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## BUSINESS ASSOCIATIONS-PARTNERSHIP-CLAIMS AGAINST PARTNER WHO ASSERTS INFANCY

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## RECENT DECISIONS

**BUSINESS ASSOCIATIONS—PARTNERSHIP—CLAIMS AGAINST PARTNER WHO ASSERTS INFANCY**—An adult partner sought dissolution of the partnership, contribution of monies according to the contract, determination of liabilities for debts, ascertainment of respective interests, and an accounting from the infant partner. The infant partner asserted his infancy, disavowed the contract, and moved to dismiss the action. *Held*, motion granted except as to plaintiff's demand for a dissolution and accounting. *Sacco v. Schallus*, 11 N.J. Super. 197, 78 A. (2d) 143 (1950).

Partnership contracts with infants are, in general, voidable at the election of the infant partner within a reasonable time after he becomes of age.<sup>1</sup> Such an election may be manifested by either a voluntary disavowal or as a defense to an action brought against him by either partnership creditors or an adult partner.<sup>2</sup> However, in actions by creditors of the firm, it is generally conceded that the infant's contributions to the assets of the firm are irrevocably subject to the claims of such creditors, even though he is completely relieved of all personal liability for such debts both to his copartners and to the firm creditors.<sup>3</sup> This is based largely on a policy of stabilizing commercial transactions and protecting those not directly associated with the infant.<sup>4</sup> The courts are divided, however, as to whether or not an infant partner may recover his contributions from his adult partner. Some courts follow the view that there can be no recovery of such contributions in the absence of fraudulent conduct on the part of the adult,<sup>5</sup> while other courts hold that the infant may recover his contributions.<sup>6</sup> However, the value of any benefits received by the infant must be deducted from such recovery. He cannot rescind the burdens and keep the benefits he has received under the contract.<sup>7</sup> It has been held that payment for personal services to the partnership cannot be recovered by the infant partner.<sup>8</sup> This is out of line with the usual rule that the infant partner is entitled to recover for everything of value which he has contributed, but seems to be based on a policy designed to give some relief to the adult partner, who is already in an uncertain

<sup>1</sup> *Latrobe v. Dietrich*, 114 Md. 8, 78 A. 983 (1910); *Carolina Tel. & Tel. Co. v. Johnson*, (4th Cir. 1948) 168 F. (2d) 489; *Mutual Bank & Trust Co. v. Stout*, (Mo. 1950) 231 S.W. (2d) 274.

<sup>2</sup> *Jennings v. Stannus*, (9th Cir. 1911) 191 F. 347; *Potter v. Florida Motor Lines*, (D.C. Fla. 1932) 57 F. (2d) 313; *Commissioner of Internal Revenue v. Allen*, (3d Cir. 1939) 108 F. (2d) 961.

<sup>3</sup> *MECHEM, LAW OF PARTNERSHIP* §49 (1920).

<sup>4</sup> *Gay v. Johnson & Bodge*, 32 N.H. 167 (1855).

<sup>5</sup> *Ex parte Taylor*, 8 DeG. M. & G. 254, 44 Eng. Rep. 388 (1856); *Adams v. Beall*, 67 Md. 53, 8 A. 664 (1887).

<sup>6</sup> *Sparman v. Keim*, 83 N.Y. 245 (1880); *Kuipers v. Thome*, 182 Ill. App. 28 (1913); *Thomas v. Banks*, 224 Mich. 488, 195 N.W. 94 (1923).

<sup>7</sup> *Sparman v. Keim*, supra note 6; *Shirk v. Shultz*, 113 Ind. 571, 15 N.E. 12 (1888); *Lyghtel v. Collins*, 11 Ohio Dec. Rep. 161 (1891); *Thomas v. Banks*, supra note 6.

<sup>8</sup> *Page v. Morse*, 128 Mass. 99 (1880); *Lyghtel v. Collins*, supra note 7.

position and at a possible disadvantage when dealing with the infant. The view that an infant may recover his contributions would seem to be more in accord with the basic reasons for protecting minors from improvident contracts entered into at the instigation or under the influence of more experienced, and possibly unscrupulous, adults. The holding of the principal case that there is ordinarily no duty, in the absence of fraudulent conduct on the part of the infant, to place the adult partner *in statu quo*, is in accord with this view. To require the infant to place the adult partner *in statu quo* would, in effect, deprive the infant of much of the benefit of his privilege. The rule that an infant partner may disavow his contract and recover his contributions from the adult partner as well as escape liability for debts of the firm is a harsh one, leaving the adult partner the alternatives of either being successful in the venture or bearing all the risk himself, regardless of the innocence or good intentions of the adult.<sup>9</sup> The result and stated objective<sup>10</sup> of such a policy must be the almost total discouragement of partnerships between adults and minors.

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<sup>9</sup> However, some measure of relief is afforded, as in the principal case, by requiring an accounting of the infant partner when he has been active in the management of the firm.

<sup>10</sup> *Niemann v. Deverich*, 98 Cal. App. (2d) 787, 221 P. (2d) 178 (1950).