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Harold PEARSALL, Appellant,

v.

Joe ALEXANDER, Appellee.

No. 87-826.

District of Columbia Court of Appeals.

Argued February 28, 1990.

Decided March 22, 1990.

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Richard L. Fields, Oxon Hill, Md., for appellant.

Joseph Levin, Washington, D.C., for appellee.

Before NEWMAN, FERREN, and FARRELL,
Associate Judges.

NEWMAN, Associate Judge:

In what must be a common development wherever there are state-sponsored lotteries, this is the story of two friends who split the price of a ticket only to have the ticket win and split their friendship.

Harold Pearsall appeals from the dismissal of his complaint against Joe Alexander, in which Pearsall claimed breach of an agreement to share the proceeds of a winning D.C. Lottery ticket worth \$20,000. The trial court found that such an agreement did, in fact, exist, but determined that the agreement was invalid under § 1 of the Statute of Anne, as enacted in D.C.Code § 16-1701 (1989 Repl.). We conclude that the trial court erred in applying § 16-1701 to the Pearsall-Alexander agreement and, therefore, we reverse and remand with instructions to enter judgment for the appellant.

I.

Harold Pearsall and Joe Alexander were friends for over twenty-five years. About twice a

week they would get together after work, when Alexander would meet Pearsall at the Takoma Metro station in his car. The pair would then proceed to a liquor store, where they would purchase what the two liked to refer to as a "package"—a half-pint of vodka, orange juice, two cups, and two lottery tickets—before repairing to Alexander's home. There they would "scratch" the lottery tickets, drink screw-drivers, and watch television. On occasion these lottery tickets would yield modest rewards of two or three dollars, which the pair would then "plow back" into the purchase of additional lottery tickets. According to Pearsall, the two had been sharing D.C. Lottery tickets in this fashion since the Lottery began.

On the evening of December 16, 1982, Pearsall and Alexander visited the liquor store twice, buying their normal "package" on each occasion. The first package was purchased when the pair stopped at the liquor store on the way to Alexander's home from the Metro station. Pearsall went into the store alone, and when he returned to the car, he said to Alexander, in reference to the tickets, "Are you in on it?" Alexander said "Yes." When Pearsall asked Alexander for his half of the purchase price of the tickets, Alexander replied that he had no money. When they reached Alexander's home, Alexander, expressing his anxiety that Pearsall might lose the tickets, demanded that Pearsall produce them, snatched them from Pearsall's hand, and "scratched" them, only to find that both were worthless.

At about 8:00 p.m. that same evening, Alexander, who apparently had come by some funds of his own, returned to the liquor store and bought a second "package". This time Pearsall, who had been offended by Alexander's conduct earlier in taking both tickets, snatched the two tickets from Alexander and announced that he would be the one to "scratch" them. Intending only to bring what he regarded as Alexander's childish behavior to Alexander's attention, Pearsall immediately relented and gave over one of the tickets to Alexander. Each man then "scratched" one of the tickets. Pearsall's ticket

proved worthless; Alexander's was a \$20,000 winner.

Alexander became very excited about the ticket and began calling friends to announce the good news. Fearing that Alexander might lose the ticket, Pearsall told Alexander to sign his name on the back of

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the ticket. Subsequently, Alexander cashed in the ticket and received the winnings; but, when Pearsall asked for his share, Alexander refused to give Pearsall anything.

Pearsall brought suit against Alexander, claiming breach of an agreement to share the proceeds of the winning ticket. Alexander denied that there was any agreement between the two to share the winnings of the ticket

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III.

The record supports the trial court's finding that an agreement existed between Pearsall and Alexander to share equally in the proceeds of the winning ticket at issue.

The conduct of the two men on the evening of December 16, 1982, when the ticket was purchased, clearly demonstrates a meeting of the minds. After purchasing the first pair of tickets, Pearsall asked Alexander if he was "in on it." Not only did Alexander give his verbal assent, but later, when the two reached Alexander's home, Alexander, who had contributed nothing to the purchase price of the tickets, snatched *both* tickets from Pearsall and anxiously "scratched" them. It is evident from this that Alexander considered himself "in on" an agreement to share in the fortunes of the tickets purchased by his friend. It is equally clear that in giving over tickets he had purchased, Pearsall gave his assent to the agreement he had proposed earlier in the car. Moreover, this conduct took place within the context of a long-standing pattern of similar

conduct, analogous to a "course of conduct" as described in the Uniform Commercial Code,⁵ which included their practice of "plowing back" small returns from winning tickets into the purchase of additional tickets.⁶

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It is also clear to us that, by exchanging mutual promises to share in the proceeds of winning tickets, adequate consideration was given by both parties. An exchange of promises is consideration, so long as it is bargained-for. RESTATEMENT (SECOND) CONTRACTS, § 75 (1932). Moreover, consideration may consist of detriment to the promisee. *Clay v. Chesapeake & Potomac Tel. Co.*, 87 U.S.App.D.C., 284 F.8d 995 (1950). The giving over of onehalf of the proceeds of a winning ticket would be a detriment to either man. Therefore, Pearsall's promise to share, as expressed in his question to Alexander, "Are you in it?" induced a detriment in Alexander. Likewise, Alexander's promise to share, as contained in his assent, induced a detriment in Pearsall.⁷

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IV.

In conclusion, we find that there was a valid, enforceable agreement between Pearsall and Alexander to share in the proceeds of the \$20,000 ticket purchased by Alexander on the evening of December 16, 1982. Therefore, we reverse and remand with instructions to enter judgment in favor of the appellant.

Reversed and remanded.