KESER v. CHAGNON

SUPREME COURT OF COLORADO, 1966
159 COLO. 209, 410 P.2D 637

FACTS On June 11, 1964, Chagnon bought a 1959 Edsel from Keser for $995. Chagnon, who was then a twenty-year-old minor, obtained the contract by falsely advising to Keser that he was over twenty-one years old, the age of majority. On September 25, 1964, two months and four days after his twenty-first birthday, Chagnon disaffirmed the contract and, ten days later, returned the Edsel to Keser. He then brought suit to recover the money he had paid for the automobile. Keser counterclaimed that he suffered damages as the direct result of Chagnon's false representation of his age. A trial was had to the court, sitting without a jury, all of which culminated in a judgment in favor of Chagnon against Keser in the sum of $655.78. This particular sum was arrived at by the trial court in the following manner: the trial court found that Chagnon initially purchased the Edsel for the sum of $995 and that he was entitled to the return of his $995; and then, by way of setoff, the trial court subtracted from the $995 the sum of $339.22, apparently representing the difference between the purchase price paid for the vehicle and the reasonable value of the Edsel on October 5, 1964, the date when the Edsel was returned to Keser.

DECISION Judgment affirmed except as to the calculation of damages for misrepresentation.

OPINION McWilliams, J. Before considering each of these several matters, it is deemed helpful to allude briefly to some of the general principles pertaining to the long-standing policy of the law to protect a minor from at least some of his childish foibles by affording him the right, under certain circumstances, to avoid his contract, not only during his minority but also within a reasonable time after reaching his majority. In [citation] we held that when a minor elects to disaffirm and avoid his contract, the "contract" becomes invalid *ab initio* and that the parties thereto then revert to the same position as if the contract had never been made. In that case we went on to declare that when a minor thus sought to avoid his contract and had in his possession the specific property received by him in the transaction, he was in such circumstance required to return the same as a prerequisite to any avoidance.

In [citation] it is said that a minor failing to disaffirm within a "reasonable time" after reaching his majority loses the right to do so and that just what constitutes a "reasonable time" is ordinarily a question of fact. As regards the necessity for restoration of consideration, in [citation] it is stated that the minor after disaffirming is "usually required *** to return the consideration, if he can, or the part remaining in his possession or control."

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Keser's *** contention that Chagnon upon attaining his majority ratified the contract by his failure to disaffirm within a reasonable time after becoming twenty-one and by his retention and use of the Edsel prior to its return to the seller is equally untenable. In this connection it is pointed out that Chagnon did not notify Keser of his desire to disaffirm until 66 days after he became twenty-one and that he did not return the Edsel until 10 days after his notice to disaffirm, during all of which time Chagnon had the possession and use of the vehicle in question. As already noted, when an infant attains his majority he has a reasonable time within which he may thereafter disaffirm a contract entered into during his minority. And this rule is not as strict where, as here, we are dealing with an executed contract. There is no hard and fast rule as to just what constitutes a "reasonable" time within which the infant may disaffirm. *** Suffice it to say, that under the circumstances disclosed by the record we are not prepared to hold that as a matter of law Chagnon ratified the contract either by his actions or by his alleged failure to disaffirm within a reasonable time after reaching his majority. ***

Finally, error is predicated upon the trial court's finding in connection with Keser's setoff for the damage occasioned him by Chagnon's admitted false representation of his age. In this regard the trial court apparently found that the reasonable value of the Edsel when it was returned to Keser by Chagnon was $655.78, and accordingly went on to allow Keser a setoff in the amount of $339.22, this latter sum representing the difference between the purchase price, $995, and the value of the vehicle on the date it was returned. Finding, then, that Chagnon was entitled to the return of the $995 which he had theretofore paid Keser for the Edsel, the trial court then subtracted therefrom Keser's setoff in the amount of $339.22, and accordingly entered judgment for Chagnon against Keser in the sum of $655.78. Whether it was by accident or design we know not, but $655.78 is apparently the exact amount which Chagnon "owed" the Public Finance Corporation on his note with that company.

INTERPRETATION States vary on the rights of a minor and a defrauded party when a minor fraudulently misrepresents her age when entering into a contract.

ETHICAL QUESTION If a minor misrepresents his age, should he forfeit the right to avoid the contract? Explain.

CRITICAL THINKING QUESTION What rule would you apply in this case? Explain.

LIABILITY FOR TORT CONNECTED WITH CONTRACT

It is well settled that minors are generally liable for their torts. There is, however, a legal doctrine that if a tort and a contract are so "interwoven" that the court must enforce the contract to enforce the tort action, the minor is not liable in tort. Thus, a minor who rents an automobile from an adult enters into a contractual relationship obliging him to exercise reasonable care to protect the property from injury. By negligently damaging the automobile, he breaches that contractual undertaking. But his contractual immunity protects him from an action by the adult based on the contract. By the majority view, the adult cannot successfully sue the minor for damages on a tort theory. For, it is reasoned, a tort recovery would, in effect, be an enforcement of the contract and would defeat the protection that contract law gives the minor. Should the minor depart, however, from the terms of the agreement (e.g., by using a rental automobile for an unauthorized purpose) and in so doing negligently cause damage to the automobile, most courts would hold that the tort is independent and that the adult can collect from the minor.

Incompetent Persons

In this section, we will discuss the contract status of incompetent persons who are under court-appointed guardianship and those who are not adjudicated incompetents.

PERSON UNDER GUARDIANSHIP

If a person is under **guardianship** by ***court order***, her contracts are ***void*** and of no legal effect. A court appoints a *guardian*, generally under the terms of a statute, to control and preserve the property of a person (the ***ward*** or ***adjudicated incompetent***) whose impaired capacity prevents her from managing her own property. Nonetheless, a party dealing with an individual under guardianship may be able to recover the fair value of any necessaries provided to the incompetent. Moreover, the contracts of the ward may be ratified by her guardian during the period of guardianship or by the ward on termination of the guardianship.

MENTAL ILLNESS OR DEFECT

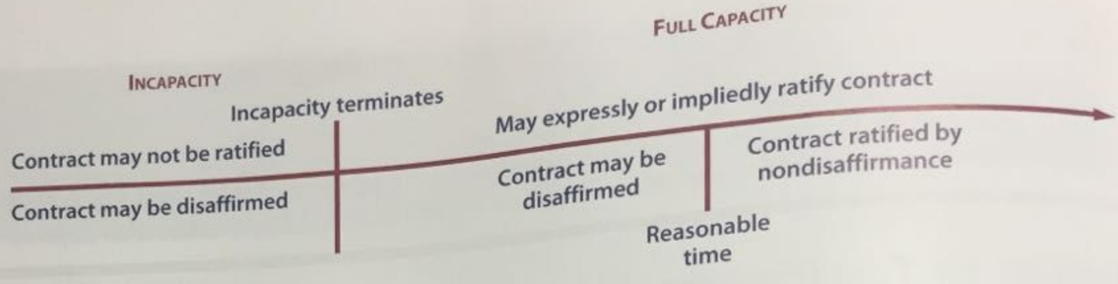
Because a contract is a consensual transaction, the parties to a valid contract must have a certain level of mental capacity. If a person lacks such capacity, or is **mentally incompetent**, the agreement is ***voidable***.

Under the traditional cognitive ability test, a person is mentally incompetent if he is unable to comprehend the subject of the contract, its nature, and its probable consequences. Though he need not be proved permanently incompetent to avoid the contract, his mental defect must be something more than a weakness of intellect or a lack of average intelligence. In short, a person is competent unless he is unable to understand the nature and effect of his actions, in which case he may disaffirm the contract even if the other party did not know or had no reason to know of the incompetent's mental condition.

A second type of mental incompetence recognized by the Restatement and some states is a mental condition that impairs a person's ability to act in a reasonable manner. In other words, the person understands what he is doing but cannot control his behavior in order to act in a reasonable and rational way. If the contract he enters is entirely executory or grossly unfair, it is voidable. If, however, the contract is executed and fair and the competent party had no reason to suspect the incompetency of the other, the incompetent must restore the competent party to the *status quo* by returning the consideration he has received or its equivalent in money. If restoration to the *status quo* is impossible, avoidance will depend upon the equities of the situation.

Like minors and persons under guardianship, an incompetent person is liable on the principle of quasi-contract for *necessaries* furnished him, the amount of recovery being the reasonable value of the goods or services. Moreover, an incompetent person may *ratify* or *disaffirm* voidable contracts during a lucid period or when he becomes competent.

Figure 14-1
Incapacity: Minors, Nonadjudicated Incompetents, and Intoxicated



Intoxicated Persons

A person may *avoid* any contract that he enters into if the other party has reason to know that the person, because of his intoxication, is unable to understand the nature and consequences of his actions or unable to act in a reasonable manner. Such contracts, as in the case that follows, are ***voidable***, although they may be ratified when the intoxicated person regains his capacity. Slight intoxication will not destroy one's contractual capacity; on the other hand, to make a contract voidable, a person need not be so drunk that he is totally without reason or understanding.

The effect that the courts allow intoxication to have on contractual capacity is similar to the effect they allow contracts that are voidable because of incompetency, although the courts are even more strict with intoxication due to its voluntary nature. Most courts, therefore, require that, to avoid a contract, the intoxicated person on regaining his capacity must act promptly to disaffirm and generally must offer to restore the consideration he has received. Individuals who are taking prescribed medication or who are involuntarily intoxicated are treated the same as those who are incompetent under the cognitive ability test. As with incompetent persons, intoxicated persons are liable in quasi-contract for necessaries furnished during their incapacity.

Practical Advice

If you have doubts about the capacity of the other party to a contract, have an individual with full legal capacity cosign the contract.

Figure 14-1 summarizes the voidability of contracts made by persons with contractual incapacity.

FIRST STATE BANK OF SINAI V. HYLAND

SUPREME COURT OF SOUTH DAKOTA, 1987
399 N.W.2D 894

FACTS Randy Hyland, unable to pay two promissory notes due September 19, 1981, negotiated with The First State Bank of Sinai (Bank) for an extension. The Bank agreed on the condition that Randy's father, Mervin, act as cosigner. Mervin, a good customer of the Bank, had executed and paid on time over sixty promissory notes within a seven-year period. Accordingly, the Bank drafted a new promissory note with an April 20, 1982, due date, which Randy took home for Mervin to sign. On April 20, 1982, the new note was unpaid. Randy, on May 5, 1982, brought the Bank a check signed by Mervin to cover the interest owed on the unpaid note and asked for another extension. The Bank agreed to a second extension, again on the condition that Mervin act as cosigner. Mervin, however, refused to sign the last note; and Randy subsequently declared bankruptcy. The Bank sued Mervin on December 19, 1982. Mervin responded that he was not liable since he had been incapacitated by liquor at the time he signed the note. He had been drinking heavily throughout this period, and in fact had been involuntarily committed to an alcoholism treatment hospital twice during the time of these events. In between commitments, however, Mervin had executed and paid his own promissory note with the Bank and had transacted business in connection with his farm. The trial court held that Mervin's contract as cosigner was void due to alcohol-related incapacity, and the Bank appealed.

DECISION Judgment for the Bank.

OPINION Henderson, J. Historically, the void contract concept has been applied to nullify agreements made by mental incompetents who have contracted *** after a judicial determination of incapacity had been entered. [Citations.] ***

Mervin had numerous and prolonged problems stemming from his inability to handle alcohol. However, he was not judicially declared incompetent during the note's signing.

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Contractual obligations incurred by intoxicated persons may be voidable. [Citation.] Voidable contracts (contracts other than those entered into following a judicial determination of incapacity) *** may be rescinded by the previously disabled party. [Citation.] However, disaffirmance must be prompt, upon the recovery of the intoxicated party's mental abilities, and upon his notice of the agreement, if he had forgotten it. [Citation.] ***

A voidable contract may also be ratified by the party who had contracted while disabled. Upon ratification, the contract becomes a fully valid legal obligation. [Citation.] Ratification can either be express or implied by conduct. [Citations.] In addition, failure of a party to disaffirm a contract over a period of time may, by itself, ripen into a ratification, especially if rescission will result in prejudice to the other party. [Citations.]

Mervin received both verbal notice from Randy and written notice from Bank on or about April 27, 1982, that the note was overdue. On May 5, 1982, Mervin paid the interest owing with a check which Randy delivered to Bank. This by itself could amount to ratification through conduct. If Mervin wished to avoid the contract, he should have then exercised his right of rescission. We find it impossible to believe that Mervin paid almost $900 in interest without, in his own mind, accepting responsibility for the note. His assertion that paying interest on the note relieved his obligation is equally untenable in light of his numerous past experiences with promissory notes.

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We conclude that Mervin's obligation to Bank was not void. *** Mervin's obligation on the note was voidable and his subsequent failure to disaffirm (lack of rescission) and his payment of interest (ratification) then transformed the voidable contract into one that is fully binding upon him.

INTERPRETATION An intoxicated party ratifies a contract by not disaffirming it when she is not intoxicated and learns of its existence and by making interest payments on it when she is not intoxicated.

CRITICAL THINKING QUESTION When should a person be allowed to invalidate an agreement because of intoxication? Explain.

Ethical Dilemma

Should a Merchant Sell to One Who Lacks Capacity?

FACTS Alice Richards is a salesclerk for an exclusive department store in Connecticut. She was working in the children's clothing department when an elderly woman, Carrie Johnson, entered the area and began to browse. Because part of her compensation is based on commissions and it had been a slow season, Richards was eager to help her. However, when Richards asked Johnson if she needed any help, Johnson replied, "No, I'm just looking for a new pocketbook." When Richards attempted to direct Johnson to the pocketbooks, Johnson did not appear to respond. Puzzled, Richards began to wonder whether the woman was mentally alert.

Johnson picked out infant's clothing and accessories worth approximately $250. At the cashier's counter she exclaimed how lovely everything was and explained that the jumpers and bath toys would go well with the other new clothes she had purchased for her son, who would soon be back from a cruise in the Bahamas.

Worried that the woman did not know what she was purchasing, Richards asked her manager for assistance. The manager said that the sale should be completed, as long as the store's credit policies were satisfied.

Social, Policy, and Ethical Considerations

1. What would you do?
2. What responsibility does a retail store have in stopping a sale where a reasonable person would assume that the customer lacks capacity? What business policies are appropriate?
3. What are the dangers in assuming a protective position? How can a retailer avoid discrimination and extend appropriate protection?
4. What alternatives does a family have when an elderly member begins to lose capacity?