

Contract Not Modified by Acceptance of Compromise Wages

By WILLIAM JABINE

A contract for the design and construction of a golf course followed by a 10-year term as supt. seems like a most attractive proposition, but as some of our TV luminaries who have signed long-term contracts have

found, the attractiveness doesn't always last. The Supreme Court of South Dakota had the

task of interpreting the provisions of such a contract recently when the designer-builder-supt. brought an action against a country club that had engaged him and then dispensed with his services when things did not work out as well as both parties to the contract had hoped.

In the excerpts from the Court's opinion which follow, the discharged designer and builder is referred to as the party of the second part and the club as the party of the first part.

The Court stated the pertinent provisions of the contract: "The contract provides that the second party receive the lump sum of \$5,000. upon completion of the first nine holes of said course, payable at \$500 per month during continuance of the work, and the sum of \$7,200 per year commencing at the completion of said nine hole golf course, payable at the rate of \$600 per month for a period of 10 years".

Damage Clause

A liquidating damage clause provided: "It is understood and agreed that the second party is furnishing his knowledge, skill, experience and training in designing, superintending and laying out the whole of the golf course. In further consideration of this 10-year contract of employment as above provided, and in the event the first party desires to terminate

Legal Side of Golf

this contract without good cause, prior to the expiration thereof, the first party shall pay the second party as liquidation damages the sum of \$8,000 less the sum of \$800 for each year of the second party's employment if this contract be terminated at any other time during the ten year period aforementioned. It is provided, however, that in the event of any breach of this agreement by the second party, or any flagrant misconduct or wilful disobedience on his part or upon his failure to superintend and direct the maintenance of the course and grounds in accordance with the standards of skill and care required by the Minnesota GCSA, the first party shall have the option to forthwith terminate this contract. In this event the first party shall not be required to pay any sum or sums as liquidated damages.

In event the first party, for any reason shall divert the property to a use other than as a golf course or shall decide and determine that it will not operate or maintain a golf course upon said land during the life of this contract, the first party may upon 90 days notice to the second party terminate this contract without a payment of any sum or sums as liquidated damages."

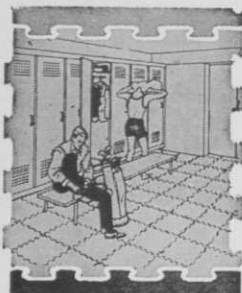
Guarantee with Contract

The contract was accompanied by a "Guarantee" signed by a man named Peterson, who according to the evidence, was the owner of practically all of the stock in the country club corporation. This instrument guaranteed performance by the club, but gave Peterson a measure of control over purchases of machinery and materials.

As is so often the case, it took more time, and much more money, than had been anticipated to complete the first nine holes of the course. From the time the contract was executed in October, 1958 until July, 1960, the club managed to pay the monthly wages promised. Then it began to drop behind and in the winter months of 1960 and 1961, paid only \$200 or \$300 per month. The designer-supt. orally agreed to accept those amounts temporarily with the understanding that the full amount due would be paid at a later date.

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Golf Association president, accepted for Dey and the Bulletin sports editor, John T. Wilson, accepted for Taylor. Dey was in California and Taylor in New York.

Marty Lyons, of Llanarch CC and Ted Bickel, of Spring Haven CC, had charge of the chipping contest. About 2000 visitors enjoyed this new feature and competed for prizes.

C. Joseph Burnett, of the J. Wood Platt Scholarship Trust, presented plaques to Aronimink Huntingdon Valley, Gulph Mills, Overbrook, Philadelphia Cricket and Trenton,, for contributing \$1000 each to a caddie scholarship fund.

Contract Not Modified

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In the fall of 1961 attempts were made to compromise the differences between the parties but were unsuccessful. The designer-supt. brought an action against the club demanding the sum due him for unpaid wages, plus the amount due at that time under the liquidated damages provision of the contract. At the trial the jury found that \$3,516.50 was due for unpaid wages and awarded the plaintiff an additional \$3,000 as liquidated damages. The defendant appealed to the Supreme Court of South Dakota, contending that the additional \$3,000 was not due.

Not Modified by Agreement

Much of the defendant club's argument before the Supreme Court was based on the theory that by agreeing to accept less than the amounts stipulated in the contract, the plaintiff had entered into an oral agreement modifying the written contract.

The Supreme Court did not agree, saying: "Plaintiff's evidence was that he had conversations with defendant, Peterson, in the fall of 1960 about payment of wages during the winter; that when asked if he could wait for his money until a later date until funds were available and if he would accept \$200 a month, the plaintiff replied, 'I will as long as I get my money, the balance of it, at a future date'; and that later he told Peterson he 'couldn't get along with \$200' and that he then answered affirmatively when asked if he could get along with \$300."

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The evidence went into more detail, but the plaintiff's evidence together with permissible inferences, made a submissible case for the jury as to whether the contract between the parties had been modified by an executed oral agreement. The jury having found that the contract had not been modified, the Supreme Court refused to disturb its finding.

Difficult to Prove

The defendant country club also contended that the liquidated damages provision of the contract was insufficient of itself to sustain the \$3,000 liquidated damages portion of the verdict. Again the Supreme Court disagreed with the plaintiff's contention.

It said in part: "The contract here was for the rendition of personal services by the plaintiff. The courts have, in many instances, construed specific amounts for breach of employment contracts as liquidated damages because the damage that a breach would cause would be uncertain and difficult of proof. (Citations) There may be different degrees of nonperformance and injury may result in varying amounts. (Citations)"

"There would be much less time for which the defendant would be liable if a breach occurred near the end of the term of the contract than if there was a total breach. To this end the parties agreed to graduate the amount payable according to the extent of nonperformance. The amount payable was \$8,000 'less the sum of \$800 for each year' that plaintiff was engaged before breach in performance of the contract and the amount recover-

able was not disproportionate to the actual damages which might result from failure to perform."

The Supreme Court affirmed the judgment of the trial court in the full amount awarded to the plaintiff by the jury. (Anderson v. Cactus Heights CC, 125 N.W. 2d 491.)

Florida Turf-Grass Show Set for April 30-May 2

The third annual Florida Turf-Grass trade show will begin activities with tours and demonstrations of turf machinery at the Plantation Field Laboratory in Ft. Lauderdale, April 30. The indoor meeting will be held and displays set up in the Hotel Seville in Miami Beach through May 2. The Florida Society of Golf Supts. has scheduled its meeting for May 1. During the general sessions topics will be "Selling Yourself," "Banking Services for the Small Business," "Workmens' Compensation and You" and "Wage-Hour Legislation and the Small Businessman." On May 2, displays at the Seville will be open to the general public.

Big Prizes for Ladies PGA

At the end of March, the Ladies PGA had eight events lined up for its summer schedule. They offer \$77,500 in prizes. With the spring tourneys included, the Ladies PGA will have \$188,000 riding in its April-August schedule.

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