Virginia Unconscionability Doctrine and Jones v Star Credit

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Introduction

The freedom to enter into a contract is undoubtedly one of the major principles and beliefs in the law of contracts (Ben, 2011). However, the law allows government intervention in the contracting process whereby the court can apply the Uniform Commercial Code to determine if the agreements are fair or unfair and rule on the contract based on the unconscionability of the case (Ben, 2011). The doctrine explains terms of contracts that are unfair, unjust, or extremely one-sided and seem to favor one party deemed to have superior bargaining power over the other party. Thus, the concept of unconscionability is a means to prevent the formation of oppressive contracts and contract terms that may seek to take advantage of the adverse situation of one party (Edwards, 2008). Virginia courts have consistently applied a two-step unconscionability test set out in *Jones v. Star Credit Corp.,* 298 N.Y.S.2d 264 (Sup. Ct. 1969). This paper will review various cases to support the view that the Virginia courts follow the same unconscionability doctrine applied in Jones v. Star Credit Corp.

Analysis

Jones v. Star Credit Corp., 298 N.Y.S.2d 264 (Sup. Ct. 1969)

The plaintiffs agreed with the defendant to purchase a home freezer unit for a total cost of $1,234.80. At the time of the court proceedings, the plaintiffs had a balance due on the account of $819.81, having paid $619.88 toward the agreement (Edwards, 2008). Additionally, the court determined that the maximum price for the same item was $300. The court ruled that the purchase agreement between the two parties was unconscionable. Therefore, it held that the payment due from the plaintiffs should be limited to the already paid amount and the contract be revised such that the amount due equals the amount already paid.

The court determined that three criteria must be met in coming to its conclusion: (1) there should be “gross disparity” in values exchanged, (2) bargaining power must be lacking, and (3) there must be exploitation of one party in the contract leading to an unfair agreement. In Jones v. Star Credit Corp.,

there was gross disparity in the terms of the agreement because the difference between the original value of the freezer and the selling price in the agreement was significantly high (Helveston & Jacobs, 2014). The plaintiffs had little education and were low-income earners, thus presenting a lack of bargaining power in the agreement. It is also evident that the defendant exploited this lack of bargaining power to inflate the credit charges and cause disparities in the contract.

Virginia Courts' Treatment of Unconscionability

Derby v. Derby, 378 S.E.2d 74 (Va. Ct. App. 1989)

The plaintiff filed for divorce from the defendant but later made amendments to make it a separation suit. This led to the defendant having hope for reconciliation of the marriage. Consequently, the plaintiff used the misguided expectations to influence him into signing papers that gave her the majority of the properties owned by the defendant. The defendant was left with almost nothing even though the divorce was ultimately granted on the charge of adultery. However, the separation agreement was found to be under duress and was not included in the divorce decree.

The validity of the separation agreement between the two parties was considered on the grounds of duress, fraud, and unconscionability. The court utilized a three-pronged test to determine unconscionability: (1) the presence of gross disparity, (2) the presence of concealment and misinterpretation in the agreements, and (3) exploitation of the opposing party (Helveston & Jacobs, 2014; Horton, 2009). The court found that, indeed, the defendant was experiencing emotional distress and the plaintiff exploited the weakness of the defendant and his hope of reconciliation to manipulate him into signing the agreement on settlement.

Galloway v. Galloway, 622 S.E.2d 267 (Va. Ct. App. 2005)

The two parties were married for 17 years, with Mr. Galloway working for civil service while Mrs. Galloway was a nurse. Mr. Galloway later started his own heating company and was soon joined by Mrs. Galloway 5 years later. They later executed an agreement involving the division of their assets following their separation. The agreement had allocated 94% of the marital property to Mr. Galloway. Despite being advised to do so, Mrs. Galloway had declined to hire a lawyer to help discuss the settlement agreement.

The court held that although the agreement was not fair, it was valid because Mrs. Galloway was of sound mind when she signed it without consulting a lawyer. The judges did not find fraud or duress like in the Derby v. Derby case. They determined that the only indication of unconscionability was the inequality in the agreement. There was no evidence of undue influence or duress. Rather, the agreement was reached due to an unwise decision by Mrs. Galloway. The case was not extreme to the extent of justifying relief. As such, Mrs. Galloway made a bad bargain, but Mr. Galloway did not affect

her decision.

Jesse v. Smith, 278 S.E.2d 793 (Va. 1981)

The plaintiff originally agreed to have some work done in the defendant's retail businesses at the cost of materials plus 10% for labor. Later, he changed the offer to include the cost of materials plus 25% labor. Mrs. Smith agreed, and the plaintiff commenced the work. However, when the work was near completion, Jesse presented a bill for the cost of materials plus 125%, which Mrs. Smith refused to pay. The judge decided that the price for labor was unreasonably high, and the case was eventually dismissed due to failure by the parties to submit the contract document to the courts.

The material facts regarding the oral agreement between the two could not be established clearly. The court ruled that the contract was not enforceable under public policy. The judge also noted that the labor price was exorbitant. Adequacy of consideration was used to determine the unconscionability of the agreement. Although there was evidence of gross disparity between the charged price and the reasonable price for the work done, there was no evidence that any of the parties entered into the agreement due to duress or was forced by another party. The parties could determine the enforceability of the contract they were entering into.

Chaplain v. Chaplain, 682 S.E.2d 108 (Va. Ct. App. 2009)

The two parties were married for seven years after a whirlwind romance and a short engagement. They signed a premarital agreement where both parties were to retain all property owned individually before the marriage. Mrs. Chaplain did not know English well at that time, having been born and raised in Morocco, and relied on a translator most of the time. She argued that she was under the impression that she was signing a marriage certificate when she signed the agreement.

The court ruled that the premarital agreement was valid. The judges noted that Mrs. Chaplain had the opportunity to review the agreement but did not take the time to review it. The evidence failed to show a gross disparity in the agreement as the property belonged to everyone and thus there were no collectively owned belongings to compare. There was also no evidence of undue influence as the plaintiff could know what was contained in the agreement and deliberately ignored it to confirm.

The test of gross disparity is applied differently, but its definition remains essentially the same. In all cases, the judges are looking for evidence of a discrepancy of value in the conscience of individuals. The test of lack of bargaining power and exploitation of a perceived weakness in one party determines a case's unconscionability (Knapp, 2009). The unconscionability doctrines applied in Virginia courts are similar, although they might not be identical. In applying *Jones v. Star Credit Corp.,* 298 N.Y.S.2d 264 (Sup. Ct. 1969) to determine unconscionability, the courts have made the application standard nearly uniform across a wide range of cases in Virginia. Each time the doctrine is applied, there has to be evidence of gross disparity and undue influence or duress, which leads to

exploitation by one party.

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