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Statute of Frauds: Memorandum Must Show Complete Intent of Parties

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In some states the common-law rule against assignability of the possibility of reverter and its sister the right of entry for breach of condition subsequent has been changed by statute.[10] Some of these statutes expressly make the interests assignable, while others which make any interest or claim in real property tranferable are interpreted as applying to the possibility of reverter and the right of entry and making them transferable.[11] The Restatement of Property defines the possibility of reverter as a reversionary interest and declares that all reversionary interests are assignable.[12] In another section it holds nontransferable a power of termination,[13] but in that same section states that the rule is not to be applied in cases involving merger, consolidation or *dissolution* of a partnership or *corporation.* Applying the modified Restatement rule to the instant case this plaintiff as a dissolved corporation would recover, for it precludes the application of the *Cookman* dictum.

Irrespective of the doctrine of nonassignability there is still authority for a finding for this plaintiff. The United States Supreme Court has declared it settled law that if the grantor was an artificial person the successors of the grantor could take advantage of a condition annexed to an estate.[14] In that case the artificial person was a sovereign state but it is generally held that a corporation is an artificial person. Is it not logical then to conclude that the trustees of this dissolved corporation were the successors of an artificial person and therefore valid holders of the possibility of reverter?

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STATUTE OF FRAUDS: MEMORANDUM MUST SHOW COMPLETE INTENT OF PARTIES.—Morris Levin executed a will by which he devised and bequeathed his entire residuary estate to his two children by his wife, Yetta Levin, and expressly excluded from bequest his son by a previous marriage, Herman Levin. At the same time he signed and delivered the following letter to his wife:

September 16, 1942.

"Dear Yetta:

"This is to confirm our agreement as follows:

"You have under date of September 14, 1942, made a will whereby you have bequeathed and devised to me the entire net income of your estate after the payment of certain premiums, if any, on life insurance carried by me. You have done so in the knowledge that if you should predecease me I will leave my entire estate to our children Max Levin and Belle Burrill. I have this day made a will in which I have devised and bequeathed my entire residuary estate to our children Max and Belle in the event that you should predecease me.

"This letter is to confirm my agreement that in the event that you should pre-

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[10]RESTATEMENT, PROPERTY, § 160, comment c (1948).

States making right of termination alienable: Cal. Civ. Code, sec. 1046 (1945); Conn. Gen. Stat., sec. 5033 (1930); Ida. Code, sec. 54-502 (1932); Mont. Rev. Codes, sec. 6839 (1939); N. J. Stat. Ann., sec. 46:3-7 (1946); R. I. Gen. Laws, c. 433, sec. 10 (1938).

States with statutes making any interest in land alienable: Kan. Gen. Stat., secs. 67-202, 67-208, 77-201 (1935); Miss. Code, sec. 831 (1946); Va. Code, sec. 5147 (1942); W. Va. Code, sec. 3529 (1943).

[11]See note, 109 A. L. R. 1148, and 117 A. L. R. 563. See, also, a strong dissent by J. Potter to a holding that the right was inalienable. Dolby v. Dillman, 283 Mich. 609, 278 N. W. 694 (1938).

[12]RESTATEMENT, PROPERTY, § 154, 159.

[13]RESTATEMENT, PROPERTY, § 160.

[14]Schulenberg v. Harriman, 21 Wall. 44, 63, 22 L. Ed. 551 (1874).

decease me, and that at the time of your death you should not have revoked your said Will made on September 14, 1942, I will not revoke or alter my said Will made today.

(signed) Affectionately,

Morris Levin."

Yetta died without changing her will. Morris, after her death, revoked his will, executing another one in which he gave his entire estate to all three of his children, Herman, Belle, and Max, in equal shares. After Morris's death, Herman, as executor, brought a proceeding in the nature of an accounting for causes not pertinent here. Belle came in as objectant, seeking to exclude Herman from the bequest by specifically enforcing Morris's agreement not to revoke his first will. The letter was introduced as a memorandum to satisfy the Statute of Frauds.[1]

The introduction of Yetta's will in evidence revealed that its terms included a bequest of a substantial savings account to Max and Belle. Thus the terms of Yetta's will conflicted with the purported terms of her will as set out in Morris's letter. Belle introduced the testimony of an attorney present at the signing and delivery of the letter which tended to prove that Morris knew of, and was perfectly amenable to, Yetta's bequest to Max and Belle. Herman prevailed when the New York Court of Appeals in a 4/3 decision held it was reversible error to admit this testimony into evidence,[2] affirming the Supreme Court's reversal of the Surrogate's finding in favor of Belle.

As a basis for their holding, the majority stated that "a memo of a contract required by statute to be in writing must be by and of itself a complete expression of the intention of the parties without reference to parol evidence."[3] From this rule the court reasoned that since the oral evidence contradicted part of the letter it could not be admitted without first showing that the letter was an incomplete expression of intention and therefore an insufficient memorandum.[4] In order for Belle to get specific enforcement of the contract she had to prove performance by Yetta. She could not do this without the attorney's oral testimony, which, if admitted into evidence, would nullify the memorandum and void the underlying contract.

An examination of the cases, including the one cited by the majority in support of the rule set out above, indicates that the scope of application of the phrase "complete intention" is confined to the essential terms of a contract.[5] Parol evidence is inadmissible to correct an erroneous statement of the essential terms of the contract on the theory that the promisee is seeking to prove a contract different from, and therefore irrelevant to, the contract which the memorandum evidences.[6]

Thus the operative issue in the case was whether the recital in the letter which the parol evidence proved mistaken is a recital of an essential term. This, of course, depends upon the intent of the writer of the letter. Parol evidence is admissible to explain what meaning the writer intended by his phraseology unless that phraseology

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[1]N. Y. Pers. Prop. Law, sec. 31, subds. 1, 7.

[2]In re Levin's Estate, 302 N. Y. 2d 535, 99 N. E. 2d 877 (1951); affirming 276 App. Div. 739, 97 N. Y. S. 2d 148 (1950), which reversed 194 Misc. 553, 87 N. Y. S. 2d 282 (1950).

[3]In re Levin's Estate, *supra*, page 879.

[4]In re Levin's Estate, *supra*, page 879; Donald Friedman & Co. v. Newman, 255 N. Y. 340, 174 N. E. 703 (1931).

[5]Stulsaft v. Mercer Tube and Mfg. Co., 288 N. Y. 255, 43 N. E. 2d 31 (1942); Standard Oil Co. v. Koch, 260 N. Y. 150, 183 N. E. 278 (1932); Seymour v. Oelrichs, 156 Cal. 782, 134 Am. St. Rep. 154, 106 P. 88 (1909).

[6]Donald Friedman & Co. v. Newman, *supra*.