneficiary

(1) A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.

(2) The person manifesting the intention is the promisor.

(3) The person to whom the manifestation is addressed is the promisee.

§ 4. How a Promise May Be Made

A promise may be stated in words either oral or written, or may be inferred wholly or partly from conduct.

Comment to § 4.

a. Express and implied contracts. Contracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect, but lies merely in the mode of manifesting assent. Just as assent may be manifested by words or other conduct, sometimes including silence, so intention to make a promise may be manifested in language or by implication from other circumstances, including course of dealing or usage of trade or course of performance. . . .

Illustrations:

> 1. A telephones to his grocer, "Send me a ten-pound bag of flour." The grocer sends it. A has thereby promised to pay the grocer's current price therefor.
>
> 2. A, on passing a market, where he has an account, sees a box of apples marked "25 cts. each." A picks up an apple, holds it up so that a clerk of the establishment sees the act. The clerk nods, and A passes on. A has promised to pay twenty-five cents for the apple.

b. Quasi-contracts. Implied contracts are different from quasi-contracts, although in some cases the line between the two is indistinct. Quasi-contracts have often been called implied contracts or contracts implied in law; but, unlike true contracts, quasi-contracts are not based on the apparent intention of the parties to undertake the performances in question, nor are they promises. They are obligations created by law for reasons of justice. Such obligations were ordinarily enforced at common law in the same form of action (assumpsit) that was appropriate to true contracts, and some confusion with reference to the nature of quasi-contracts has been caused thereby. They are dealt with in the Restatement of Restitution. . . .