POEL & ARNOLD v. BRUNSWICK-BALKE-COLLENDER CO.
110 N.E. 619 (N.Y. 1915)

SEABURY, J.

In this action the plaintiffs sued to recover damages from this defendant for the breach of an executory contract. The plaintiffs are the general partners of the limited partnership of Poel & Arnold. The defendant is a corporation organized under the laws of the state of New York. The theory of the action is that the defendant agreed to accept and pay for certain rubber which the plaintiffs agreed to sell to it, and that the refusal of the defendant to accept and pay for said rubber caused a breach of that contract. In the transaction between the parties the defendant was represented by one C.R. Rogers, who carries on negotiations in behalf of the defendant and signed the letters purporting to come from the defendant, and which will be referred to below. In the court below several questions were litigated, viz., whether Rogers had authority to represent the defendant, and whether there was a contract and a sufficient written memorandum of such contract to satisfy the requirements of the statute of frauds. In our discussion of this case we shall assume, without deciding, that Rogers was authorized to represent the defendant in the action which he took.

....

.... There are in this case [three] writings … upon [which] this controversy must be determined. They set forth with accuracy and precision the transaction between the parties….  

Poel & Arnold
277 Broadway.

New York, April 4, 1910.

Brunswick-Balke-Collender Co.
Long Island City, L.I.

Gentlemen:

[E]nclosed, we beg to hand you contract for 12 tons Upriver Fine Para Rubber, as sold you today, with ou[r] thanks for the order.

Very truly yours,

Poel & Arnold,
Per W.J. Kelly.
Enclosed with this letter was the following:

April 4, 1910

Brunswick-Balke-Collender Co.
Long Island City, L.I.

Sold to You:

For equal monthly shipments January to June, 1911, from Brazil and/or Liverpool, about twelve (12) tons Upriver Fine Para Rubber at two dollars and forty-two cents ($2.42) per pound: payable in U.S. gold or its equivalent, cash twenty (20) days from date of delivery here.

On April 6th Rogers sent the following order to the plaintiffs….

Purchase Dep’t
Order No. 25409
This number must appear on Invoices and Cases
The Brunswick-Balke-Collender Co. of New York
Review Ave., Fox and Marsh Sts.

Long Island City, 4/6, 1910.

M. Poel and Arnold,
277 Broadway, N.Y.C.

Please deliver at once the following, and send invoice with goods:

About 12 tons Upriver Fine Para Rubber at 2.42 per lb. Equal monthly shipments
January to June, 1911.

Conditions on Which Above Order is Given

Goods on this order must be delivered when specified. In case you cannot comply, advise us by return mail stating earliest date of delivery you can make, and await our further orders.

The acceptance of this order which in any event you must promptly acknowledge will be considered by us as a guaranty on your part of prompt delivery within the specified time.

Terms: F.O.B.

Respectfully yours,

The Brunswick-Balke-Collender Co. of New York

Per C.R. Rogers.

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Several months later, Brunswick sent the following:

January 7, 1911.

Messrs. Poel & Arnold
No. 277 Broadway, City

Gentlemen:

We beg herewith to advise you that within the past few weeks there has come to our attention through a statement made to us for the first time by Mr. Rogers, information as to certain transactions had by him with you in the past, and especially as to a transaction in April last relating to 12 tons of crude rubber. Mr. Rogers had no authority to effect any such transaction on our account, nor had we any notice or knowledge of his action until he made a voluntary statement disclosing the facts within the past few weeks.

In order that you may not be put to any unnecessary inconvenience, we feel bound to give you notice at the earliest opportunity after investigating the facts, that we shall not recognize these transactions or any others that may have been entered into with Mr. Rogers which were without our knowledge or authority.

Yours truly,

The Brunswick-Balke-Collender Co. of New York,

Per Chas. P. Miller
Vice-Pres.

.... The fundamental question in this case is whether these writings constitute a contract between the parties.... An analysis of their provisions will show that they do not constitute a contract. It is not contended, and in face of the provisions of the plaintiffs' letter of April 4th it cannot be claimed, that [Poel & Arnold’s April 4th] letter is in itself a contract. It is a mere offer or proposal by the plaintiffs that the defendant should accept the proposed contract [e]nclosed which is said to embody an oral order that the defendant had that day given the plaintiffs. The object of this letter was to have the terms of the oral agreement reduced to writing so that there could be no uncertainty as to the terms of the contract. The letter of the defendant of April 6th did not accept this offer. If the intention of the defendant had been to accept the offer made in the plaintiffs’ letter of April 4th, it would have been a simple matter for the defendant to have indorsed its acceptance upon the proposed contract which the plaintiffs’ letter of April 4th had [e]nclosed. Instead of adopting this simple and obvious method of indicating an intent to accept the contract proposed by the plaintiffs, and the defendant submitted its own proposal and specified the terms and conditions upon which is should be accepted. The defendant’s letter of April 6th was not an acceptance of this offer made by the plaintiffs in their letter of April 4th. It was a counter offer or proposition for a contract. Its provisions made it perfectly clear that the defendant: (1) Asked the plaintiffs to deliver rubber of a certain quality and quantity at the price specified in designated shipments; [and] (2) specified that the order therein given was conditional upon the receipt of its order being promptly acknowledged and upon the further
condition that the plaintiffs would guarantee delivery within the time specified. It may be urged that the condition specified in the defendant’s order that the plaintiffs would guarantee the delivery of the goods within the time specified added nothing of substance to the agreement, because if the offer was accepted the acceptance itself would involve this obligation on the part of the plaintiffs. The other condition specified by the defendant cannot be disposed of in the same manner. That provision of the defendant’s offer provided that the offer was conditional upon the receipt of the order being promptly acknowledged. It embodied a condition that the defendant had the right to annex to its offer. The import of this proposal was that the defendant should not be bound until the plaintiffs signified their assent to the terms set forth. When this assent was given and the acknowledgment made, this contract was then to come into existence and would be completely expressed in writing. The plaintiffs did not acknowledge the receipt of this order and the proposal remained unaccepted. As the party making this offer deemed this provision material, and as the offer was made subject to compliance with it by the plaintiffs, it is not for the court to say that it is immaterial. When the plaintiffs submitted this offer in their letter of April 4th to the defendant, only one of two courses of action was open to the defendant. It could accept the offer made and thus manifest that assent which was essential to the creation of a contract, or it could reject the offer. There was no middle course. If it did not accept the offer proposed it necessarily rejected it. A proposal to accept the offer it modified or an acceptance subject to other terms and conditions was equivalent to an absolute rejection of the offer made by the plaintiffs.

* * *

…. [T]he defendant’s letter of April 6th … did not constitute an acceptance of the offer of the plaintiffs, but was a new proposition for a contract upon the terms therein proposed.

The letter of January 7th by the defendant, in which it declares that Rogers acted without authority, refers to the “transaction in April last relating to 12 tons of crude rubber.” This statement obviously refers to the matters set forth in the letters of April 4th and 6th, and if these letters do not, when read together, constitute a contract, it is eviden[t] that, when read in connection with the defendant’s letter of January 7th, they fail to express a contract. There was no contract because, as has been shown, the plaintiffs did not accept the counter offer of the defendant expressed in its letter of April 6th. That being so, this letter from the defendant some months later, disavowing the authority of the salesman who sent the order, cannot supply the omission of the plaintiffs to accept the offer which the defendant’s salesman made….

Having reached the conclusion that there was no contract between the parties, it is unnecessary to discuss the other questions urged upon our attention by the appellant.

The judgment appealed from should be reversed, and a new trial granted, with costs to abide the event.

POUND, J., dissents [without opinion].