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Commercial Law—EQUITABLE ESTOPPEL AND THE U.C.C. STATUTE OF FRAUDS—*Sacred Heart Farmers Cooperative Elevator v. Johnson*, 305 Minn. 324, 232 N.W. 2d 921 (1975); *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 230 N.W.2d 588 (1975).

In two recent cases, *Del Hayes & Sons, Inc. v. Mitchell*¹ and *Sacred Heart Farmers Cooperative Elevator v. Johnson*,² the Minnesota Supreme Court held that in the absence of misrepresentation or concealment of material facts, equitable estoppel is not available to take an oral contract for the sale of grain out of the Uniform Commercial Code's (hereinafter U.C.C.) Statute of Frauds.³

In *Del Hayes*, the plaintiff orally agreed to sell and the defendants to purchase a quantity of soybeans for \$3.50 per bushel. After approximately 4,020 bushels had been delivered, the parties disagreed as to whether or not the oral agreement had been fully performed.⁴ Payment for the soybeans which had been delivered had not been made, causing plaintiff to file suit seeking recovery of the agreed price.⁵ Defendants counterclaimed for damages arising from plaintiff's alleged failure to deliver the agreed upon quantity of soybeans. The Statute of Frauds was asserted by the plaintiff in reply to defendants' counterclaim.⁶ Finding the counterclaim to be within the Statute of Frauds despite defendants' offer to prove that they had contracted to resell 5,000 bushels in reliance on the oral contract, the trial court granted summary judgment. The trial court rejected defendants' argument that the alleged conduct and representations of the plaintiff estopped him from asserting the Statute of Frauds, holding that, even if proved, the allegations were not sufficient to constitute an estoppel. The defendants appealed, one issue⁷

1. 304 Minn. 275, 230 N.W.2d 588 (1975).

2. 305 Minn. 324, 232 N.W.2d 921 (1975).

3. MINN. STAT. § 336.2-201 (1976). This section corresponds to U.C.C. § 2-201 (1972 version).

4. The plaintiff claimed that the contract was for 4,000 bushels, while the defendants claimed that the contract was for a "bin of beans" which they claimed would amount to approximately 5,000 to 5,500 bushels. 304 Minn. at 281, 230 N.W.2d at 592.

5. The parties stipulated that the agreed price for the grain actually delivered was \$13,151.73. *Id.* at 277, 230 N.W.2d at 590.

6. Plaintiff was allowed to amend its reply to defendants' counterclaim to include the defense of the Statute of Frauds after the trial court raised the issue during the pretrial conference. *Id.*

7. Defendants' appeal raised three other issues. The first issue was whether the trial court had exceeded its authority in granting what amounted to a summary judgment *sua sponte* based on the record. The supreme court held that, while none of the procedural rules expressly give the trial court authority to enter a summary judgment on its own motion, the power is inherent and it was properly exercised by the trial court. In so holding, the court cited *Niazi v. St. Paul Mercury Ins. Co.*, 265 Minn. 222, 121 N.W.2d 349 (1963). Another issue raised was whether a general issue of material fact was presented with respect to the question of whether a "bin of beans" constituted a commercial unit within the meaning of MINN. STAT. § 336.2-105(6) (1976), the defendant having argued

being whether a genuine issue of a material fact existed concerning whether the plaintiff was estopped from asserting the Statute of Frauds.

The Minnesota Supreme Court stated that, while the U.C.C.'s Statute of Frauds⁸ does not expressly indicate that estoppel can take a contract out of the Statute of Frauds, the general savings provision of the U.C.C. provides that common law principles, including estoppel, apply unless expressly displaced by provisions of the U.C.C.⁹ The court distinguished equitable estoppel¹⁰ from promissory estoppel,¹¹ holding that promissory estoppel was inapplicable because an oral contract existed.¹² The court then considered equitable estoppel, referring to the elements of equitable estoppel as stated by Pomeroy,¹³ which make it

that the contract was for a "bin of beans," that less than a "bin of beans" had been delivered, that acceptance of any part of a bin under MINN. STAT. § 336.2-606(2) (1976) constituted acceptance of the entire bin, and that thus the Statute of Frauds was not applicable. The supreme court did not reach the issue, holding instead that under MINN. STAT. § 336.2-201(3)(c) (1976) the goods must "have been received and accepted" before the Statute of Frauds can be avoided, relying on *Johnston Jewels, Ltd. v. Leonard*, 156 Conn. 75, 239 A.2d 500 (1968). The issue of whether the trial court erred in entering judgment against the defendant Mitchell individually was also raised on appeal. The court held that Mitchell's failure to make a proper record concerning this issue precluded him from raising it on appeal.

8. MINN. STAT. § 336.2-201(1) (1976) provides:

Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.

9. MINN. STAT. § 336.1-103 (1976) provides: "Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

10. Equitable estoppel sometimes is referred to as estoppel in pais. *E.g.*, *Roberts v. Friedell*, 218 Minn. 88, 96, 15 N.W.2d 496, 500 (1944).

11. Promissory estoppel is sometimes referred to as quasi-contract. *E.g.*, *Del Hayes & Sons v. Mitchell*, 304 Minn. 275, 282, 230 N.W.2d 588, 593 (1975).

12. The effect of promissory estoppel is to imply a contract where a contract does not otherwise exist. See RESTATEMENT OF CONTRACTS § 90 (1932).

13. See 3 J. POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 805 (5th ed. 1941). Pomeroy sets forth the elements of equitable estoppel as follows:

1. There must be conduct—acts, language, or silence—amounting to a representation or a concealment of material facts.
2. These facts must be known to the party estopped at the time of said conduct, or at least the circumstances must be such that the knowledge of them is necessarily imputed to him.
3. The truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel, at the time when such conduct was done, and at the time when it was acted upon by him.
4. The conduct must be done with the intention, or at least with the expectation, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon. There are several familiar species in

“akin to fraud” and require a representation or concealment of material facts.¹⁴ Affirming the trial court, the supreme court held that the defendants’ offer of proof did not show a representation or concealment of material facts and thus could not take the oral contract out of the Statute of Frauds.

In *Sacred Heart Farmers Cooperative Elevator v. Johnson*,¹⁵ the defendant farmer orally agreed¹⁶ to sell plaintiff grain elevator 30,000 bushels of corn at \$1.22 per bushel.¹⁷ The defendant overheard plaintiff’s manager call a grain dealer and negotiate a resale of defendant’s corn.¹⁸ Despite defendant’s urging over a period of several months,¹⁹ plaintiff refused to take delivery. When plaintiff finally requested delivery, defendant refused, having sold the corn elsewhere a few days earlier. The plaintiff sued and a jury found that plaintiff had relied on the oral contract to its detriment, that defendant had knowledge of the reliance, and that plaintiff was entitled to \$6,900 in damages. The defendant appealed, the sole issue being whether equitable estoppel could prevent the defendant from raising the Statute of Frauds defense and thereby render the contract unenforceable.

The Minnesota Supreme Court, considering the facts to be “legally indistinguishable” from *Del Hayes*, reversed, holding that equitable estoppel was not available. The court stated that the defendant had made no factual representations which he later sought to deny and that none of his actions were so tainted with unfair dealing as to approach fraud

which it is simply impossible to ascribe any intention or even expectation to the party estopped that his conduct will be acted upon by the one who afterwards claims the benefit of the estoppel. 5. The conduct must be relied upon by the other party, and, thus relying, he must be led to act upon it. 6. He must in fact act upon it in such a manner as to change his position for the worse; in other words, he must so act that he would suffer a loss if he were compelled to surrender or forego or alter what he has done by reason of the first party being permitted to repudiate his conduct and to assert rights inconsistent with it.

Id. at 191-92 (emphasis in original).

14. See, e.g., *Bremer v. Commissioner of Taxation*, 246 Minn. 446, 454-55, 75 N.W.2d 470, 475 (1956).

15. 305 Minn. 324, 232 N.W.2d 921 (1975).

16. During the trial, the defendant denied that any contract ever existed. However, the jury found, based on abundant evidence, that an oral contract existed and this finding was not appealed.

17. The corn was to be delivered within 60 days or whenever boxcars, apparently for hauling corn, became available. See 305 Minn. at 324, 232 N.W.2d at 922.

18. In this aspect *Sacred Heart* differs from *Del Hayes*, since it is clear that the defendant in *Sacred Heart* was aware that a resale contract had been made while it is not clear from the facts in *Del Hayes* whether the plaintiff was expressly aware of the resale contract.

19. The oral contract was entered into on January 19, 1973, and the plaintiff refused to accept delivery through all of February, March, and April. This refusal was apparently based on the unavailability of boxcars.

and preclude him from invoking the Statute of Frauds.²⁰

In *Del Hayes*, the Minnesota Supreme Court correctly distinguished promissory estoppel and equitable estoppel. Promissory estoppel is used to imply a contract where one does not otherwise exist²¹ and has been considered as "a species of or substitute for consideration."²² Thus, because the existence of a contract was not in issue, the court properly refused to apply promissory estoppel.²³ Equitable estoppel, on the other hand, was defined by the court as requiring a representation or concealment of a material fact, and it may be utilized to take an otherwise unenforceable oral contract out of the Statute of Frauds.

In stating that the U.C.C.'s Statute of Frauds does not prevent the application of the doctrine of equitable estoppel, the court followed its previous non-U.C.C. decisions concerning the Statute of Frauds in cases involving the sale of real estate.²⁴ All other jurisdictions which have considered the applicability of the doctrine of equitable estoppel to Statute of Frauds cases, except one,²⁵ have reached the same conclusion.²⁶

In adopting Pomeroy's requirements for equitable estoppel,²⁷ and thereby requiring a representation or concealment of material facts,²⁸ the Minnesota Supreme Court followed what could be termed the

20. The supreme court, citing *Del Hayes* as recognizing that there is always some degree of reliance on an oral contract, stated that the plaintiff's reliance in making a resale was not sufficient to require an estoppel. 305 Minn. at 327, 232 N.W.2d at 923.

21. The classic statement of promissory estoppel is contained in the RESTATEMENT OF CONTRACTS § 90 (1932) which provides: "A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."

22. Constructors Supply Co. v. Bostrom Sheet Metal Works, Inc., 291 Minn. 113, 116, 190 N.W.2d 71, 74 (1971).

23. As was discussed in Note, *Statute of Frauds—The Doctrine of Equitable Estoppel and the Statute of Frauds*, 66 MICH. L. REV. 170, 175-79 (1967), a number of jurisdictions have failed to distinguish promissory estoppel from equitable estoppel when dealing with the Statute of Frauds.

24. *E.g.*, *Poksyla v. Sundholm*, 259 Minn. 125, 106 N.W.2d 202 (1960). The court also followed its prior decisions that an essential element of equitable estoppel is a representation or concealment of material facts. See *Bremer v. Commissioner of Taxation*, 246 Minn. 446, 454, 75 N.W.2d 470, 475 (1956).

25. The Supreme Court of Pennsylvania has, in its own words, "consistently held that principles of estoppel may not be invoked against operation of the Statute of Frauds." *Del Borrello v. Lauletta*, 455 Pa. 350, 352, 317 A.2d 254, 255 (1974) (citing *Polka v. May*, 383 Pa. 80, 118 A.2d 154 (1955); *Peterson v. Chandler*, 362 Pa. 102, 66 A.2d 284 (1949); *Mott v. Kaldes*, 288 Pa. 264, 135 A. 764 (1927)).

26. See Note, *supra* note 23, at 180.

27. See note 13 *supra*.

28. *Sacred Heart Farmers Coop. Elevator v. Johnson*, 305 Minn. 324, 327, 232 N.W.2d 921, 923 (1975); *Del Hayes & Sons, Inc. v. Mitchell*, 304 Minn. 275, 286, 230 N.W.2d 588, 595 (1975).

historical view of equitable estoppel.²⁹ This view is consistent with that of other jurisdictions which have considered the applicability of equitable estoppel in the context of cases involving the sale of growing crops³⁰ and is probably the majority view. However, a substantial minority of jurisdictions have eliminated the requirement that there be a representation of material facts.³¹ One minority approach which appears to have growing support requires: (1) a promise to perform, (2) reasonable reliance on the promise, and (3) that either an "unconscionable injury or unjust enrichment" would result from a refusal to enforce the contract.³² This approach essentially allows avoidance of the Statute of Frauds in all cases except those in which its enforcement would not produce an unconscionable result.³³ A somewhat similar approach which seeks to enforce oral contracts where enforcement is necessary to avoid injustice is stated in Section 217A of the *Restatement (Second) of Contracts*.³⁴ The *Restatement* advocates that

29. See Note, *supra* note 23, at 173.

30. See *Cox v. Cox*, 292 Ala. 106, 289 So. 2d 609 (1974) (oral contract for the sale of cotton); *Farmers Coop. Ass'n v. Cole*, 239 N.W.2d 808 (N.D. 1976) (oral contract for the sale of wheat; cited and followed *Sacred Heart and Del Hayes*). But see *Farmers Elevator Co. v. Lyle*, ___ S.D. ___, 238 N.W.2d 290 (1976) (oral contract for the sale of corn).

31. Note, *supra* note 23, at 174.

32. See *Mosekian v. Davis Canning Co.*, 229 Cal. App. 2d 118, 40 Cal. Rptr. 157 (Dist. Ct. App. 1964). For a good discussion of the development of the "unconscionable injury or unjust enrichment" position in California, see Comment, *Equitable Estoppel and the Statute of Frauds in California*, 53 CALIF. L. REV. 590 (1965).

33. Under this approach, recovery would not be allowed in those cases where recovery for an expectation interest is sought, see, e.g., *Bach v. Perkins*, 223 F.2d 251 (9th Cir.), cert. denied, 350 U.S. 918 (1955); where the plaintiff's reliance is not justified, see, e.g., *Aubrey v. Workman*, 384 S.W.2d 389 (Tex. Civ. App. 1964); or where restitution would provide satisfactory relief, see, e.g., *Kobus v. San Diego Trust & Sav. Bank*, 172 Cal. App. 2d 574, 342 P.2d 468 (1959).

34. RESTATEMENT (SECOND) OF CONTRACTS § 217A (Tent. Draft No. 4, 1973) provides:

(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

(2) In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant:

- (a) the availability and adequacy of other remedies, particularly cancellation and restitution;
- (b) the definite and substantial character of the action or forbearance in relation to the remedy sought;
- (c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence;
- (d) the reasonableness of the action or forbearance;
- (e) the extent to which the action or forbearance was foreseeable by the promisor.