performance on his part; nor can the minor retain part of the contract and disaffirm another part.

Note that a minor has *no* power to ratify a contract while still a minor. A ratification based on words or conduct occurring while the minor is still underage is no more effective than his original contractual promise. The ratification must take place after the individual has acquired contractual capacity by attaining his majority.

Ratification can occur in three ways: (1) through express language, (2) as implied from conduct, and (3) through failure to make a timely disaffirmance. Suppose that a minor makes a contract to buy property from an adult. The contract is voidable by the minor, and she can escape liability. But suppose that after reaching her majority she promises to go through with the purchase. The minor has *expressly* ratified the contract she entered when she was a minor. Her promise is binding, and the adult can recover for breach if the minor fails to carry out the terms of the contract.

Ratification also may be *implied* from a person's conduct. Suppose that the minor, after attaining majority, uses the property involved in the contract, undertakes to sell it to someone else, or performs some other act showing an intention to affirm the contract. She may not thereafter disaffirm the contract but is bound by it. Perhaps the most common form of implied ratification occurs when a minor, after attaining majority, continues to use the property purchased as a minor. This use is obviously inconsistent with the nonexistence of a contract. Whether the contract is performed or still partly executory, the continued use of the property amounts to a ratification and prevents a disaffirmance by the minor. Simply keeping the goods for an unreasonable time after attaining majority has also been construed as a ratification.

In re The Score Board, Inc.

U.S. DISTRICT COURT, DISTRICT OF NEW JERSEY, 1999
238 B.R. 585

http://lawlibrary.rutgers.edu/fed/html/ca99-259-1.html

FACTS During the spring of 1996, Kobe Bryant (Bryant), then a seventeen-year old star high school basketball player, declared his intention to forgo college and enter the 1996 National Basketball Association (NBA) lottery draft. The Score Board Inc., a company in the business of licensing, manufacturing, and distributing sports and entertainment-related memorabilia, entered into negotiations with Bryant's agent, Arn Tellem (Agent) and Bryant's father, former NBA star Joe "Jelly Bean" Bryant, to sign Bryant to a contract. In early July 1996, Score Board sent Bryant a signed written licensing agreement (agreement). The agreement granted Score Board the right to produce licensed products, such as trading cards, with Bryant's image. Bryant was obligated to make two personal appearances on behalf of Score Board and provide between a minimum of 15,000 and a maximum of 32,500 autographs. Bryant was to receive a $2.00 stipend for each autograph, after the first 7,500. Under the agreement, Bryant could receive a maximum of $75,000 for the autographs. In addition to being compensated for the autographs, Bryant was entitled to receive a base compensation of $10,000.

Bryant rejected this proposed agreement, and on July 11, 1996, while still a minor, made a counteroffer (counteroffer), signed it, and returned it to Score Board. The counteroffer made several changes to Score Board's agreement, including the number of autographs. Score Board claimed that they signed the counteroffer and placed it into its files. The copy signed by Score Board was subsequently misplaced and has never been produced by Score Board during these proceedings. Rather, Score Board has produced a copy signed only by Bryant.

On August 23, 1996, Bryant turned eighteen. Three days later, Bryant deposited the check for $10,000 into his account. Bryant subsequently performed his contractual duties for about a year and a half. By late 1997, Bryant grew reluctant to sign any more autographs under the agreement and his Agent came to the conclusion that a fully executed contract did not exist. By this time, Agent became concerned with Score Board's financial condition because it failed to make certain payments to several other players. Score Board claims that the true motivation for Bryant's reluctance stems from his perception that he was becoming a "star" player, and that his autograph was "worth" more than $2.00.

On March 17, 1998, Score Board mistakenly sent Bryant a check for $1,130 as compensation for unpaid autographs. Bryant was actually entitled to $10,130 and the check for $1,130 was based on a miscalculation.

On March 18, 1998, Score Board filed a voluntary Chapter 11 bankruptcy petition. On March 23, 1998, Agent returned the $1,130 check. Included with the check was a letter that directed Score Board to "immediately cease and desist from any use of" Kobe Bryant's name, likeness, or other publicity rights. Subsequently, Score Board began to sell its assets, including numerous executory contracts with major athletes, including Bryant. Bryant argued that Score Board could not do this, because he believed that a contract never existed. In the alternative, if a contract had been created, Bryant contended that it was voidable because it had been entered into while he was a minor. The Bankruptcy Court ruled in favor of Score Board. Bryant appealed.

DECISION Judgment affirmed.

OPINION Irenas, J. Bryant challenges the Bankruptcy Court's finding that he ratified the agreement upon attaining majority. Contracts made during minority are voidable at the minor's election within a reasonable time after the minor attains the age of majority. [Citations]

The right to disaffirm a contract is subject to the infant's conduct which, upon reaching the age of majority, may amount to ratification. [Citation.] "Any conduct on the part of the former infant which evidences his decision that the transaction shall not be impeached is sufficient for this purpose." [Citation.]

On August 23, 1996, Bryant reached the age of majority, approximately six weeks after the execution of the agreement. On August 26, 1996, Bryant deposited the $10,000 check sent to him from Debtor (Score Board). Bryant also performed his contractual duties by signing autographs.

The Bankruptcy Court did not presume ratification from inaction as Bryant asserts. It is clear that Bryant ratified the contract from the facts, because Bryant consciously performed his contractual duties.

Bryant asserts that he acted at the insistence of his Agent, who believed that he was obligated to perform by contract. Yet, neither Bryant nor his Agent disputed the existence of a contract until the March 23, 1998, letter by Tellem (Agent). That Bryant may have relied on his Agent is irrelevant to this Court's inquiry and is proper evidence only in a suit against the Agent. To the contrary, by admitting that he acted because he was under the belief that a contract existed, Bryant confirms the existence of the contract. Moreover, it was Bryant who deposited the check, signed the autographs, and made personal appearances.

INTERPRETATION Ratification of a contract may be implied from a person's conduct after the person attains his majority.

CRITICAL THINKING QUESTION What criteria should a court employ in determining what is a reasonable period of time for disaffirmance by a person who has attained majority?

Liability for Necessaries

Contractual incapacity does not excuse a minor from an obligation to pay for **necessaries**, those things, such as food, shelter, medicine, and clothing, that suitably and reasonably supply his personal needs. Even here, however, the minor is not contractually liable for the agreed price but for the *reasonable* value of the items furnished. Recovery is based on quasi-contract. Thus, if a clothier sells a minor a suit that the minor needs, the clothier can successfully sue the minor. The clothier's recovery, however, is limited to the reasonable value of the suit only, even if this amount is much less than the agreed-upon selling price. In addition, a minor is not liable for anything on the ground that the item is a necessary, unless it has been actually furnished to him and used or consumed by him. In other words, a minor may disaffirm his executory contracts for necessaries and refuse to accept such clothing, lodging, or other items.

Defining "necessaries" is a difficult task. In general, the states regard as necessary those things that the minor ... himself in his particular station in life.

Items necessary for subsistence and health, such as lodging, clothing, medicine, and medical services included. But other less essential items, such as textb school instruction, and legal advice, may be incluc well. Further, some states enlarge the concept of n ries to include articles of property and services minor needs to earn the money required to prov necessities of life for himself and his dependents. N less, many states limit necessaries to items that are vided to the minor. Thus, if a minor's guardian her with an adequate wardrobe, a blouse the mi chased would *not* be considered a necessary.

The case which follows is the leading case on and obligations of minors for the purchase of "ne

Ordinarily, luxury items, such as cameras, ta ers, stereo equipment, television sets, and motc not qualify as necessaries. The question whether automobiles and trucks are necessaries considerable controversy, but some courts have that under certain circumstances, an automob necessary where it is used by the minor for activities.