

***Rosenberg v. Son, Inc.*¹, p. 368**

Facts: The Rosenbergs owned a Dairy Queen in Grand Forks, North Dakota. They agreed in writing to sell the Dairy Queen to Mary Pratt. The contract required her to pay \$10,000 down and \$52,000 over 15 years, at 10 percent interest. Two years later, Pratt assigned her rights and delegated her duties under the sales contract to Son, Inc. The agreement between Pratt and Son contained a “Consent to Assignment” clause that the Rosenbergs signed. Pratt then moved to Arizona and had nothing further to do with the Dairy Queen. The Rosenbergs never received full payment for the Dairy Queen. They sued Mary Pratt. The trial court gave summary judgment for Pratt, finding that she was no longer obligated on the original contract. The Rosenbergs appealed.

Issue: Did Pratt obtain a novation relieving her of her duties under the original sales contract?

Holding: Judgment for Pratt reversed and remanded. The agreement between Pratt and Son was an assignment, not a novation. The agreement made no mention of discharging Pratt from her duties. Although the Rosenbergs signed the agreement, they were merely consenting to an assignment, not a novation. A creditor is free to consent to an assignment without releasing the original obligor.

¹ 491 N.W.2d 71, 1992 N.D. LEXIS 202 Supreme Court of North Dakota, 1992