

Principal and Agent--Scope of Agent's Authority--Fraud (Angerosa, et al. v. White, 248 App. Div. 425 (4th Dept. 1936))

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law he could never avoid, to such an extent that between the natural parent who can support but is unwilling, and the state, the burden should fall upon the state.

M. M. B.

PRINCIPAL AND AGENT—SCOPE OF AGENT'S AUTHORITY—FRAUD.—Plaintiff was induced to purchase a motor truck through the fraudulent representation of the defendant's salesman as to its capacity. The plaintiff negligently failed to read the written agreement after the misrepresentations relied upon had been made. The agreement contained a provision in large type immediately above the plaintiff's signature that no representations had been made to the purchaser except those embraced in the contract. This was followed by a true recital of the truck's capacity. Upon discovery of the fraud the plaintiff elected to rescind¹ and brought this action to recover the purchase price. Defendant contends that the agent exceeded his authority and that plaintiff, being guilty of gross negligence in not reading the contract should be estopped from pleading the antecedent fraud. *Held*: Judgment for plaintiff. An agent empowered to sell property is clothed with apparent authority to make the usual representations concerning such a sale and his principal will be bound by the representations, although they constitute a direct violation of specific instructions. Fraud will annul the entire transaction even where gross negligence is present, and a principal in defending an action for rescission based on the fraud of his agent is liable for having ratified by implication. *Angerosa, et al. v. White*, 248 App. Div. 425, 290 N. Y. Supp. 204 (4th Dept. 1936).

Apparent authority of an agent is that authority which he appears to have by reason of the nature of his duties, or by reason of some act or conduct on the part of his principal.² Representations concerning the quality or condition of an article are within the apparent scope of authority of an agent entrusted with soliciting sales.³ A principal who holds an agent out as having apparent authority to make representations according to common business usage, if the agent's representations are relied upon by a third party, will be held liable although the agent exceeded his real authority.⁴ However, the principal will not be

¹ "A transaction into which one is induced to enter by reliance upon untrue and material representations as to the subject matter, made by an agent entrusted with its preliminary or final negotiations, is subject to rescission at the election of the person deceived." RESTATEMENT, AGENCY (1924) vol. 1, § 259.

² 1 WORDS AND PHRASES, 1st Ser., p. 441.

³ *Mayer v. Dean*, 115 N. Y. 556, 560-561, 22 N. E. 261 (1889).

⁴ *Wen Kroy Realty Co. v. Public National Bank & Trust Co. of New York*, 260 N. Y. 84, 91, 183 N. E. 73 (1932); *Bickford v. Menier*, 107 N. Y. 490, 494, 14 N. E. 438 (1887).

liable when the party doing business with the agent knows the extent of the latter's authority⁵ or does not rely upon his representations.⁶ In the instant case the plaintiff was guilty of gross negligence in not reading the instrument.⁷ Ordinarily one is bound by an instrument which he signs even though his mind never gave assent to the terms expressed.⁸ However, negligence is not a defense to an action based on fraud.⁹ Yet numerous authorities deny a purchaser the right to avail himself of antecedent fraud under such circumstances as in the case at bar, holding that any written contract complete on its face and voluntarily executed without the practice of any deceit as to its contents or execution is binding on the purchaser.¹⁰ New York¹¹ and other jurisdictions¹² hold that fraud whether in the inducement or *factum* will vitiate the contract.¹³ The law will not suffer a principal who keeps the avails of the act of his agent and yet repudiates the latter's authority.¹⁴ The principal is really placed in a dilemma for if he agrees to rescission he must return the money obtained on the contract and if he holds the contract to be good by defending an action in rescission, he ratifies the fraud and must account. Therefore the defendant having undertaken to affirm the contract is deemed to have ratified the fraudulent as well as the fair means by which it was obtained, such instrumentalities being utilized in achieving the object of the agency.¹⁵

H. R. K.

⁵ *Ernst Iron Works, Inc., v. Duralith Corp.*, 270 N. Y. 165, 200 N. E. 683 (1936).

⁶ *Wen Kroy Realty Co. v. Public National Bank & Trust Co. of New York*, 260 N. Y. 84, 91, 183 N. E. 73 (1932).

⁷ *Pimpinello v. Swift & Co.*, 253 N. Y. 159, 162-163, 170 N. E. 530 (1930); *Megzger v. Aetna Insurance Co.*, 227 N. Y. 411, 415-416, 125 N. E. 814 (1920).

⁸ *WILLISTON, SALES* (2d ed. 1924) § 654.

⁹ *Albany City Savings Institution v. Burdick*, 87 N. Y. 40 (1881); *King v. Livingston Mfg. Co.*, 180 Ala. 118, 127, 60 So. 143 (1912); Note (1929) 42 HARV. L. REV. 733, 739-740; *WILLISTON, SALES* (2d ed. 1924) § 634.

¹⁰ *Sullivan v. Roche*, 257 Mass. 166, 153 N. E. 549 (1926); *Barnebey v. Barron G. Collier, Inc.*, 65 F. (2d) 864 (C. C. A. 4th, 1895); *Bybee v. Embree-McLean Carriage Co.*, 135 S. W. 203 (1911); *Case Threshing Machine Co. v. Broach*, 137 Ga. 602, 73 S. E. 1063 (1912).

¹¹ *Arnold v. National Aniline Chemical Co.*, 20 F. (2d) 364 (C. C. A. 2d, 1927); *Bridger v. Goldsmith*, 143 N. Y. 424, 38 N. E. 458 (1894); *Industrial & General Trust Co., Ltd., v. Tod*, 180 N. Y. 215, 73 N. E. 7 (1905).

¹² *Stroman v. Atlas Refining Corp.*, 112 Neb. 187, 199 N. W. 26 (1924); *Menking v. Larson*, 112 Neb. 479, 199 N. W. 323 (1924); *Shepard v. Pabst*, 149 Wis. 35, 135 N. W. 158 (1912); *Land Finance Corp. v. Sherwin Electric Co.*, 102 Vt. 73, 146 Atl. 72 (1929); *Advance Rumely Thresher Co. v. Jacobs*, 51 Idaho 160, 4 P. (2d) 657 (1930).

¹³ *Ibid.*

¹⁴ *Coykendall v. Constable*, 99 N. Y. 309, 1 N. E. 884 (1885).

¹⁵ *Bennet v. Judson*, 21 N. Y. 238 (1860); *Hathaway v. Johnson*, 55 N. Y. 93 (1873).