

# Principal and Agent--Liability of Principal for False Representations of Agent--Notice of Agent's Limitations (Ernst Iron Works, Inc. v. Duralith Corporation, 270 N.Y. 165 (1936))

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hibited from taking his child to the Megiddo center in Rochester. If this is so,<sup>16</sup> the court virtually would have the power to grant custody of the child to whomsoever it pleased, depending on the political, social, or religious views of the presiding justices, basing its decision on the infringement of the rights of the opposing claimant.<sup>17</sup>

S. S.

PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL FOR FALSE REPRESENTATIONS OF AGENT—NOTICE OF AGENT'S LIMITATIONS.—Plaintiff commenced this action for rescission of the written contract, wherein defendant corporation agreed to sell its wall texture products to the plaintiff corporation, on the ground of fraudulent misrepresentations by defendant's sales agent that Duratint had not been sold in plaintiff's distribution territory and that plaintiff would be sole distributor in the city of Buffalo. Testimony discloses that the plaintiff's officers were fully aware of defendant's agent's limitation of authority to make any representations of this sort and furthermore two clauses in the contract read that "the company" (defendant) "makes no representation regarding previous sales in distributor's territory" and "no representation or warranty of any kind shall be binding upon either the Duralith Corp. or the dealer unless it has been incorporated in this agreement." Plaintiff's contention that one cannot exempt himself from liability for fraud by inserting in his contract a shielding or blanket clause was sustained by the Court of Appeals but, *held*, the judgment in favor of the plaintiff reversed on the ground that a principal cannot be made liable for the false representations of his agent where the party dealing with the agent has specific notice that he is acting beyond the limitation of his authority. *Ernst Iron Works, Inc. v. Duralith Corporation*, 270 N. Y. 165, 200 N. E. 683 (1936).

A principal is not liable for loss caused to a third person by reason of his reliance upon a fraudulent representation of an agent unless the representation was authorized either expressly, impliedly, or apparently, or unless it was subsequently ratified.<sup>1</sup> When dealing with a special agent, known to be such, a third person is charge-

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<sup>16</sup> The dissenting opinion of the Appellate Division of the case at bar held that the modification of the special term order gave the father exclusive control, where, as a matter of fact, its effect was just the opposite.

<sup>17</sup> In case at bar the prolonged religious trips were held to be a violation of the relator's rights.

<sup>1</sup> *Smith v. Tracy*, 36 N. Y. 79 (1867); *Forster v. Wilhusen*, 14 Misc. 520, 35 N. Y. Supp. 1083 (1895); MATHESON, *LAW OF AGENCY* (6th ed. 1935) 104.

able with notice of the nature and extent of the agent's powers.<sup>2</sup> Obviously a principal is not liable for his agent's deceitful representations when the circumstances are such that the person dealing with the agent is not entitled to rely on the misrepresentations.<sup>3</sup> The third person may obtain actual notice of the agent's limitations from the contract that he signs,<sup>4</sup> as in the instant case, or he may obtain constructive notice from facts that would put him on inquiry.<sup>5</sup> In either event, he cannot gain rights against the principal by an act of the agent which exceeds the known limitations<sup>6</sup> and the court so held. Since the reason for holding a principal whose agent has acted beyond his actual authority is to encourage business transactions through agents by protecting third persons, it is only just to protect the principal when the third person has notice that the agent is acting beyond his limitations.<sup>7</sup> The Court of Appeals recognized the validity of the plaintiff's contention that one cannot protect himself from liability for fraud by inserting a blanket clause in his contract, but left open the question, whether or not parol evidence of a corporation's agent's statements may be introduced in an action for fraud against the corporation where such statements are at variance with specific provisions in a printed contract. Other jurisdictions have held that parol evidence may be introduced to show the agent's fraudulent misrepresentations notwithstanding the fact that it directly contradicts the written contract,<sup>8</sup> but an exception is made where the party seeking to claim reliance on the agent's fraud has notice of the limitations of the agent's authority to make the representations.<sup>9</sup>

M. R. W.

SALES—BREACH OF WARRANTY THAT ARTICLE IS NEW AND UNUSED—RESCISSION—DAMAGES.—Defendant, a manufacturer and dealer in pianos, sold a piano to the plaintiff, who believed it to be new and unused. Two years later, the plaintiff discovered that prior to its

<sup>2</sup> *Miller v. Bartnet*, 158 App. Div. 862, 144 N. Y. Supp. 40 (2d Dept. 1913); *Beck v. Donahue*, 27 Misc. 230, 57 N. Y. Supp. 741 (1899); *Deyo v. Hudson*, 225 N. Y. 602, 122 N. E. 635 (1919); *Dudley v. Perkins*, 235 N. Y. 448, 139 N. E. 570 (1923).

<sup>3</sup> *Deyo v. Hudson*, 225 N. Y. 602, 612, 122 N. E. 635 (1919); *Wen Kroy Realty Co. Inc. v. Public Nat. Bank*, 260 N. Y. 84, 183 N. E. 73 (1932).

<sup>4</sup> *Waldorf v. Simpson*, 15 App. Div. 297, 44 N. Y. Supp. 921 (3d Dept. 1897).

<sup>5</sup> *Jacoby & Co. v. Payson*, 85 Hun 367, 32 N. Y. Supp. 1032 (1895); *Hernandez v. Brookdale Mills*, 194 App. Div. 369, 185 N. Y. Supp. 485 (1st Dept. 1920); *Daly v. Behrens*, 118 Misc. 465, 194 N. Y. Supp. 581 (1922).

<sup>6</sup> *Martin v. Universal Life Ins. Co.*, 85 N. Y. 278 (1881).

<sup>7</sup> *TIFFANY, AGENCY* (2d ed. 1924) § 19.

<sup>8</sup> *Stroman v. Atlas Ref. Corp.*, 112 Neb. 187, 19 N. W. 26 (1924); *Gridley v. Tilson*, 202 Cal. 748, 262 Pac. 322 (1928).

<sup>9</sup> *Gridley v. Tilson*, 202 Cal. 748, 262 Pac. 322 (1928).