North Dakota Law Review

Volume 23 | Number 1 Article 5

1947

Conflicts of Law - Contracts - Law of State in Which Contract Is to Be Performed Governs Performance of Contract

RECENT CASES

CONFLICTS OF LAW—CONTRACTS—LAW OF STATE IN WHICH CONTRACT IS TO BE PERFORMED GOVERNS PERFORMANCE OF CONTRACT*—Bonholders under the Superior and Duluth Division and Terminal First Mortgage claimed interest on their bonds at a rate greater than four per cent after May 1, 1936, the maturity date of the bonds. The bond mortgage was executed and delivered in New York, and the interest thereon was payable in that state. There was no express provision in the mortgage as to the interest rate after maturity. In New York, the statutory interest rate of six per cent governed after maturity unless the parties stipulated for a different rate. Other bondholders of the corporation contended that either the mortgage should be construed to imply the same rate of interest as applied before maturity, or that Minnesota law, the law of the forum, governed the contract. The court held, that an order be granted allowing interest to claimants at the New York statutory rate. As no interest rate could be inferred from the mortgage, the New York statutory rate should be applied to the bonds after maturity, since the law of the state in which a contract is to be performed governs the performance of a contract. In Re Wisconsin Central Ry. Co., (D. Minn. 1945) 63 F. Supp. 151. (Facts and holdings on other issues involved in the case are omittel.)

The instant case followed the decision of McCulloch v. Canadian Pacific Ry Co., (D. Minn. 1943) 53 F. Supp. 534, in holding first, that the conflict of laws rules of Minnesota must be followed by a federal court sitting in this state under the decision of Klaxon Co. v. Stentor Electric Mfg. Co., (1941) 313 U. S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477; and, secondly, that the conflict of laws rule in Minnesota is that the law of the place of performance governs the performance of a contract. The court in the McCulloch Case cited Thomson-Houston Electric Co. v. Palmer, (1893) 52 Minn. 174, 53 N. W. 1137, 38 Am. St. Rep. 536, as authority in support of the latter proposition; but in that case, because the contract was both made and performed in Illinois, it was stated that the parties would presumably intend the law of Illinois to apply. While the Restatement, Conflict of Laws, sec. 358, p. 437, adheres to the rule stated by the court in the instant case, the law on the proposition in Minnesota, which the court purported to follow, is not clear. McClintock, Conflict of Laws as to Contract: The Restatement and Minnesota Decisions Compared, (1929) 13 Minnesota Law Review 538, 551-552. Although the question has never been squarely presented to the Supreme Court of Minnesota, there are dicta in accord with the rule of the Restatement. See Lewis v. Bush, (1883) 30 Minn. 244, 247, 15 N. W. 113; Johnson v. Nelson (1915) 128 Minn. 158, 160-161, 150 N. W. 620; but see Gilbert v. Fosston Manufacturing Co., (1927) 174 Minn. 68, 71, 216 N. W. 778, mod., 174 Minn. 68, 218 N. W. 451. In general, it may be said that the Minnesota court has found it unnecessary to distinguish between cases involving the question of validity of a contract in its inception, (1936) 20 Minnesota Law Review 309, (1940) 24 Minnesota Law Review 410, and cases concerning the

*This case note first appeared in Volume 30 of the Minnesota Law Review at page 123, and we are indebted to that publication for permission to reprint it.

law of performance of a valid contract. McClintock, Conflict of Laws as to Contracts: Minnesota Decisions, (1926) 10 Minnesota Law Review 498, 499. The decision in the instant case is unquestionably correct, since the contract was both made and performed in New York, True v. Northern Pacific Ry Co., (1914) 126 Minn. 72, 75-76, 147 N. W. 948; Patterson v. Wyman, (1919) 142 Minn. 70, 72, 170 N. W. 928, but quaere as to what rule the Supreme Court of Minnesota would follow if a valid contract were made in Minnesota to be performed in another state.

CONSTITUTIONAL LAW—STATE TAXATION OF INTERSTATE COMMERCE*—The city of Richmond by ordinance required all solicitors to pay an annual tax before being permitted to solicit business within the city.[1] Appellant, a representative of a Washington, D. C. firm, was arrested for soliciting without having previously procured the required license.[2] Appellant was convicted and her conviction was upheld by the Supreme Court of Appeals of Virginia.[3] On appeal to the United States Supreme Court she contended that the statute upon which her conviction was based was unconstitutional, inasmuch as it was repugnant to the Commerce Clause of the Federal Constitution.[4] Held, reversed. Taxes that discriminate against interstate commerce are unconstitutional and the court in each case will look at the practical consequences of such taxes to see if such discrimination is present.[5] Nippert v. City of Richmond, (U.S. 1946) 66 S. Ct. 586.

Until 1938, while the Court was dominated by the belief that interstate commerce should be free from all state taxation, taxes similar in design to the impost sought to be imposed in the principal case were consistently invalidated.[6] Then in Western Live

*This case note first appeared in Volume 44 of the Michingan Law Review at page 1135, and we are indeoted to that publication ior permission to reprint it.

1 Richmond City Code (1939) c. 10, § 23. The ordinance lays an annual license tax in the following terms: "(Upon) . . .—Agents—Solicitors—Persons, Firms or Corporations engaged in business as solicitors . . . $50.00 and one-half of one percentum of the gross earnings, receipts, fees or commissions for the preceding license year in excess of $1,000.00 . . ." Quoted by the Court, principal case at 587.

2 The firm in question employs solicitors throughout the country selling ladies' garments at $2.98 each. The solicitor obtains the order and receives a down payment usually sufficient to pay the solicitor's commission. The order is then sent to the home office and is filled through the mails. The record does not show whether appellant would have been compensated by her company had she paid the tax. Yet whether the company does or does not absorb the tax should not affect the result.

3 183 Va. 689, 33 S. E. (2d) 206 (1945).

4 Article 1, Sec. 8 ,cl. 3, "Congress shall have the power to regulate commerce . . . among the several States . . ."

5 The statute also required that in applying for the permit, "evidence of the good character of the individual, the members of the firm, or the chief officers of the corporation, as the case may be" had to be produced. The Director of Public Safety was to make a reasonable investigation and if he was satisfied that the applicant was of a good moral character and fit to engage in the proposed business he was to issue the permit.

The appellant, before the United States Supreme Court, argued that this discretionary power given to the director was sufficient to invalidate the measure without respect to the character of the tax. This contention had not been relied upon in the lower court and the court did not consider this question. It does seem, however, that if the power given to the director can be shown to be a reasonable safety measure it would not be open to attack.

6 Robbins v. Shelby County Taxing District, 120 U. S. 489, 7 S. Ct. 592 (1887), was the first case involving such a tax to come before the Court. There the Court flatly said at p. 497, "Interstate commerce cannot be taxed at all, even though the same amount of tax should be laid on domestic commerce . . ." Since then, and until 1938, nineteen such taxes have been invalidated, culminating with Real Silk Hosiery Mills v. Portland, 268 U. S. 325, 45 S. Ct. 529 (1925). For specific references to these cases and an analysis of them in respect to their possible effect upon a sales tax of the type considered in the Berwind-White case, see Lockhart. "The Sales Tax in Interstate Commerce," 52 Harv. L. Rev. 617 (1939). For bibliographical material on this subject generally see 43 Mich. L. Rev. 761 at 774-775, items 47-51 (1945).