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IN THE COURT OF APPEALS OF IOWA

R. W. CARDELLA,	)	
Appellant,	)	Filed April 27, 1978
vs.	)	
SEITHER & CHERRY COMPANY,	)	486
INCORPORATED,	)	<u>2-60834</u>
Appellees.	)	

Appeal from Lee District Court - Thomas E. Tucker, Judge.

Plaintiff employee appeals the trial court's refusal to grant him damages for the alleged breach of a stock option contract occurring when he terminated his employment prior to the expiration of the full option period. -- Reversed and remanded with instructions.

Michael P. Short & James P. Hoffman, Keokuk, for Appellant.

Thomas C. Younggren, of Norman, Younggren & Webber, Keokuk, for Appellee.

Heard by Albee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff employee Cardella appeals the refusal of the trial court to grant him damages for the alleged breach of his stock option contract by defendant employer Seither & Cherry Company, Inc. We reverse.

The fighting issue in this appeal is whether the stock option agreement contemplated termination of accrued option rights upon termination of employment before the expiration of the full option period. Seither's position is simple: consideration for the stock option was the employee's promise to remain in Seither's employ for the 49 months. Neither the contract language nor the stipulated facts support such a view.

We are not aided by Seither's citation to *Maytag Company v. Alward*, 253 Iowa 455, 112 N.W.2d 654 (1962) since the Maytag option specifically provided termination of employment during the option period was to be deemed a violation of the stock option agreement and would terminate the right to exercise any options unexercized at that date. *Langer v. Iowa Beef Packers, Inc.*, 420 F.2d 365 (8th Cir. 1970) has no direct application since it involved an employee's attempt to exercise his stock option after having completed the full years of service constituting consideration for the full option.

The contract must be construed most strictly against Seither since it drew it. *Freese v. Town of Alburnett*, 255 Iowa 1264, 125 N.W.2d 790 (1964). No doubt, Seither could have specified within the option the necessity of remaining in the company employ for the full four years. It chose to remain silent about the effects of voluntary - or involuntary - termination within the option period.

On this record we hold the authorization to purchase in installments with the cumulation of unexercised options contemplated that the consideration was continued employment for the installment period. Cardella so performed and should have been allowed to purchase the 530 shares.

The trial court made no ruling on damages; without expressing any opinion as to the amount or proper measure of damages, we remand the case for determination of this issue on the present record.

Reversed and remanded with instructions.

ALLBEE, C.J., dissents.

ALLBRE, C.J. (dissenting)

Plaintiff was an employee of defendant corporation. By letter dated April 9, 1969, defendant advised plaintiff that he had been given the option to purchase 2500 shares of defendant's stock at \$10 per share. Plaintiff would be permitted to purchase 20 percent of the shares each year for 5 years. Unexercised options would be cumulative to the offer's expiration date of May 1, 1973. The letter noted that "it is a pleasure to make the announcement that you will be able to participate in the growth of the Company that should prevail if we continue to work hard together." There is no indication in the record that this option was a part of any prior contract of employment which plaintiff had with defendant.

On April 24, 1972, plaintiff submitted his resignation effective June 1, 1972. In late May of 1972, plaintiff informed defendant that he wished to exercise his option for 530 shares, 500 of which had become available on April 1, 1972 and 30 of which had accumulated from prior unexercised options. The company refused to allow exercise of the option and this action ensued.

The question is whether the agreement which would allow plaintiff to purchase 530 shares after April 1, 1972 was supported by consideration despite plaintiff's resignation. The answer to this question requires a closer examination of the facts. The letter of April 9, 1969 contemplated a five year period and yet specified a termination date of May 1, 1973, less than 49 months hence. It thus appears that the five year period envisioned in the letter had begun nearly a year prior to that communication. It is also apparent that the right to purchase the first 20 percent of the stock, or 500 shares, accrued immediately.

No consideration for the option appears, except the obligation of the plaintiff to work for the company. The retention of the services of an employee is generally considered sufficient consideration for such a stock option. See, e.g., Kerbs v. California Eastern Airways, 90 A.2d 652, 656 (Del. 1952). Such services are often considered to be essential and the essence of the contract. Langer v. Iowa Beef Packers, Inc., 420 F.2d 365, 368 (8th Cir. 1970); Gruber v. Chesapeake & Ohio Ry. Co., 158 F.Supp. 593, 596 (N.D. Ohio 1957). A reading of the April 9 letter leaves no doubt that such is the case here. It also demonstrates that the intention was that the exercise of each 20 percent would be supported by the receipt of one year's services.

The question arises, then, whether the consideration for the exercise of any given portion of the option is the year immediately prior to that exercise or the year immediately following. It appears to be well established that past services will not provide consideration for a new contract. *Meghinnes v. McChesney*, 179 Iowa 563, 576, 160 N.W. 50, 54, (1917), citing *Handrahan v. O'Regan*, 45 Iowa 296 (1876); *Carruthers & Murray v. McMurray*, 75 Iowa 173, 177, 39 N.W. 255, 257 (1888); see generally, 1A A. Corbin, *Contracts* § 235 (1963 & Supp. 1971); 1 W. Jaeger, *Williston on Contracts* § 142 (1957 & Supp. 1977); see also *Dullard v. Schaffer*, 251 Iowa 274, 283, 100 N.W.2d 422, 428 (1960). The letter equates one year's work with the exercise of the option for each 20 percent. In sum, if there was a valid contract at all, consideration for the right to purchase each 20 percent was found in plaintiff's obligation to work for the subsequent year.

It is apparent from what has been said that plaintiff's resignation caused a failure of consideration so that he lost the right to purchase the 20 percent (500 shares) which became available in 1972. It is also apparent, however, that the accumulated right to purchase the remaining 30 shares was supported by the three years of services rendered by plaintiff from April of 1969 until his resignation. This case should, therefore, be affirmed in part, reversed in part and remanded for a determination of damages on the present record.