

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN MICHAEL KUEHN,	§	
	§	No. 96, 2013
Appellant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
ANDREW CODY COTTER and	§	
TRACY CAMPBELL,	§	
	§	
Appellees Below,	§	C.A. No. N12A-08-001
Appellees.	§	

Submitted: July 19, 2013  
Decided: October 15, 2013

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 15<sup>th</sup> day of October 2013, upon consideration of the parties' briefs and the records of the Superior Court and the Court of Common Pleas, it appears to the Court that:

(1) This appeal is from the Superior Court's opinion and order of February 6, 2013 affirming the Court of Common Pleas' dismissal of a complaint for repayment of a loan, brought by the appellant, Brian Michael Kuehn, against the appellees, Andrew Cody Cotter and Cotter's mother, Tracy Campbell, as Cotter's guarantor. We conclude that the Superior Court's February 6, 2013 decision must be reversed and this matter remanded for further proceedings.

(2) The following facts are taken from the Superior Court's decision:

On or about March 16, 2011, Mr. Kuehn apparently lent \$5,650.00 to Mr. Cotter to purchase a vehicle. The vehicle was purchased for that amount and titled in the name of Ms. Campbell, Mr. Cotter's mother. According to Mr. Kuehn, there was an oral contract in which Mr. Cotter agreed to repay the loan and Ms. Campbell agreed to guaranty the loan. At the time this transaction took place, Mr. Cotter, the recipient of the vehicle, was seventeen years old. He turned eighteen, thus reaching the age of majority, on March 26, 2011.

On March 26, 2011, Mr. Kuehn agreed to reduce the loan amount by \$1,000.00 as a gift for Mr. Cotter's eighteenth birthday. On or about April 5, 2011, Mr. Cotter made a payment to Mr. Kuehn in the amount of \$2,900.00. On that same date, Ms. Campbell made a payment to Mr. Kuehn in amount of \$1,000.00. No further payments were made.

(3) In the Court of Common Pleas, Cotter and Campbell moved to dismiss Kuehn's complaint under title 6, section 2705 of the Delaware Code, which provides:

Any person who has attained 18 years of age shall have full capacity to contract; provided such person has not been declared legally incompetent to contract for reasons other than age. Any person who has attained the age of 18 years shall become fully responsible for that person's own contracts.<sup>1</sup>

Cotter and Campbell argued that, because Cotter was age seventeen at the time of the loan from Kuehn, Cotter lacked the capacity to contract under section 2705.

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<sup>1</sup> Del. Code Ann. tit. 6, § 2705 (2011).

(4) The Court of Common Pleas dismissed Kuehn's complaint, finding that because Cotter was age seventeen at the time he entered into the loan contract, the contract was void under section 2705. By order dated July 20, 2012, the Court of Common Pleas denied Kuehn's motion for reargument.<sup>2</sup>

(5) On appeal, the Superior Court agreed with the Court of Common Pleas' interpretation of title 6, section 2705 and concluded that, in Kuehn's case, "there was no valid contract because one of the parties was a minor," and neither Cotter nor Campbell could be held liable "on a contract that does not exist." This appeal followed.

(6) On appeal, we conclude, upon *de novo* review, that the Court of Common Pleas erred when interpreting title 6, section 2705.<sup>3</sup> In *King v. Cordrey*, the *en banc* Superior Court decided that a contract with a minor was voidable, not void, and was thus subject to ratification by the minor.<sup>4</sup> Nothing in title 6, section 2705 contradicts *King v. Cordrey* or requires another result.<sup>5</sup>

(7) In this case, because Cotter, after turning eighteen, apparently ratified the contract by making a payment to Kuehn in the amount of \$2,900.00; and

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<sup>2</sup> *Kuehn v. Cotter*, 2012 WL 2951858 (Del. Com Pl. July 20, 2012).

<sup>3</sup> Questions of statutory interpretation are reviewed *de novo*. *Delaware Bay Surgical Serv. v. Swier*, 900 A.2d 646, 652 (Del. 2006).

<sup>4</sup> *King v. Cordrey*, 177 A. 303 (Del. Feb. 5, 1935).

<sup>5</sup> As a tenet of statutory construction, we interpret statutes consistent with the common law unless the statutory language clearly and explicitly expresses intent to abrogate the common law. *PHL Variable Ins. Co. v. Price Dawe 2006 Ins. Trust*, 28 A.3d 1059, 1072-73 (Del. 2011).

Campbell, as guarantor, also made a \$1,000 payment on the ratified contract, the Court cannot conclude that Kuehn “would not be entitled to recover under any reasonably conceivable set of circumstances.” For these reasons, we must reverse the Superior Court’s affirmance of the Court of Common Pleas’ dismissal of Kuehn’s complaint under title 6, section 2705 of the Delaware Code, and remand this matter for further proceedings.<sup>6</sup>

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is REVERSED with instructions to remand the matter to the Court of Common Pleas for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>6</sup> *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings*, 27 A.3d 531, 535 (Del. 2011).