Indiana Law Journal

Volume 13 | Issue 6 Article 14

1-2000

Contract-Negligence as a Bar to Equitable Relief

CONTRACT—NEGLIGENCE AS A BAR TO EQUITABLE RELIEF.—Appellant and appellee entered into a written agreement whereby the appellant agreed to purchase automobile accessories from the appellee. At the time of the execution of the instrument appellee's agent, in response to an inquiry, stated that the contract as written contained a provision to the effect that upon the termination of the agreement the appellant could at his option pay such sums as were due either in cash or by return of certain merchandise. In reliance thereon, the appellant signed the instrument without reading it only to discover subsequently that the provision had been omitted. After the rightful termination of the contractual relations by the appellant, the appellee brought suit for the sum owing. The court below excluded evidence of the misrepresentations which appellant offered, apparently for the purpose of securing reformation of the agreement. Held, on appeal, affirmed. The appellant's negligence barred equitable relief.[1]

This case presents the intriguing question as to the right to equitable relief of one who has signed an instrument without reading it. At present there are two lines of authority,[2] some courts taking the view that in the absence of some clear excuse such as incapacity, the existence of a fiduciary relation, or the like, it is inexcusable negligence so to sign without reading and equitable relief will not be granted.[3] On the other hand, many liberal jurisdictions have held that signing a contract without reading it is not as a matter of law such negligence as to preclude reformation; to have that effect the circumstances must show gross negligence.[4]

While this split of authority does in fact exist as to the mere signing of an instrument without reading it, a totally different question is presented when one is induced to sign such a contract by the misrepresentations of the other contracting party. In the case at bar, the court's opinion was predicated on the fact that the appellant negligently refused to avail himself of the knowledge at hand; therefore, he was not entitled to relief. It is submitted, however, that while this statement of the law might be true in a situation in which there was no misrepresensation as to the contents of an agreement, it certainly is not true when this other element is present. Such a result in the latter event would be contrary to the great weight of authority, which is to the effect that negligence constitutes no bar to reformation for the mistake of

---

[9] Parker v. Potter (1931), 200 N. C. 348, 157 S. E. 68; Riggs v. Palmer (1889), 115 N. Y. 506, 22 N. E. 188; New York Mutual v. Armstrong (1885), 117 U. S. 591, 6 S. Ct. 877.

Contra, Metropolitan Life v. May (1929), 10 Tenn. App. 221.

[1] Welsh v. Kelly Springfield Tire Co. (Ind., 1938), 12 N. E. (2nd) 254.

[2] 45 A. L. R. 706.

[3] Keains v. Hart (1924, D. C.), 1 F. (2nd) 318; Houchin v. Auracher (1922), 194 Ia. 606, 190 N. W. 3, 45 A. L. R. 707.

[4] Schautz v. Keener (1882), 87 Ind. 258; Smelser v. Pugh (1902), 29 Ind. App. 614, 64 N. E. 943; Albany City Sav. Bank v. Burdick (1881), 87 N. Y. 40; 45 A. L. R. 707.

one party induced by the conscious misrepresentation of the other party.[5] In short, when actual fraudulent misrepresentations have been made, equitable relief in the form of rescission or reformation of the integration will be granted despite the fact that the mistake resulted in part from the lack of due care of the other party.[6]

In the situation presented, the element of fraud might well be found to exist, since one is conclusively presumed to know the terms of the writing he prepared and presented.[7] And when one definitely represents to the other contracting party that it contains certain provisions which it does not, thereby inducing the other to contract without investigation, inferences as to fraudulent intent might be drawn.[8] But even if such could not be established, surely relief should be granted, since failure to investigate the truth of even an honest misrepresentation is generally held to be no bar to relief.[9]

Thus, it would seem that the Indiana court ignored the significant features of the case, and was content with saying that in the absence of a fiduciary relationship the appellant's negligence barred all relief. In so proceeding this state has taken a view definitely out of step with the modern and liberal views.[10] F. L. M.

---

[5] McNair v. Public Sav. Ins. Co. of America (1928), 88 Ind. App. 389, 163 N. E. 290; Fiorito v. Clyde Equip. Co. (1924), 2 F. (2nd) 807; and parol evidence is admissible to show fraud: Tribune Co. v. Red Ball Transit Co. (1926), 84 Ind. App. 666, 151 N. E. 338.

[6] Note 5, supra; Given v. Masterson (1898), 152 Ind. 127, 51 N. E. 237; Keller v. The Equitable Fire Ins. Co. (1867), 28 Ind. 170. However, if rescission is attempted, the question as to restoring the defrauding party to status quo might arise since the appellant has already used some of the goods. The following cases have held that restitution in specie is not necessary, if the nature of the transaction makes it impractical. Clark v. Wells (1914), 127 Minn. 353, L. R. A. 1916 F. 476, 149 N. W. 547; 6 R. C. L. 938.

[7] Fiorito v. Clyde Equip. Co., note 5, supra.

[8] McNair v. Public Sav. Ins. Co. of America, note 5, supra.

[9] Wilks v. McGovern Place Oil Co. (1926), 189 Wis. 420, 207 N. W. 692; Redgrave v. Hurd Ct. of Appeals, (1881), L. R. 20 Ch. Div. 1.

[10] 6 R. C. L. 633-34; Page, On Contracts (1919-1929 Suppl.) sec. 2219.