

WHEELER & WILSON MANUF'G CO. v. LYON.

(Circuit Court, D. Minnesota. December 21, 1895.)

1. MUTUALITY IN CONTRACTS.

Alleged want of mutuality in an agreement guarantying the performance of the contract of another is no defense, where the contract had become executed.

2. CONSTRUCTION OF CONTRACT.

Where the agent of a sewing-machine company contracted to purchase from the company "all parts and attachments," held, that by "parts" was meant portions or pieces of machinery such as may be used for repairs; and by "attachments," mechanisms belonging to the original machine.

3. LIABILITY OF GUARANTOR—ALTERATION OF INSTRUMENT.

Held that, under the evidence, the guarantor was not released from his liability.

This was an action by the Wheeler & Wilson Manufacturing Company against William H. Lyon upon a bond guarantying the performance of a contract.

Warren H. Mead and J. D. Flannery, for plaintiff.
Kitchel, Cohen & Shaw, for defendant.

NELSON, District Judge. This action is brought to enforce a bond executed by defendant, whereby he guaranties the faithful performance of a contract between one Frank McCloud and the plaintiff company, and the payment of all notes, indebtedness, or damages which might arise under said contract. By written stipulation a jury was waived, and the case tried by the court.

(1) I find that plaintiff is a corporation resident and a citizen of the state of Connecticut, and defendant is a resident and citizen of the state of Minnesota.

(2) I find that for some time previous to the 22d day of July, 1889, Frank McCloud had been employed in selling and leasing sewing machines upon salary and commission, as the agent of plaintiff, and that on July 22, 1889, a certain contract was entered into between him and this plaintiff, which is as follows:

Exhibit A.

Minneapolis, Minn., July 22nd, 1889.

Wheeler & Wilson Mfg. Co., Chicago, Ills.—Gentlemen: I will purchase your machines, to be sold or leased by me in Minneapolis and Anoka, and in such other territory as you may hereafter designate in writing, on the following terms, f. o. b. Bridgeport, Conn., or, if shipped from Chicago, I to pay you what you pay from Bridgeport, Conn., to Chicago, and I pay the freight from Chicago to this place, for the following prices:

No. 2 bare.....	\$13 00
“ “ O. W. half.....	20 00
“ 6 Cyl. bare.....	24 00
“ “ “ table cabinet platform.....	31 00
No. 8 K. B. E. 4 drawer.....	19 00
“ 9 B. B. E. 2 drawer oak.....	19 00
“ 9 D. A. A. 4 drawer folding leaf oak or walnut.....	21 00
“ “ C. C. C. 4 drawer drop leaf oak or hazel.....	20 00
No. 9 drop cabinet.....	40 00
“ 9 F and table for cloak work.....	18 00
“ “ hand with box.....	17 00

No. 12 or D. 12 bare.....	18 50
“ “ or D. 12 bare & H. T.....	20 00
“ “ “ “ F. table	24 00
“ “ “ “ G. table	24 25
“ “ “ “ G. A. K.....	27 50
“ “ “ “ F. table and cover.....	25 50
“ “ bare and trimmer.....	26 50
“ “ “ “ and H. T.....	28 00
2 needle stay H. T.....	50 00
2 stitch zigzag.....	45 00
3 “ “	77 00
German Universal polytype.....	55 00
Buttonhole machine, bare and T.....	95 00
“ “ D. table foot power.....	90 00
2 needle vamping machine H. T.....	55 00
11/21/89. Wax thread machine, 10% on amt. f. o. b. Chicago.	

Said machines to be disposed of in Minneapolis and Anoka ——— for cash, notes, or leases (the latter to be sent to you, to be held as collateral security), at regular retail prices, as shown on your printed price list, with the following exceptions:

No. 12 or D. 12 bare at.....	\$25 or \$28 if with transmitter
Buttonhole machine complete.....	\$125 00
2 needle stay & H. T.....	65 00
2 stitch zigzag.....	55 00
3 stitch zigzag.....	100 00
2 needle vamping & H. T.....	75 00

—or family machines to dealers at same prices and terms as per your printed contract machines to manufacturers on 30 days for cash.

On Saturday of each week I will render to you at Chicago, Ills., a true account of all machines disposed of and collections made, with all notes or leases or other evidences of indebtedness inclosed, and remit therewith, by sight draft on Chicago or New York, at my expense, all the cash I have on hand after paying the legitimate expenses of the business, and \$25 for my own personal expenses; hereby guarantying to you the payment in cash for the full amount for each machine at the above-named prices (and for which you may hold collateral) within twelve months after date of shipment or invoice. As soon as you receive the full price above mentioned on a note or lease, you are to assign same to me, without recourse, unless I am otherwise indebted to you. Then said notes and leases may be held by you, and the proceeds collected on the same applied on my indebtedness. I to do the collecting and instructing, and pay all expenses, including all taxes, insurance, licenses, rent, &c., incurred in the prosecution of the business during the continuance of my handling your machines under this contract, and will transact all business hereunder in my own name and for my own account, you to give me free use of all office fixtures here during the continuance of this contract. I am to receive fifteen per cent. on cash collected by me on leases, notes, or book accounts dated prior to July 22nd, 1889, which shall also be pay for my services in instructing parties in the use of machines already sold or leased in the city, and repairing the same free of charge in all cases when promises have been made to by you or your agents. I agree not to handle or sell any make of sewing machines or parts during the continuance of this contract, except I get them through you, except old machines I get in trade. I agree to purchase from you all parts and attachments at twenty per cent. discount from your wholesale prices, and will pay for same ninety days from date of shipment; I to have the privilege to return all new parts and merchandise at 20 per cent. discount from your wholesale price list. You are, at the termination of this contract, to have the privilege of buying of me any or all of the machines I may have on hand, at the prices as above, less cost of parts there may be short, or damage there may be to machines, stands, or woodwork. If, at any time hereafter, there may be any change in the style or prices to me of machines, you may insert such change of style or price in this contract. I distinctly