

## Sample Office Memorandum

To: Requesting Attorney  
From: Summer Clerk  
Date: November 9, 2002  
Re: Beth Buckley; file # 756385; stolen car; whether Buckley can disaffirm purchase of car based on her minority

### QUESTION PRESENTED

Can Buckley, a minor, disaffirm the purchase of a car when she misunderstood the sales agent's question and therefore accidentally misrepresented her age as eighteen?

### BRIEF ANSWER

Probably yes. A minor can disaffirm a contract unless the minor's fraudulent misrepresentation induced the other party to rely justifiably on the representation. On Buckley's facts, a court would probably rule that an innocent misrepresentation such as Buckley's is not fraudulent and therefore would not prevent a minor from disaffirming a contract. A court might also rule that the seller did not justifiably rely on Buckley's representation.

### FACTS

Our client, Beth Buckley, is seventeen and a high school senior. She will turn eighteen on December 15. Two months ago she bought a used car for \$3,000 from Willis Chevrolet. She paid cash, using the money she had saved from her summer job. Buckley purchased collision insurance for the car, but she did not insure against theft. Last week the car was stolen, and Buckley has asked what she can do about her loss.

When Buckley first looked at cars on the lot, the sales agent asked if she was old enough to buy a car. Buckley did not realize that she had to be eighteen to enter into a contract, even when paying cash. She thought the sales agent was asking whether she was old enough to drive, so she said "Yes." The agent did not ask to see any identification and did not raise the subject of age again.

The next day Buckley returned to the lot, selected the car she wanted to purchase, and completed the transaction. She recalls "signing a bunch of papers," but she did not read them and does not know what they said. She says that the sales agent did not attempt to explain the documents.

He simply showed her where to sign, and she signed on those lines. She does not know if she still has copies of the documents, but she will look among her papers and let us know.

#### DISCUSSION

##### I. Can Beth Buckley disaffirm the contract?

A minor does not have the capacity to make a binding contract, but a contract made by a minor is not automatically void. *Hood v. Duren*, 125 S.E. 787 (Ga. Ct. App. 1924). Generally, one who is a minor at the time of making a contract can disaffirm the contract within a reasonable time after reaching the age of majority. O.C.G.A. § 13-3-20 (1982); *Merritt v. Jowers*, 193 S.E. 238 (Ga. 1937). The rationale for the rule is the recognition that minors have not yet attained sufficient maturity to be responsible for the decisions they make, so the rule protects them from at least some of the consequences of bad decisions. See generally *White v. Sikes*, 59 S.E. 228 (Ga. 1907).

However, a minor is estopped from disaffirming a contract if (a) the minor made a false and fraudulent representation of his or her age; (b) the contracting party justifiably relied on the minor's representation; and (c) the minor has reached the age of discretion. *Carney v. Southland Loan Co.*, 88 S.E.2d 805 (Ga. 1955). Because the first element is the most problematic in Buckley's case, the memo will discuss it first.

##### A. Buckley's unintentional misrepresentation of her age probably is insufficient to establish fraudulent misrepresentation.

The first element necessary for estoppel is a false and fraudulent representation. A minor makes a false and fraudulent representation when the minor affirmatively and intentionally states a false age, intending that the seller rely on the information. For instance, in *Carney* the minor told the car sales agent that he was twenty-two, the agent recorded that information on the loan application, and the minor signed the application and purchased the car. The court affirmed the trial court's holding that the minor had fraudulently misrepresented his age and was estopped from disaffirming the contract. *Id.* at 807-808.

Similarly, in *Clemons v. Olshine*, 187 S.E. 711 (Ga. Ct. App. 1936), the minor told the clothing sales agent that he was twenty-one and signed a contract confirming the representation. The court held that his fraudulent misrepresentation estopped him from disaffirming. In *Watters v. Arrington*, 146 S.E. 773 (Ga. Ct. App. 1929), another car purchase case, several agents of the seller testified that the minor had twice affirmatively stated his age to be twenty-one. The court affirmed the jury's verdict for the seller, holding that a minor's fraudulent misrepresentation of age estops the minor from disaffirming the contract.

The courts distinguish this kind of intentional, knowing misrepresentation from unintentional, even negligent misrepresentations of age. For instance, in *Woodall v. Grant & Co.*, 9 S.E.2d 95 (Ga. Ct. App. 1940), the minor had simply signed without reading a form contract that



contained a representation that he was of age. There the court held that the representation in the contract did not estop the minor because the minor had not read the contract. The court reasoned that minors are not required to read contracts. *Id.* at 95. The *Carney* decision distinguished *Woodall* by pointing out that in *Woodall* "the minor's only sin, if any, was his failure to read a contract which . . . stated that he was of age, while in [*Carney*] the minor falsely gave the information put into the contract." *Carney*, 88 S.E.2d at 808.

The most recent relevant case, *Siegelstein v. Fenner & Beane*, 17 S.E.2d 907 (Ga. Ct. App. 1941), reaffirmed the *Carney/Woodall* distinction. In *Siegelstein*, the jury returned a verdict for the defendant, and the appellate court reversed on other grounds. However, the appellate court affirmed the trial court's jury instruction, stating that a minor's false representation of age "will not affect his power to disaffirm a contract unless [the representation] was made *fraudulently*." *Id.* at 910 (emphasis supplied).

The rule holding minors responsible only for intentional affirmative misrepresentations is consistent with the policy behind allowing minors to disaffirm their contracts. Minors, by definition, are more likely than adults to make errors and other innocent misrepresentations. Given this symmetry of rationale, the courts are likely to continue allowing minors to disaffirm despite innocent, even negligent, misrepresentations.

Here, the sales agent simply asked Buckley whether she was old enough to buy a car. Buckley misunderstood the question, thinking that the agent was asking whether she was old enough to drive. Thus she innocently answered "Yes." She did not affirmatively state an age at all. This kind of misunderstanding is exactly the sort of confusion a minor is likely to experience.

Buckley's representation that she was old enough to buy a car is significantly different from the representations in the cases holding that the minor cannot disaffirm. Unlike the minors in *Carney*, *Clemons*, and *Watters*, Buckley never stated her age at all. Also unlike the facts in those cases, Buckley's assertion, taken to mean what she intended it to mean (that she was old enough to drive), was not even false. Further, Buckley made only this single, ambiguous statement, in comparison to the several oral and written assertions of a specific age, as in the facts of the earlier cases.

Buckley's statement is much closer to the situation in *Woodall*, in which the minor made the representation unknowingly. In *Woodall*, the minor did not know that he was making the representation because he did not read the form contract he was signing. Buckley did not know that she might be making a representation that she was eighteen because she misunderstood the agent's question. In both cases, the requisite intent to deceive is absent. Because Buckley did not intend to deceive Willis Chevrolet, a court would probably allow her to disaffirm the contract.

However, Buckley must realize that the sales agent's testimony describing their conversation may differ from hers. The agent may remember the conversation differently or may testify falsely. Others may claim to have overheard the conversation. One way or another, Buckley's

testimony may be controverted. Further, the documents Buckley signed may have contained representations of age, and other witnesses may testify that Buckley read them. If we decide to proceed with Buckley's case, we will need to learn what testimony Willis Chevrolet will offer and what the documents contain. On the facts we now have, however, a court would probably conclude that Buckley did not fraudulently misrepresent her age.

B. Willis Chevrolet's reliance on Buckley's representation was probably reasonable.

The next element requires the injured party to have justifiably relied on the representation. *Carney*, 88 S.E.2d at 808. The cases that describe this element allude to the minor's physical appearance, the minor's life circumstances known to the injured party, the lack of any reason to cause the party to suspect the representation, and the lack of a ready means of confirming the representation. *Clemons*, 187 S.E. at 712-713; *Hood*, 125 S.E. at 788; *Carney*, 88 S.E.2d at 808; *Watters*, 146 S.E. at 773-774.

For instance, in *Carney*, the court points out that the minor was married, was a father, and appeared to be of the age of majority. 88 S.E.2d at 808. In *Hood*, the court points to the minor's physical appearance and to the seller's knowledge that the minor had been married and living independently with his wife for about four years. 125 S.E. at 788. While the decisions sometimes articulate the standard as whether the defendant "failed to use all ready means" to ascertain the truth, *see, e.g., Carney*, 88 S.E.2d at 808, none of the reported decisions have found circumstances requiring the defendant to go further than the minor's representation. In fact, *Clemons* specifically held that a contracting party need not undertake an affirmative investigation beyond the representation of age when the contracting party has no reason to doubt the assertion. 187 S.E. at 713-714.

Buckley's facts do not indicate whether the sales agent knew anything about Buckley's life circumstances that would lead the agent to suspect that Buckley might not be eighteen. The facts also do not include a physical description of Buckley, although we can infer that she looks young, as the agent questioned her about her age. Although this issue would be a question of fact at trial, the facts seem similar to the facts in the reported cases. Contrary to the facts in *Hood*, Buckley is close enough to eighteen that an agent probably would not be expected to suspect her minority simply from her appearance. Also unlike the *Hood* facts, we have no reason to believe that the agent knew anything about Buckley's life, nor that he had any reason other than her appearance to suspect that she was a minor. Therefore, the facts may not be sufficient to require the agent to go further than questioning Buckley.

However, one might argue that the agent had at least one "ready means" to verify Buckley's answer, namely asking to see her driver's license. There is no discussion of requiring this simple verification in any of the prior cases, but at least for some of them, that may be because driver's licenses were not required at the time those cases were decided.



Not only would this solution have been simple, but requiring it would facilitate an important policy rationale for the rule. The rule is designed to discourage sellers from being too ready to contract with minors, despite the inherent pressure to make sales. Requiring sellers to verify the ages of buyers who appear young would counteract the possible tendency of sellers to be too easily convinced of a buyer's majority.

The court's ruling on the second element probably would be a close one. However, based on the applicable case law, a court probably would find the agent's reliance reasonable.

C. Buckley had almost certainly reached the age of discretion when she made the representation of her age.

A minor cannot be held responsible for a misrepresentation unless the minor had reached the age of discretion when he or she made the misrepresentation. *Carney*, 88 S.E.2d at 808; *Clemons*, 187 S.E. at 713. A minor reaches the age of discretion when the minor has developed the capacity to conceive a fraudulent intent. *Clemons* points out that most minors have reached the age of discretion for criminal prosecution for fraud at least by the age of fourteen, though probably not by the age of ten. *Clemons* concludes that the eighteen-year-old minor in that case was well within the age of discretion. *Id.* at 713.

Buckley was seventeen when she bought the car, just a few months away from the age of majority. She is three years older than the presumptive age of discretion for criminal prosecution, and criminal prosecution probably requires more assurance of sufficient age than simple estoppel in a contract action. A court almost certainly would conclude that Buckley had reached the age of discretion.

#### CONCLUSION

Buckley can disaffirm unless (1) she fraudulently misrepresented her age, (2) Willis Chevrolet justifiably relied upon the misrepresentation, and (3) Buckley had reached the age of discretion. On the facts as we presently understand them, a court would probably rule that Buckley did not misrepresent her age. A court might also rule that Willis Chevrolet was not justified in relying on Buckley's representation. Given the probable absence of one required element and the possible absence of another, Buckley can probably disaffirm the contract.