

Michigan Law Review

Volume 55 | Issue 8

1957

Partnership - Partnership by Estoppel -Application to Tort Actions

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Recommended Citation

Thomas Erickson S.Ed., *Partnership - Partnership by Estoppel -Application to Tort Actions*, 55 MICH. L. REV. 1190 (1957).

Available at: <https://repository.law.umich.edu/mlr/vol55/iss8/14>

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PARTNERSHIP—PARTNERSHIP BY ESTOPPEL—APPLICATION TO TORT ACTIONS—Plaintiff-motorist brought action against defendant who, it was alleged, owned a truck which was driven into the rear of the plaintiff's automobile. Defendant had arranged to take title to the truck from his son. The transfer was to be effective three days before the accident but was not in fact completed until after the accident. Defendant also had taken out insurance on the truck and had joined with his son in purchasing it and in taking out an ash-hauling license in which business the truck was used. Other trucks previously used in the business by defendant's son had been carried in defendant's name. Plaintiff sought to hold the defendant liable, either as actual owner of the truck, or as a partner with his son. A directed verdict for defendant was given below. On appeal, *held*, reversed. A jury question was presented upon the issue of whether or not ownership of the truck was in defendant at the time of the accident. The court also indicated that defendant might be liable as a partner by estoppel. *Frye v. Anderson*, (Minn. 1957) 80 N.W. (2d) 593.

Reliance on the holding out of a partnership relation, with subsequent detrimental action as result of that reliance, is an essential prerequisite to the creation of a partnership by estoppel.¹ It must be a good faith reliance and must precede the doing of the act.² Although reliance may be pre-

¹ Uniform Partnership Act (1949) §16; *Pump-It, Inc. v. Alexander*, 230 Minn. 564, 42 N.W. (2d) 337 (1950); CRANE, PARTNERSHIP, 2d ed., 168 (1952). But see note 13 *infra*.

² MECHEM, ELEMENTS OF PARTNERSHIP, 2d ed., §102 (1920); *Weber v. Fohl*, 111 Ind. App. 388, 41 N.E. (2d) 648 (1942).

sumed in cases of long and continued holding out, there is no doubt that it must exist.³ Because of the reliance element, partnerships by estoppel are usually found in cases involving the giving of credit and the formation of contracts.⁴ The dictum of the principal case to the effect that the doctrine might apply to the type of accident situation there involved is misleading. The doctrine would properly apply to those forms of tort actions involving reliance.⁵ In cases of fraud or misrepresentation, where one is induced to buy from those misrepresenting, or to deliver goods to them, relying on their holding out of a partnership, he may sue them as partners and hold them estopped to deny the relation.⁶ On the other hand, one suing for wrongful conversion,⁷ or for negligent injury to his person or property, usually relies on no one in suffering the damage and cannot hold ostensible partners.⁸ Where a negligence claim arises out of a contract, express or implied, and one has relied on the due care and competency of apparent partners in entering into the contract, the doctrine of partnership by estoppel properly applies.⁹ Even where there is no contractual relation, as where one is negligently injured while upon premises believed to be controlled by a partnership, those held out to be partners may be liable if there is reliance on them to keep the premises safe.¹⁰ In this situation, to impose liability on a retired partner, for example, it may be necessary, in order to establish reliance, to show prior dealings with the firm and no knowledge of the retirement.¹¹ If there is neither reliance nor a contract induced by reliance, however, there can be no partnership by estoppel. The typical negligence case in which neither element is present is that of the street accident. At one time, even in this type of case, a partnership by estoppel was said to arise if at the time of the accident the ostensible

³ *Thompson v. First Nat. Bank of Toledo*, 111 U.S. 529 (1884).

⁴ Indeed, the Uniform Partnership Act, note 1 *supra*, speaks of reliance only in terms of the giving of credit.

⁵ But cf. POLLOCK, *PARTNERSHIP*, 15th ed., 55 (1952). Pollock apparently believes that the holding out doctrine does not apply to tort cases at all.

⁶ *Sherrod v. Langdon*, 21 Iowa 518 (1866); *Maxwell & Downs v. Gibbs*, 32 Iowa 32 (1871). These cases also involve elements of contract, on which reliance could be based. See note 9 *infra*.

⁷ *Shapard v. Hynes*, (8th Cir. 1900) 104 F. 449.

⁸ *Schlick v. Berg*, 205 Minn. 465, 286 N.W. 356 (1939).

⁹ *Rhone v. Try Me Cab Co.*, (D.C. Cir. 1933) 65 F. (2d) 834; *Gale v. Indep. Taxi Owners Assn.*, (D.C. Cir. 1936) 84 F. (2d) 249; *Middleton v. Frances*, 257 Ky. 42, 77 S.W. (2d) 425 (1934). In each case a cab passenger was injured and the owner of the cab and the company whose cabs she carried were held liable as partners. In *Cook v. Coleman*, 90 W. Va. 748, 111 S.E. 750 (1922), plaintiff recovered against a group of doctors as partners, since she relied on all of them in contracting for an operation.

¹⁰ *Jewison v. Dieudonne*, 127 Minn. 163, 149 N.W. 20 (1914). But see 15 *COL. L. REV.* 81 (1915), for adverse criticism of this case.

¹¹ In *Middleton v. Frances*, note 9 *supra*, plaintiff was unable to prevail against a retired partner for lack of proof of prior dealings. In *Jewison v. Dieudonne*, note 10 *supra*, the court did not expressly require such evidence, but prior dealings apparently existed and plaintiff was not shown to have known of the retirement.

partner had his name publicly displayed as a partner.¹² But this "holding out to the world" theory, which does not depend upon reliance, has long been disapproved both in England and the United States.¹³ In situations like that in the present case, the courts have almost uniformly held that no partnership by estoppel can result, since there is no reliance on the holding out prior to the accident, and the complainant, therefore, has not been induced to act to his detriment.¹⁴ Starting from the premise that detrimental reliance is essential,¹⁵ a well-reasoned opinion, under the facts of the present case, could only conclude that no partnership by estoppel exists.

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¹² *Stables v. Eley*, 1 Car. & P. 614, 171 Eng. Rep. 1339 (1825).

¹³ *Smith v. Bailey*, 2 Q. B. 403 (1891); *Thompson v. First Nat. Bank of Toledo*, note 3 supra; LINDLEY, *PARTNERSHIP*, 11th ed., 82 (1950).

¹⁴ *Rowland v. Canuso*, 329 Pa. 72, 196 A. 823 (1938); *Brudi v. Luhrman*, 26 Ind. App. 221, 59 N.E. 409 (1901); *Page v. D. M. D. Taxi Corp.*, (D.C. Cir. 1937) 92 F. (2d) 218; *Harlem Taxicab Assn. v. Nemes*, (D.C. Cir. 1951) 191 F. (2d) 459.

¹⁵ Minnesota requires reliance to create a partnership by estoppel. *Jewison v. Dieudonne*, note 10 supra, on which the court mainly relies for its dictum, has been interpreted by writers and the Minnesota court to require reliance. *Schlick v. Berg*, note 8 supra. MECHEM, *ELEMENTS OF PARTNERSHIP*, 2d ed., §108 (1920); CRANE, *PARTNERSHIP*, 2d ed., §81, 440 (1952). Minnesota also has the Uniform Partnership Act, which requires reliance. Minn. Stat. (1953) c. 323.15.