MOCK CLASS
SECTION 1
EMILY KADENS

WILLIAMS V. WALKER-THOMAS FURNITURE, CO.

United States Court of Appeals, District of Columbia Circuit, 1965
350 F.2d 445

J. SKELLY WRIGHT, Circuit Judge:

Appellee, Walker-Thomas Furniture Company, operates a retail furniture store in the District of Columbia. During the period from 1957 to 1962 each appellant in these cases purchased a number of household items from Walker-Thomas, for which payment was to be made in installments. The terms of each purchase were contained in a printed form contract which set forth the value of the purchased item and purported to lease the item to appellant for a stipulated monthly rent payment. The contract then provided, in substance, that title would remain in Walker-Thomas until the total of all the monthly payments made equaled the stated value of the item, at which time appellants could take title. In the event of a default in the payment of any monthly installment, Walker-Thomas could repossess the item.

The contract further provided that "the amount of each periodical installment payment to be made by (purchaser) to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by (purchaser) under such prior leases, bills or accounts; and all payments now and hereafter made by (purchaser) shall be credited pro rata on all outstanding leases, bills and accounts due the Company by (purchaser) at the time each such payment is made." The effect of this rather obscure provision was to keep a balance due on every item purchased until the balance due on all items, whenever purchased, was liquidated. As a result, the debt incurred at the time of purchase of each item was secured by the right to repossess all the items previously purchased by the same purchaser, and each new item purchased automatically became subject to a security interest arising out of the previous dealings.

On May 12, 1962, appellant Thorne purchased an item described as a Daveno, three tables, and two lamps, having total stated value of $391.10. Shortly thereafter, he defaulted on his monthly payments and appellee sought to replevy all the items purchased since the first transaction in 1958. Similarly, on April 17, 1962, appellant Williams bought a stereo set of stated value of $514.95.[1] She too defaulted shortly thereafter, and appellee sought to replevy all the items purchased since December, 1957. The Court of General Sessions granted judgment for appellee. The District of

[1] At the time of this purchase her account showed a balance of $164 still owing from her prior purchases. The total of all the purchases made over the years in question came to $1,800. The total payments amounted to $1,400.

Columbia Court of Appeals affirmed, and we granted appellants' motion for leave to appeal to this court.

Appellants' principal contention, rejected by both the trial and the appellate courts below, is that these contracts, or at least some of them, are unconscionable and, hence, not enforceable. In its opinion in *Williams v. Walker-Thomas Furniture Company*, 198 A.2d 914, 916 (1964), the District of Columbia Court of Appeals explained its rejection of this contention as follows:

> Appellant's second argument presents a more serious question. The record reveals that prior to the last purchase appellant had reduced the balance in her account to $164. The last purchase, a stereo set, raised the balance due to $678. Significantly, at the time of this and the preceding purchases, appellee was aware of appellant's financial position. The reverse side of the stereo contract listed the name of appellant's social worker and her $218 monthly stipend from the government. Nevertheless, with full knowledge that appellant had to feed, clothe and support both herself and seven children on this amount, appellee sold her a $514 stereo set.
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> We cannot condemn too strongly appellee's conduct. It raises serious questions of sharp practice and irresponsible business dealings. A review of the legislation in the District of Columbia affecting retail sales and the pertinent decisions of the highest court in this jurisdiction disclose, however, no ground upon which this court can declare the contracts in question contrary to public policy. We note that were the Maryland Retail Installment Sales Act, Art. 83 §§ 128-153, or its equivalent, in force in the District of Columbia, we could grant appellant appropriate relief. We think Congress should consider corrective legislation to protect the public from such exploitive contracts as were utilized in the case at bar.

We do not agree that the court lacked the power to refuse enforcement to contracts found to be unconscionable. In other jurisdictions, it has been held as a matter of common law that unconscionable contracts are not enforceable. While no decision of this court so holding has been found, the notion that an unconscionable bargain should not be given full enforcement is by no means novel. In *Scott v. United States*, 79 U.S. (12 Wall.) 443, 445 (1870), the Supreme Court stated:

> * * * If a contract be unreasonable and unconscionable, but not void for fraud, a court of law will give to the party who sues for its breach damages, not according to its letter, but only such as he is equitably entitled to. * * *

Since we have never adopted or rejected such a rule, the question here presented is actually one of first impression.

Congress has recently enacted the Uniform Commercial Code, which specifically provides that the court may refuse to enforce a contract which it finds to be unconscionable at the time it was made. 28 D.C. CODE § 2-302 (Supp. IV 1965). The enactment of this section, which occurred subsequent to the contracts here in suit, does not mean that the common law of the District of Columbia was otherwise at the time of enactment, nor does it preclude the court from adopting a similar rule in the exercise of its powers to develop the common law for the District of Columbia. In fact, in view of the absence of prior authority on the point, we consider the congressional adoption of § 2-302 persuasive authority for following the rationale of the cases from which the section is explicitly derived. Accordingly, we hold that

where the element of unconscionability is present at the time a contract is made, the contract should not be enforced.

Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. Whether a meaningful choice is present in a particular case can only be determined by consideration of all the circumstances surrounding the transaction. In many cases the meaningfulness of the choice is negated by a gross inequality of bargaining power.[2] The manner in which the contract was entered is also relevant to this consideration. Did each party to the contract, considering his obvious education or lack of it, have a reasonable opportunity to understand the terms of the contract, or were the important terms hidden in a maze of fine print and minimized by deceptive sales practices? Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain.[3] But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all the terms. In such a case the usual rule that the terms of the agreement are not to be questioned[4] should be abandoned and the court should consider whether the terms of the contract are so unfair that enforcement should be withheld.

In determining reasonableness or fairness, the primary concern must be with the terms of the contract considered in light of the circumstances existing when the contract was made. The test is not simple, nor can it be mechanically applied. The

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[2] Inquiry into the relative bargaining power of the two parties is not an inquiry wholly divorced from the general question of unconscionability, since a one-sided bargain is itself evidence of the inequality of the bargaining parties. This fact was vaguely recognized in the common law doctrine of intrinsic fraud, that is, fraud which can be presumed from the grossly unfair nature of the terms of the contract. See the oft-quoted statement of Lord Hardwicke in *Earl of Chesterfield v. Janssen*, 28 Eng. Rep. 82, 100 (1751): "* * * (Fraud) may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses and not under delusion would make * * *."

And cf. *Hume v. United States*, 132 U.S. at 413 where the Court characterized the English cases as "cases in which one party took advantage of the other's ignorance of arithmetic to impose upon him, and the fraud was apparent from the face of the contracts."

[3] See also *Daley v. People's Building, Loan & Savings Ass'n*, 178 Mass. 13 (1901), in which Mr. Justice Holmes, while sitting on the Supreme Judicial Court of Massachusetts, made this observation: "* * * Courts are less and less disposed to interfere with parties making such contracts as they choose, so long as they interfere with no one's welfare but their own. * * * It will be understood that we are speaking of parties standing in an equal position where neither has any oppressive advantage or power * * *."

[4] This rule has never been without exception. In cases involving merely the transfer of unequal amounts of the same commodity, the courts have held the bargain unenforceable for the reason that "in such a case, it is clear, that the law cannot indulge in the presumption of equivalence between the consideration and the promise." 1 WILLISTON, CONTRACTS § 115 (3d ed. 1957).

terms are to be considered "in the light of the general commercial background and the commercial needs of the particular trade or case."[5] Corbin suggests the test as being whether the terms are "so extreme as to appear unconscionable according to the mores and business practices of the time and place." 1 CORBIN.[6] We think this formulation correctly states the test to be applied in those cases where no meaningful choice was exercised upon entering the contract.

Because the trial court and the appellate court did not feel that enforcement could be refused, no findings were made on the possible unconscionability of the contracts in these cases. Since the record is not sufficient for our deciding the issue as a matter of law, the cases must be remanded to the trial court for further proceedings.

So ordered.

DANAHER, Circuit Judge (dissenting):

The District of Columbia Court of Appeals obviously was as unhappy about the situation here presented as any of us can possibly be. Its opinion in the Williams case, quoted in the majority text, concludes: "We think Congress should consider corrective legislation to protect the public from such exploitive contracts as were utilized in the case at bar."

My view is thus summed up by an able court which made no finding that there had actually been sharp practice. Rather the appellant seems to have known precisely where she stood.

There are many aspects of public policy here involved. What is a luxury to some may seem an outright necessity to others. Is public oversight to be required of the expenditures of relief funds? A washing machine, e.g., in the hands of a relief client might become a fruitful source of income. Many relief clients may well need credit, and certain business establishments will take long chances on the sale of items, expecting their pricing policies will afford a degree of protection commensurate with the risk. Perhaps a remedy when necessary will be found within the provisions of the "Loan Shark" law, D.C. CODE §§ 26-601 et seq. (1961).

I mention such matters only to emphasize the desirability of a cautious approach to any such problem, particularly since the law for so long has allowed parties such great latitude in making their own contracts. I dare say there must annually be thousands upon thousands of installment credit transactions in this jurisdiction, and one can only speculate as to the effect the decision in these cases will have.

I join the District of Columbia Court of Appeals in its disposition of the issues.

What follows are Class Preparation questions just like what you will get in the course book. It would be a good idea to think about them and talk them over with your classmates before class.

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[5] Comment, Uniform Commercial Code § 2-302.

[6] The traditional test as stated in *Greer v. Tweed*, 13 Abb. Pr., N.S., at 429, is "such as no man in his senses and not under delusion would make on the one hand, and as no honest or fair man would accept, on the other."

CLASS PREPARATION QUESTIONS

1. What are the facts in the case?
2. What does this clause in the contract mean: "the amount of each periodical installment payment to be made by purchaser to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by purchaser under such prior leases, bills or accounts; and all payments now and hereafter made by purchaser shall be credited pro rata on all outstanding leases, bills and accounts due the Company by purchaser at the time each such payment is made."
3. Why does Walker-Thomas include this provision?
4. Do you think the Plaintiff-Appellants understood this clause? Should it matter to the outcome of the case whether or not they did?
5. Why is it important to the way the Judge Wright approaches his analysis that this is a standard form contract? (What is a standard form contract? What is a contract of adhesion? Is the contract in this case a contract of adhesion?)
6. What is Plaintiff-Appellants' argument?
7. What does unconscionable mean?
8. Did the DC Court of Appeals approve of the contract?
9. Why didn't the DC Court of Appeals just declare the contract void due to unfairness?
10. What does "freedom of contract" mean?
11. Why might we want to have a public policy against unfair contracts? How unfair would the contract have to be?
12. What is the Uniform Commercial Code?
13. How does Judge Wright get around the fact that DC has no law controlling the issue in this case that allows him to rule the way he thinks he should rule?
14. Does Judge Wright's maneuvering around the precedent concern you? Should it?
15. State the rule Judge Wright uses to decide the case. Note: it has two elements.
16. Why does Judge Wright focus on consent?
17. Why is the ordinary rule that you bear the risk of the terms of the contract even if you sign without knowledge of them?
18. Explain Judge Danaher's argument in dissent.
19. With whom do you agree: Judge Wright or Judge Danaher? Who makes the better *legal* argument?
20. What was the outcome in the case?

Here is the contract Williams signed. Can you understand it?

APPENDIX A: TEXT OF THE *WILLIAMS* CONTRACT[361]

Lease No. _____ READ CONTRACT BEFORE SIGNING

This Deed Witnesseth that upon and subject to the terms and conditions hereinafter stated, I _____ have this day hired of and from THE WALKER-THOMAS FURNITURE COMPANY, (a partnership) having an office at Nos. 1027–1031 Seventh Street, Northwest, in the City of Washington, District of Columbia, certain property of the description and value as follows, viz:

_____

_____

_____

_____

_____

Total value _____ Dollars. The terms and conditions aforesaid which I hereby agree to perform and abide by are as follows, viz: Said hiring is only for my own personal use of said property at my home No. _____ Street _____ in said City of Washington, where, at my said home, said property may be seen at all times by the agents of said Company, and I shall not without the consent of said Company in writing and subject to the conditions of such consent, cause or permit any of said property to be removed therefrom or placed in storage, nor shall I without such consent in writing transfer any of my rights hereunder; nor shall I mortgage, rent, pawn, dispose of or sell said property or any part thereof; nor shall I do anything whereby the rights of said Company hereunder or its title to, or my actual possession of, said property or any part thereof, shall or might be in anywise endangered, impaired or lost. For such use I shall pay to said Company now the sum of _____ dollars cash, and hereafter I shall pay, without any demand therefor, to said Company at its store, or at such other place or places in said City as said Company shall hereafter in writing direct _____ dollars on the ____ day of each ____ until all said payments actually and promptly made shall in the aggregate equal the total value aforesaid; and thereupon the said Company, upon the surrender to said Company of the receipts given for all such payments, shall transfer to me at my own expense by bill of sale the title to said property, but until such transfer such title shall remain in said Company, and I shall not have or claim the same, provided, that before such transfer of title, in case of default by me hereunder, I shall also fully reimburse said Company for all its expenses reasonably incurred in any efforts it may make to recover and maintain possession of said property hereunder. For every such payment the Company shall give me a written receipt, which shall be my only evidence of such payment, and I shall never claim any benefit of any payment of which such evidence shall have been lost or destroyed. Upon my failure to make any of said payments at the time or place

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361. Transcribed from Transcript of Record at 122, Williams v. Walker-Thomas Furniture Co., 198 A.2d 914 (D.C. 1964) (No. 3389).

aforesaid, although there shall have been no legal or formal demand therefor, or in case of failure on my part to take such care of any of said property as is required of a bailee for hire, or my failure to perform or abide by any of the terms and conditions of this agreement the said Company, by its agents, or the United States Marshal in and for the District of Columbia, or his deputies at the instance of said Company, may enter my said home or any place where any of said property may be found or where said Company may have reasonable cause to believe the same to be, and take actual possession of such property and remove the same therefrom either with or without legal process, and without previous demand therefor, and in such case I hereby waive and relinquish to, and forever discharge the said Company of and from all payments previously made hereunder, and I hereby release and discharge the said Company and its agents and the said United States Marshal and his deputies of and from any and all damages caused by such entry or by such taking or removal and of and from all claims which I may ever have by reason of any such payments, entry, taking, or removal. If I am now indebted to the Company on any prior leases, bills or accounts, it is agreed that the amount of each periodical installment payment to be made by me to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by me under such prior leases, bills or accounts; and all payments now and hereafter made by me shall be credited pro rata on all outstanding leases, bills and accounts due the Company by me at the time each such payment is made. No indulgence to me by said Company as to time, amount, or place of payment or otherwise hereunder shall be construed to be a waiver by said Company of any of its rights or any of my duties hereunder, and no clause or stipulation of this agreement shall be deemed rescinded as against said Company unless such rescission is in writing and signed by the said Company. The word "Company" wherever it appears in this deed includes and shall be construed to mean The Walker Thomas Furniture Company aforesaid and its successors and assigns and each of them. This agreement is made subject to the approval of said Company, such approval to be evidenced only by the delivery to me of said property, and at any time before such delivery the said Company may, if it so elect, refuse to deliver said property to me, which refusal shall operate as a cancellation of this deed, and any rights which I may have or might have had hereunder shall immediately cease and determine. I also agree to pay attorney's fees of no less than $10 resulting from my breach of this lease in case a judgment for the deficiency in balance is awarded against me or possession of articles listed above is awarded to said Company. And hereunto I bind myself, my heirs, executors, administrators and assigns forever.

WITNESS my hand and seal this ___ day of ___ 19 __ _____

Husband

_____

Wife