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Contracts - Estoppel - Infants

Walter Auran

tion of an insurer's liability. Under the rule laid down in the instant case the same liability can be found where the bailee promises to exercise the same duty of care as is required by common law.

Most American courts hold that in bailments for mutual benefit a contract of bailment is not to be construed to include one of insurance by the bailee. To hold otherwise is to rest liability upon incidental expressions of the common law duty of due care. Courts should not venture into uncertain grounds to find liability where none was intended when justice and certainty in contracts can so easily be had.

KIRK B. SMITH

CONTRACTS — ESTOPPEL — INFANTS — Plaintiff, 19 years of age, by representing that he was 22, induced defendant, a loan company, to finance the purchase of an automobile on conditional sale. Subsequently plaintiff abandoned the automobile to defendant, repudiated the contract on the ground of his minority, and brought this action to recover payments made. Defendant counterclaimed for the unpaid balance on the contract after repossession and resale. The trial court rendered judgment for defendant on his counterclaim and *held* that plaintiff, being of the age of discretion was estopped to rescind the voidable contract because of his fraudulent representations. *Carney v. Southland Loan Co.*, 88 S.E.2d 805 (Ga. 1955).

An infant's contract,[1] except for the reasonable value of necessaries furnished him, is voilable at his election.[2] As a prerequisite to avoiding his transaction he must return the specific consideration received, or any part of it, which remains in his possession.[3] If he has disposed of or consumed the consideration, by the weight of authority, he may nevertheless avoid the contract and recover what he has parted with.[4] This privilege was founded upon the necessity of protecting an infant from his own improvidence, and, by forcing an adult to deal with infants at his peril, of protecting minors from the designs of others.[5]

Where an infant fraudulently misrepresents his age for the purpose of inducing an adult to enter into a contract with him, the question arises whether such an infant should be allowed to avoid his obligation without responsibility either by liability in tort for his fraud or through estoppel.

Although an infant is generally liable for his torts,[6] the English Courts[7] and a few jurisdictions in the United States[8] deny such responsibility where the cause of action is based on a contract. It is reasoned that to enforce the infant's liability for the tort would be an indirect means of enforcing his

1. At common law one is an infant until the day preceding his 21st birthday. 1 Williston Contracts § 224 (rev. ed. 1936).

2. 1 Williston, Contracts §§ 223-240 (rev. ed. 1936). (As a general rule an auto is not considered a necessity.) 7 Blashfield, Cyclopedia of Automobile Law and Practice § 4438 (1950).

3. 1 Williston, contracts § 238 (rev. ed. 1936).

4. *Ibid.*

5. Burnand v. Erigoyen, 30 Cal.2d 861, 186 P.2d 417, 420 (1947) (dictum).

6. Prosser, Torts 1085, 1086 (1941).

7. *E.g.*, Bartlett v. Wells, 1 Best and S. 836, 121 Eng.Rep. 924 (1862). Johnson v. Pie, 1 Lev. 169, 83 Eng.Rep. 353 (1665).

8. *E.g.*, Monumental Building Assoc. v. Herman, 33 Md. 128 (1870); Raymond v. General Motorcycle Sales Co., 230 Mass. 54, 119 N.E. 359 (1918); Slayton v. Barry, 175 Mass. 513, 56 N.E. 574 (1900); Greensboro Morris Plan Co. v. Palmer, 185 N.C. 109, 116 S.E. 261 (1923).

liability on the contract. A majority of the United States Courts hold the infant liable on the theory that the action is one purely in tort, independent of the contract.[9]

The general rule, in the absence of statute,[10] is that the doctrine of estoppel has no application to infants.[11] In other jurisdictions[12] including the State of Georgia,[13] the courts have not strictly adhered to this rule and have held that fraudulent misrepresentations by the infant regarding his majority will estop him from setting up his disability where the other party to the contract has acted in good faith and without negligence.

Modern conditions have brought infants into trade and commerce to an extent not contemplated when the common law doctrine regarding infancy originated. In attempting to promote greater freedom in commercial transactions and in recognizing that most infants who are artful enough to successfully practice (such subterfuge as fraud) are also of sufficient intelligence to be charged with the contractual responsibilities of their deceit, many courts have devised different theories to hold the infant responsible. Some states hold the infant liable in tort for his fraud in the inducement of the contract[14] while others apply the doctrine of estoppel to preclude his plea of minority.[15] Some courts allow the infant to rescind but require him to reimburse the seller for depreciation and use of the property while in his possession.[16] Still others by statute, require an infant above the age of 18 years to restore the consideration or its value as a condition precedent to rescission.[17]

The result of the instant case, although following the minority view, appears preferrable in the light of reason and logic since it prevents the shield of infancy from being used as a sword.

WALTER AURAN

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — RIGHT OF FREE ASSOCIATION AND RIGHT TO WORK LAWS* — On suit of plaintiff non-union railroad employees, the District Court enjoined the defendant railroad and defendant labor organizations from executing union shop agreements permitted by the

9. *E.g.*, Rice v. Boyer, 108 Ind. 472, 9 N.E. 420 (1886); Wisconsin Loan & Finance Corp. v. Goodnough, 201 Wisc. 101, 228 N.W. 484 (1930).

10. *E.g.*, Iowa Code § 599.3 (1950), Friar v. Rae-Chandler Co., 192 Ia. 427, 185 N.W. 32 (1921); Kansas Gen.Stat. § 38-103 (1949), Dillian v. Burnham, 43 Kan. 77, 22 Pac. 1016 (1890); Wash. Rev. Stat. § 5830 (1922); Thosaath v. Transport Motor Co., 136 Wash. 565, 240 Pac. 921 (1925).

11. Myers v. Hurley Motor Co., 273 U.S. 18 (1927); Simo v. Everhardt, 102 U.S. 300, 313 (1880) (dictum).

12. *E.g.*, County Board of Education v. Hensley, 147 Ky. 441, 144 S.W. 63 (1912); Klinck v. Reeder, 107 Neb. 342, 185 N.W. 1000 (1921); La Rosa v. Nichols, 92 N.J.L. 375, 105 Atl. 201 (1918); Tuck v. Payne, 159 Tenn. 192, 17 S.W.2d 8 (1929).

13. Clemens v. Olshine, 54 Ga.App. 290, 187 S.E. 711 (1936); Hood v. Duren, 33 Ga. App. 203, 125 S.E. 787 (1924).

14. See not 9 supra.

15. See note 12, supra.

16. Myers v. Hurley Motor Co., 273 U.S. 18 (1927); Murdock v. Fisher Finance Corp., 51 Cal.App. 372, 251 Pac. 319 (1926).

17. Cal. Civ. Code § 35-37, Murdock v. Fisher Finance Corp., 51 Cal.App. 372, 251 Pac. 319 (1926); N.D. Rev. Code § 14-1011 (1943), In Re Campbells Guardianship. 56 N.D. 60, 215 N.W. 913 (1927); Easement v. Callaghan, 35 N.D. 27, 159 N.W. 77 (1916); S.D. Code § 43.0105 (1939).

* Subsequent to the preparation of this paper, the Supreme Court of the United States granted an appeal to the defendants in this case. As yet, no decision has been rendered by them.