EQUITABLE SERVITUDES: RESTRICTION ON TRANSFER OF CHATTEL

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In *Nadell & Co. v. Grasso*,[1] while defendant was its employee, plaintiff, a concern engaged in buying and reselling goods damaged in transit, bought a shipment of damaged brand-name goods from a carrier with which it apparently did considerable business. The sale contract, the terms of which defendant knew, required plaintiff to prevent the goods from being offered for sale at retail under the brand name. At defendant's suggestion, plaintiff sold the goods to Vizcarra, who agreed to repackage the goods prior to resale and to return the original containers, lids, and labels to plaintiff. Defendant assisted in drafting language requiring the return of such items for inclusion in the invoice evidencing the sale. Defendant then left plaintiff's employ, purchased the goods from Vizcarra, sold some of them in their original containers to a retailer, and indicated his intent to dispose similarly of the remainder. (The opinion does not so state, but presumably the goods so sold to the retailer were next offered for sale at retail in their original containers.) Plaintiff brought action to enjoin further such sales by defendant. Held, judgment awarding plaintiff a permanent injunction against the sale of the goods otherwise than in accordance with the agreement between plaintiff and the carrier affirmed.

Although the injunction thus speaks of the agreement between plaintiff and the carrier and enforces against defendant the restrictions on resale imposed in that agreement, the opinion suggests that the court was enforcing against defendant an equitable servitude imposed by the agreement between plaintiff and Vizcarra.[2] This apparent inconsistency between decree and opinion makes little practical difference in the present case, since the result of the restrictions imposed by both agreements is the same (although the Vizcarra agreement imposed an affirmative duty to return the containers which was not present in the agreement with the carrier). Defendant knew the terms of both agreements and, on the theory adopted by the California court, could have been held to be bound by the restrictions of both. Defendant argued that equitable servitudes could be imposed on

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1 175 Cal. App. 2d 449, 346 P.2d 505 (Calif. District Ct. of Appeal, 2d District, Division 1, November 19, 1959).

2 346 P.2d at 508.

personal property only by its manufacturer or, in the case of copyrights, the creator of the copyrighted matter. The court said, however, that plaintiff's good will was property which would be injured in a manner not compensable in damages if the restriction were not enforced, and seemed to espouse the theory that not only the manufacturer of a chattel but a subsequent transferee "who has his own good will to maintain" could impose equitable servitudes upon the chattel.[3]

This appears to be the only case involving equitable servitude on chattels decided since *Pratte v. Balatsos*,[4] which was the subject of a notable comment by Chafee,[5] an article to which the attention of the California court appears not to have been directed. It is unfortunate that the court did not, as Chafee recommends, "hesitate and scrutinize carefully factors of social desirability before imposing novel burdens on [personal] property in the hands of transferees."[6] One cannot quarrel with the court's purpose; on these facts, defendant clearly should not have been allowed with impunity to put plaintiff in default under the latter's contract with the carrier. But plaintiff's case, however sympathetic, does not justify a theory whereby restrictions on the transfer of chattels can be imposed by any person having a property interest therein so long as each restriction can be said to benefit the "good will" of the business of such person. In the present case, for example, the language of the court would seem to permit the manufacturer, the carrier, and the plaintiff, the carrier's vendee, to impose equitable servitudes upon the chattels involved. In view of the interest of the public in permitting the unrestricted transfer of chattels, it would seem better to grant such power only to the manufacturer. In this case, it does not appear that the manufacturer sought to exercise such power. It seems correct, as the court suggests, that damages would not adequately compensate plaintiff if, as a result of defendant's actions, plaintiff were not only sued by the carrier for breach of contract but were also deprived of future profitable business relations with the carrier. If, however, this inadequacy be balanced against the possible inconvenience which could be caused to business and the public generally by the application of the theory followed by the court to other cases, it would seem that plaintiff's remedy might better be limited to damages. (Query whether this court would have regarded an action for damages as one in tort or in contract;

[3] 346 P.2d at 512.

[4] 99 N.H. 430, 113 A.2d 492 (1955).

[5] The Music Goes Round and Round: Equitable Servitudes and Chattels, 69 Harv. L. Rev. 1250 (1956).

[6] Chafee, op. cit., at 1261.

although it is clear that defendant was not a party to either contract containing a restriction, the court at times speaks as if it were specifically enforcing a contractual obligation in lieu of awarding damages for its breach.)