Michigan Law Review

Volume 29 | Issue 8

1931

INFANTS-LIABILITY ON TORT ARISING OUT OF CONTRACT

INFANTS—LIABILITY ON TORT ARISING OUT OF CONTRACT.—Plaintiff was the assignee of a conditional sales contract for an automobile purchased by defendant, a minor. The contract contained a provision that the car should not be used in connection with any violation of any state or federal law. The defendant was apprehended by federal officers while using the car for the illegal transportation of liquor. The car was seized and later forfeited, and the plaintiff brought a tort action for the conversion of the car. *Held,* the infancy of the conditional buyer was no defense to an action for conversion by a wilful, illegal use. *Vermont Acceptance Corp. v. Wiltshire* (Vt. 1931) 153 Atl. 199.

The rule that an infant is liable for his torts is generally held to be subject to the exception that there is no liability if the tort arose out of a contract. *Greensboro Morris Plan Co. v. Palmer,* 185 N. C. 109, 116 S.E. 261; *Brunhoelzl v. Brandes,* 90 N. J. L. 31, 100 Atl. 163. The reason given is that to make him liable in such case would amount to an enforcement of the contract. So in England an infant is not liable for his deceit in inducing a contract, nor for a conversion because of an unauthorized use of a chattel bailed to him. 28 HARV. L. REV. 521; *Johnson v. Pye,* 1 Sid. 258, 82 Eng. Rep. 1091; *Raymond v. General Motorcycle Co.,* 230 Mass. 54, 119 N.E. 359. The rule in the majority of the states, however, is that a tort action may be maintained for misrepresentations as to his age, as distinguished from the subject matter of the contract, in inducing one to contract with him. These cases proceed on the theory that the misrepresentations are not part of the contract, and that, therefore, the rule that an infant is not liable for his torts which arise out of contract is not applicable. *Fitts v. Hall,* 9 N. H. 441; *Wisconsin Loan & Finance Corp. v. Goodnough,* 201 Wis. 101, 228 N.W. 484. It is now also generally held that an infant is liable for a conversion by the unauthorized use of the chattel, the principal conflict being over what amounts to a conversion. THROCKMORTON'S

COOLEY ON TORTS, sec. 47 at p. 98. *Campbell v. Stakes,* 2 Wend. (N. Y.) 137, 19 Am. Dec. 561. *Contra, Wilt v. Welsh,* 6 Watts (Pa.) 9. See the excellent note in 57 L. R. A. 680. See 6 A. L. R. 416 as to the infant's estoppel to plead infancy in an action on the contract at law. It is submitted that if the act of the infant amounts to a conversion because of a provision of the contract rather than because of some general principle of law, it is a conversion, and hence a tort which arises out of a contract, and if we adhere to the general rule there should be no liability. In the instant case it is clear that the conversion was due to the express prohibition against using the car for a violation of a law, either state or federal. The application of this indefinite concept of "a tort arising out of a contract" has been productive of much confusion in the cases. The original principle obviously was designed to prevent inroads on the doctrine of non-liability for contracts. But this goal has been lost sight of, and the courts now attempt to find that the contract did not arise out of a contract, so as not to be forced to apply this rule. The conflict between the English and American cases on the question of deceit in inducing a contract stands as mute evidence of this difference in thought. The tendency is to hold the wrongful act a tort, and the infant liable. So although at first we wished to preserve the doctrine of non-liability for contracts, now the courts are eager to limit it. This is illustrated not only by the evasion of the principle here in question, but also by the modern rule which permits a counterclaim for use and depreciation when an infant disaffirms his contract and sues for the recovery of the money he has paid. 28 MICH. L. REV. 79. Inasmuch as it is now thought to be desirable to attach liability to the infant's wrongdoing and to be more concerned with preventing unjust loss to the other party, rather than hold the infant liable under the guise of tort liability, why not frankly admit that the conduct amounts to a tortious conversion for which he is to be held liable regardless of whether the "tort arose out of a contract"?