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Agency

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or by 'any person aggrieved or by any officer of the township [other than members of the board as such] affected by any decision of the administrative officer.'"¹⁴

FRANKLIN C. LATCHAM

AGENCY

The case law in this field reveals an unusually wide variety of problems. While the title is "agency" the cases discussed have rather indiscriminately dealt with the problems of agent and principal and master and servant. No effort has been made to classify the cases on this basis.

Acts Within the Scope of Authority

In *Kalis v. Henlein Bros. Co.*,¹ the court of appeals held that a soliciting agent had no implied authority to collect or receive payment and therefore payment to such an agent by a purchaser, in the absence of other circumstances indicative of authority to collect or receive payment was at his peril.

Ehrlich v. Willis Music Co.,² presents an unusual factual situation regarding the apparent authority of a salesman in a retail store. By mistake the defendant had advertised a television set for a price less than one tenth its proper selling price. The plaintiff had knowledge at the time of the alleged purchase which would justify the reasonable conclusion that the apparent authority of the agent did not extend to a sale at such a drastic reduction. While recognizing that the salesman was clothed with apparent authority to sell in the ordinary course of business, the court concluded that the same principle which excludes a selling agent from making a gift also excluded him from selling at such a grossly undervalued price.

One case³ involved the familiar special agent rule that a person who deals with a known special agent must acquaint himself with the extent of the agent's authority. In this particular case a special agent had authority to collect rent on leased property and to make minor repairs; this did not

¹ 92 Ohio App. 347, 110 N.E.2d 157 (1952).

² 93 Ohio App. 246, 113 N.E.2d 252 (1953). The court recognized that it was a question of fact whether under all the circumstances this selling agent had authority to bind the defendant to make the sale at this ridiculously low price, and concluded that there was substantial evidence to support the trial court's determination that the defendant was not bound.

³ *Price Bros. Co. v. Walters*, 65 Ohio L. Abs. 442, 115 N.E.2d 12 (App. 1951). The action was by a mechanic's lien claimant, and it was determined that such a claimant could have standing only if it had a contract with the owner or with an agent acting within the scope of his authority.

vest him with either implied or apparent authority to bind the owner to pay for the construction of a new garage on the premises of the leased properties.

Agency by Estoppel

In *Combs v. Kobacker Stores, Inc.*,⁴ the doctrine of agency by estoppel was applied. The evidence disclosed that the Boston Store had rented the shoe department to Epko Stores, Inc., and that the clerk whose conduct formed the basis of this action was an employee of the latter, but this fact was not known to the plaintiff until after suit was filed. The court held that the defendant could not under these circumstances deny that the clerk was its agent by showing that he was in fact the employee of the lessee of the shoe department.⁵

Undisclosed Agency

In *Bader v. Corbin*,⁶ the plaintiff sustained injuries in the course of a hair treatment in a beauty parlor by an operator who was not known to be an employee of the defendant. In such a situation it was held the party who dealt with the undisclosed agent could, upon discovery, elect to sue either the principal or the individual with whom he dealt.

Another case applied the rule that the agent of the undisclosed principal is personally liable on the contracts which he has executed. Thus in *Datko v. Gieb*⁷ the court of appeals held that such an agent by making a contract in his own name is bound by his contract, and that an infant with whom he dealt had the right to look to him for the return of the purchase price upon disaffirmance.

Agent's Duty to Principal

Two cases were concerned with the continuing duty or loyalty of the agent after termination of the relationship. In *Worley v. Stoltz*⁸ defendant

⁴ 65 Ohio L. Abs. 326, 114 N.E.2d 447 (App. 1953). It was also determined in this case that there was evidence sufficient for the jury as to whether the clerk was acting within the scope of his employment while attempting to protect his master's property under his control where the clerk was just outside the entrance door at the time he stopped the plaintiff and took her to the store office.

⁵ In *Rubbo v. Hughes Provision Co.*, 138 Ohio St. 178, 34 N.E.2d 202, 203 (1941) a very similar situation existed. Paragraph 1 of the syllabus in that case is as follows: "Where the proprietor of a provision market advertises an article for sale in his market and a purchaser in reliance that he was buying from such proprietor and without knowledge to the contrary, buys such advertised article at a counter in the market which the proprietor had leased to another, which counter was the only place in the market where the article in question was to be found, the doctrine of agency by estoppel applies, and in an action against such proprietor for injuries resulting from such sale, the proprietor will not be heard to deny that the lessee of the counter space was proprietor's agent."

made a warranty of a used automobile in the presence of the plaintiff who was the salesman showing the auto. There was in fact a breach of warranty. The plaintiff settled with the customer, taking an assignment of the right of action for damages. Plaintiff used no confidential information which he acquired by reason of his employment, and his employment ceased when the particular sale was concluded. Under these circumstances, it was held that no further duty remained to be performed and that the plaintiff was at liberty to enter into a contract with the purchaser, take an assignment of the claim and sue the defendant.

An interesting injunction and habeas corpus case⁹ evoked a decision from the court of appeals concerning the duty of an employee with regard to trade secrets of a former employer after the employment relationship has terminated. The court held that the former employer had failed to make a prima facie showing that the defendant had wrongfully appropriated its business or trade secrets. It also said that defendant had no right to inspect trade secrets of the employee. The rationale is that in the absence of a restrictive covenant, no implied obligation rests on an employee not to disclose or use the trade secrets of his employer that have not been entrusted to him in confidence and, under such circumstances, an employee who has quit the service of his employer may use in his own business or the business of another his experience, skill, acumen, memory and general knowledge. It is only when particular trade secrets of an employer have been entrusted to the employee in confidence in the course of his employment that the law implies an obligation on the part of the employee not to disclose or use such trade secrets in any manner that would amount to a breach of that confidence or of good faith.

Miscellaneous

In *Elkins v. Wheeling & Lake Erie Ry.*,¹⁰ the supreme court applied the Federal Employers' Liability Act to an injury incurred by an employee of the defendant while spotting a railroad car on the premises of another company. In the first place, the employer owes a duty of furnishing a reasonably safe place to work even though the employee is sent upon the premises of another. Second, the standard of care in such a case is one for the jury to determine according to its finding of whether the employer's conduct measures up to what a reasonable and prudent person would have done under the

⁹ 115 N.E.2d 711 (Ohio App. 1952). The court relied upon the leading case of *Thayer v. Luce*, 22 Ohio St. 62 (1871).

⁷ 113 N.E.2d 672 (Ohio App. 1953).

⁸ 64 Ohio L. Abs. 457, 113 N.E.2d 28 (App. 1952).

^{*} *Perfect Measuring Tape Co. v. Notheis*, 93 App. 507, 114 N.E.2d 149 (1953)

¹⁰ 160 Ohio St. 47, 113 N.E.2d 233 (1953).