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Agency--Adverse Interests (Abercrombie et al. v. Ford Motor Co. et al., 59 S.E.2d 664 (Ga. 1950))

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RECENT DECISIONS

AGENCY—ADVERSE INTERESTS.—Defendant, an automobile producer, owned and operated plants in various states; among them were a manufacturing plant in Michigan and an assembly plant in Georgia. A labor union was the agent of both the Michigan and Georgia employees. When a dispute arose in the Michigan plant over the construction of a labor union contract, the union ordered a strike. The Michigan employees wanted to strike. Those in Georgia did not. Thus, a conflict arose between those interests represented by the union, namely, the interests of the Michigan employees and those of the Georgia employees. Acting solely as agent for the Michigan employees, the union ordered the strike. The Georgia employees were unable to work because no parts were coming out of the Michigan plant, and therefore instituted this action to recover unemployment compensation. *Held*, judgment for defendant reversed. The Georgia employees are entitled to unemployment compensation for the period they were unable to work because of the Michigan strike, since the Georgia employees are not bound by the labor union's actions. *Abercrombie et al. v. Ford Motor Co. et al.*, 59 S. E. 2d 664 (Ga. 1950).

It is commonly and correctly stated as a broad agency doctrine that an agent owes the utmost good faith and absolute loyalty to his principal in the furtherance of the latter's interests.¹ This doctrine is based on public policy and thus is applicable to all agency relations, regardless of the amount of compensation or the fact that the agent is a volunteer at a nominal consideration.² Accordingly, there has evolved the general rule that an agent can not properly serve concurrently two principals whose interests are conflicting, without their knowledge and consent.³ In a case where dual interests are being served, the agent has a duty to his principal to make a full disclosure of all the facts and circumstances without any ambiguity or reservation. Thus, an indefinite or equivocal disclosure will not be a sufficient discharge of his duty.⁴ However, even though a full and fair disclosure has been made, still the agent will not be free to

¹ MECHEM, *OUTLINES OF THE LAW OF AGENCY* § 297 (3d ed. 1923).

² *Perry et aux. v. Engel et al.*, 296 Ill. 549, 130 N. E. 340 (1921).

³ *Baird et al. v. Lascy et al.*, 71 Cal. App. 2d 142, 161 P. 2d 996 (1945); *Fort Valley Coca-Cola Bottling Co. v. Lumbermen's Mut. Casualty Co.*, 69 Ga. App. 120, 24 S. E. 2d 846 (1943); *Burlington Sav. Bank of Burlington, Vt. v. Prudential Insurance Co. of America et al.*, 207 Iowa 809, 221 N. W. 796 (1928); *Empire State Insurance Co. v. American Central Insurance Co.*, 138 N. Y. 446 (1893); *Hawkins v. Byrn et al.*, 150 Tenn. 1, 261 S. W. 980 (1924); *State v. Rogers*, 226 Wis. 39, 275 N. W. 910 (1937).

⁴ *Wendt v. Fischer et al.*, 243 N. Y. 439, 154 N. E. 303 (1926).

bargain in his own behalf or in behalf of another adverse principal until and unless he also receives the consent of his principal. This consent may be express or implied.⁵

If an agent fails to perform his specified duty, and he does represent two adverse interests without making a full disclosure of such facts,⁶ then the agent is not entitled to any compensation at all,⁷ and if perchance the agent made a profit for himself while engaged in this adverse employment, he must surrender it to the principal.⁸ It is wholly within the principal's discretion to ratify the agent's acts or repudiate them regardless of the agent's good faith and the fact that no loss or injury has resulted to the principal because of the agent's breach of duty.⁹ Since the principal's right to repudiate is based on his lack of knowledge and consent, if one of the adverse principals had knowledge of this double employment and acquiesced, he would not be permitted to repudiate the transaction;¹⁰ whereas if the other principal was completely ignorant of the facts, only the latter could disaffirm the transaction.¹¹ Contracts procured by such a breach of the agent's duty are voidable, and so the principal, who is permitted by law to repudiate, must exercise his option before the rights of innocent parties have intervened.¹²

The general rule that an agent is not permitted to serve two principals in the same transaction without their knowledge and consent is not applicable when the agent exercises no discretion and acts merely to bring the parties together.¹³ In such a case the agent has no duty to make any disclosure to either principal, and he nevertheless will be entitled to his agreed compensation; both principals will be bound by the acts of the agent within the scope of his authority.¹⁴

⁵ Pope v. Harper, 40 Ga. App. 573, 150 S. E. 470 (1929).

⁶ Tausig v. Hart, 58 N. Y. 425 (1874) (agent bought from self while purchasing agent for principal); W. W. Dillon & Co. v. Sharber *et aux.*, 19 Tenn. App. 488, 90 S. W. 2d 533 (1936) (broker acted as agent for two land owners in negotiating a trade); Becker *et aux.* v. Spalinger *et aux.*, 174 Wis. 443, 183 N. W. 173 (1921) (agent of buyer received a secret commission from the seller for doing act within the scope of his agency). *But cf.* Arthur v. Georgia Cotton Co., 22 Ga. App. 431, 96 S. E. 232 (1918) (agent received secret commission from opposite party for doing an act beyond scope of agency).

⁷ Murray v. Beard *et al.*, 102 N. Y. 505, 7 N. E. 553 (1886); Nekarda v. Presberger, 123 App. Div. 418, 107 N. Y. Supp. 897 (1st Dep't 1908).

⁸ Robert Reis & Co. v. Volck, 151 App. Div. 613, 136 N. Y. Supp. 367 (1st Dep't 1912).

⁹ Bish v. First Nat. Bank of Brighton, 78 Colo. 326, 241 Pac. 537 (1925).

¹⁰ F. & W. Grand Five-Ten-Twenty-Five Cent Stores, Inc. v. Eiseman, 160 Ga. 321, 127 S. E. 872 (1925).

¹¹ MECHEM, *op. cit. supra* note 1, § 299.

¹² Napier v. Adams, 166 Ga. 403, 143 S. E. 566 (1928).

¹³ Kondos v. Mouser, 64 Okla. 168, 166 Pac. 707 (1917) (acted as middleman to bring together buyer and seller of restaurant).

¹⁴ Knauss v. Gottfried Krueger Brewing Co., 142 N. Y. 70, 36 N. E. 867 (1894). The same results will follow when an agent is serving conflicting

In the present case, the court adhered to the general well established rule concerning an adverse agency relationship. The plaintiff knew that the union was acting as agent for both the plants and voiced its dissent to the strike so as to repudiate the action of the union. Thus, it would be unjust to hold the plaintiff bound to the acts of the union, for although the plaintiff did have full knowledge, he did not freely consent to, or ratify the acts of the agent union.

CHARITABLE SUBSCRIPTIONS — ENFORCEMENT — GROWTH OF PROMISSORY ESTOPPEL.—The St. Marks Church, the plaintiff, desiring to build a new edifice, found that its funds were insufficient to meet the plans as drawn. The testator agreed to subscribe \$25,000 if the church would approve the plans without modification and obtain a loan of \$60,000 on a mortgage arranged by the testator. The church complied. The subscription was conditioned for cancellation upon written notice of change in the subscriber's financial condition, and ". . . that it shall not be considered binding upon my estate." The church commenced this action upon the agreement when the executor resisted the claim for the balance. *Held*, the agreement bound the estate. The testator knew that his subscription was the factor that induced the adoption of the plans without modification. The court stated that ". . . it must be held that Mr. Atwater had no desire or intention of limiting his pledge. There is no question that the defendant is well able to pay the sum in dispute, and its contentions, I am sure do not reflect the thoughts of its testate." *Rector, Church Wardens, Vestrymen St. Marks Church, Westhampton Beach v. Bankers Trust Co.*, 197 Misc. 32, 96 N. Y. S. 2d 554 (Sup. Ct. 1949).

A subscription is a written agreement to furnish a designated sum of money or its equivalent for a particular purpose.¹ A "charitable subscription" is in essence a promise to make a gift,² a promise not supported by consideration.³ Notwithstanding the absence of consideration, the need for enforcing such agreements was recognized as early as 1828.⁴ The resulting decisions ". . . indicate the presence

interests and both principals, having full knowledge of all the facts, give their free consent to the agency. *Bell v. McConnell*, 37 Ohio St. 396 (1881).

¹ BOUVIER'S LAW DICTIONARY 3171 (8th ed., Rawle, 1914); BLACK'S LAW DICTIONARY 1117 (3d ed. 1933).

² *Twenty-third St. Baptist Church v. Cornell*, 117 N. Y. 601, 23 N. E. 177 (1890).

³ "The very term 'charitable subscription' indicates that the subscriber's promise is made as a gift and not in return for consideration." 1 WILLISTON, CONTRACTS § 116 (revised ed., Thompson, 1936).

⁴ "It cannot be maintained that objects so important shall be frustrated . . . by the rights of individuals to withdraw their contributions or refuse to