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Torts—Parent's Indemnity Contract Void as Against Public Policy

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PARENT'S INDEMNITY CONTRACT VOID AS AGAINST PUBLIC POLICY

In the case of *Valdimer v. Mt. Vernon Hebrew Camps, Inc.*,[87] an infant plaintiff, by her father, settled with defendant for personal injuries alleged to have resulted from defendant's negligence. At the time of payment, the parent executed an instrument entitled "Parent-Guardian Release and Indemnity Agreement" which purported to release the plaintiff's and the parents' claims against the defendants. In addition, it contained an agreement that the parent would hold defendant harmless by reason of any suit thereafter brought by or on behalf of the infant.

One year after the agreement had been executed, the parent, as guardian ad litem, commenced an action to recover damages for injuries to the infant plaintiff and for his own incidental loss. Defendant denied negligence and damage, set up the Statute of Limitations against the parent, pleaded the previous payment as full discharge of the parents' claim, and pleaded that payment as a partial defense against the infant plaintiff. The defendant also counterclaimed against the parent on the basis of the indemnity agreement. Special Term granted plaintiff's motion to strike the partial defense and the counterclaim from the answer. The Appellate Division,[88] one judge dissenting, modified the order by restoring the partial defense. The Court of Appeals unanimously affirmed the order as modified.

The decision in the instant case appears to be in accord with the legislative policy responsible for Article 80 of the New York Civil Practice Act and is consistent with previous judicial interpretation of Article 80.[89]

The primary issue is whether a contract valid on its face and made by competent parties is to be declared void as against public policy. The desired and probable ultimate effect of this indemnity agreement is to quiet the infant's claim. This is so, because it is obvious that a parent will refuse to prosecute the claim himself and will discourage its prosecution by the infant or anyone on his behalf if that parent will be held responsible for the amount recovered. In other words, an admittedly invalid release of the infant's claim would operate as effectively as a valid release if the indemnity agreement is enforceable against the parent. This would be contrary to the legislature's intent in enacting Article 80 of the Civil Practice Act, entitled "Proceeding for the Settlement of an Infant's Claim." This article permits those interested in settling claims with infants to have the settlement in all its aspects approved by a court of competent jurisdiction without the necessity of starting a formal law suit.[90] Article 80 is permissive only in that it eliminates the need for commencing an action in order to get judicial approval of a settlement that will

87. Valdimer v. Mt. Vernon Hebrew Camps, Inc., 9 N.Y.2d 21, 210 N.Y.S.2d 520 (1961).

88. 9 A.D.2d 900, 95 N.Y.S.2d 24 (2d Dep't 1959).

89. See Thirteenth Annual Report of N.Y. Judicial Council, 1947, pp. 193-202.

90. Gordon v. Agoronian, 10 Misc. 2d 650, 171 N.Y.S.2d 131 (Sup. Ct. 1957).

bind an infant. It is not permissive in the sense of allowing tortfeasors and others, against whom an infant may have a claim, to use it, *or* some alternative device to obtain a binding settlement with that infant.

The lone dissenting judge of the Appellate Division expressed the opinion that the decision in *Delafield v. Barrett*[91] compelled them to hold the present indemnity agreement enforceable against the parent. The Court of Appeals discussed the *Delafield* case and concluded that it was not controlling. That case involved an indemnity agreement designed to protect a brokerage firm from liability for investing funds belonging to the indemnitor's wards in securities that were not on the officially approved list.[92] As a result of general market declines in 1929, the infants' funds were lost. Their mother, the indemnitor, brought suit on their behalf to recover their money from the brokerage firm. The broker counterclaimed on the indemnity agreement, and it was held to be valid. This case is distinguishable because the conduct with which the defendant was charged in the *Delafield* case was not tortious as in the instant case and because the indemnity agreement was not necessarily to the infants' detriment but could have benefited them by producing a larger return on their funds. In the *Valdimer* case, the indemnity agreement kept the infant from the custody and protection of the courts which was patently to their disadvantage.[93]

The holding of the *Valdimer* case, that indemnity agreements executed by parents in non-judicial infant tort claim settlements are invalid as against public policy, will undoubtedly cast a heavier burden on the courts and insurance companies. The Supreme Court of Oregon, deciding a similar case, reasoned that the additional costs to insurance carriers would be offset by adjustment of premium rates and the burden on the court system was amply justified by the nature of the interests to be protected.[94]

D. G. M.

STATUTE OF LIMITATIONS ON NEGLIGENCE CLAIM APPLICABLE

The case of *Lorberblatt v. Gerst*[95] presented a question of the applicable period of limitations for a personal injuries action. The plaintiff claimed that his cause of action was either one created by statute or, in the alternative, one

91. N.Y. Civ. Prac. Act § 1320:
When application may be made: In any instance in which an infant may have a claim for damages for personal injuries, injury to property, or breach of contract, an application for approval of a compromise or settlement of such claim may be made to any court or a judge of any court in which an action could have been brought to recover the amount of the proposed settlement. No application shall be made under this article if an action has been commenced on behalf of the infant to recover such damages.

92. 270 N.Y. 43, 200 N.E. 67 (1936).

93. N.Y. Dec. Est. Law § 111.
Infants are the wards of the courts, and our rules of practice abound in provisions of ancient origin designed to safeguard their legal rights.
Greenburg v. New York Central & Hudson R.R. Co., 210 N.Y. 505, 509, 104 N.E. 931, 934 (1914).

94. Ohio Casualty Ins. Co. v. Mallison, 354 P.2d 800 (1960).

95. 10 N.Y.2d 244, 219 N.Y.S.2d 40 (1961).