

Those Chains That Bind You!

Evidence of the contract between the state and the natural person is the marriage license, birth certificate, driver's license, social "insecurity" number, and the like. Of course, the nature of these licenses do not meet the specific requirements of a contract; however, they do have the effect of being acted upon like a contract. In past issues we have addressed the constructive or quasi-contract, and we have a position paper available on that subject.

We are often asked how important it is to rescind these contracts, how do you get rid of them, and what do I do when they send my rescision back without an answer?

The answer to the first question is one of individual preference. Obviously, if a person doesn't want to subscribe to a daily newspaper any longer, the contract must be terminated; likewise with rescisions of quasi-governmental contracts created by legislative fiat. If a person likes the terms and conditions of the contract, they should keep the license. However, if the terms of the contract are no longer acceptable, the contract must be rescinded.

Our position has always been, if you have the driver's license, obey all traffic regulations. If you have the social security number, pay your income and social security taxes.

However, if you do not want these obligations, you must rescind the quasi-contract.

A person must immediately rescind any contract that has been entered into by fraud and false representation when he learns of the fraud, or the contract will remain in effect. The courts have said:

"... but in the view we take of the question of waiver of the fraud by failure to exercise due diligence to rescind,..."

"... If they proposed to rescind, their duty was to assert that right promptly, unconditionally, and unequivocally," otherwise the affirmation of the contract, notwithstanding the fraud, would follow. Richardson v. Lowe, 149 Fed Rep 625, 627-8.

"Whatever the form in which the government functions, anyone entering into an arrangement with the government takes the risk of having accurately ascertained that he who purports to act for the government stays within the bounds of his authority.... And this is so even though, as here, the agent himself may have been unaware of the limitations of his authority. See e.g., Utah Power & Light Co. v.

United States, 243 U.S. 389, 409; United States v. Stewart, 311 U.S. 60, 70; and see generally, The Floyd Acceptance, 7 Wall 666." Federal Corp Ins. Corp. v. Merrill, 332 U.S. 380, 384.

"Where a party desires to rescind upon the grounds of mistake or fraud he must upon the discovery of the facts, at once announce his purpose, and adhere to it. If he be silent, ... he will be held to have waived the objection, and will be conclusively bound by the contract, as if the mistake or fraud had not occurred. He is not permitted to play fast and loose. Delay and vacillation are fatal to the right which had been subsisted." *Grymes v. Saunders*, 93 U.S. 55, 62. Also see *Shapiro v. Goldberg*, 192 U.S. 232.

Rescission of a contract on the ground of fraud is not a mental process undisclosed and unacted upon. It requires affirmative action immediately on its discovery; some overt act and outward manifestation of the intention to clearly apprise the other party to the contract of the right asserted. *Melton v. Smith*, 65 Mo. 325; *Walters v. Miller*, 10 Iowa 427.

The duty of rescinding arises immediately upon acquiring knowledge of the substantial and material facts constituting the fraud. It is not requisite that the defrauded party shall be acquainted with all the evidence constituting the fraud before the duty to act by way of rescission arises. When he has evidence sufficient to reasonably actuate him to rescind the contract, and once he has acted, no subsequent discovery of cumulative evidence can operate to excuse waiver of the fraud, if such evidence has in the meantime occurred, or to revive a once

lost right of rescission. The election to waive the fraud once deliberately made is irrevocable. Vacillation or speculation cannot be tolerated. *Campbell v. Fleming*, 1 A. & E. 40; *Fry on Specific Performance on Contracts* (2nd ed) Sections 703 & 704; *Bach v. Tuch*, 26 N.E. 1019; *Taylor v. Short*, 17 S.W. 970.

"If the fraud be discovered while the contract is wholly executory, the party defrauded has the option of going on with it or not, as he chooses. If he executes it, the loss happens from such voluntary execution, and he cannot recover for loss which he deliberately elected to incur." *Simon v. Goodyear Metallic Rubber Shoe Co.*, 105 Fed 573, 579.

Instruments may be rescinded and cancelled when they have been obtained from persons who were at the time under duress or incapacity. *French's heirs v. French*, 8 Ohio 214; *Cook v. Toumbs*, 36 Miss 685.

Apart from judicial proceedings the communication of the desire to rescind need not be formal, but it must be a distinct and positive rejection of the contract. L.R. 9, Eq. 263.

From the above, it can be concluded that in order to rescind a contract a person must allege fraud, ignorance of law, mistake of facts, have been under duress, or incapacity (minor) at the time the contract was entered into.

The answer to the second question has a non-specific answer. All rescissions must be tailored to the individual situation. There should be no fill-in-the-blank rescissions, as the circumstances surrounding each quasi-contract are different.

The final question is what to do when the agency involved sends the rescission back. There are basically two alternatives.

1. Do nothing: Once the contract is rescinded, it is rescinded. The argument that

you do not have the contract is still valid. Your argument is that you do not have the contract. If the opposition says you do, the burden of proof is on them.

2. Fight: If you want to push the issue, the rescission may be sent back with an explanation of why you have rescinded the contract. Arguments can be taken from our position paper on Constructive contracts. When that fails, an action lies in the judiciary.

Like everything else, what you do is up to you.