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Attorney and Client - Scope of Attorney's Authority - Client Bound by Wrongful Settlement of Claim

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RECENT DECISIONS

ATTORNEY AND CLIENT—SCOPE OF ATTORNEY'S AUTHORITY—CLIENT BOUND BY WRONGFUL SETTLEMENT OF CLAIM—Plaintiff hired an attorney to prosecute a claim for damages resulting from the alleged negligence of defendant, a chiropodist, in the treatment of plaintiff's wife. Three years after the institution of the suit plaintiff discovered that his attorney had agreed with defendant to settle the suit and had forged plaintiff's name to a release and to a bank draft given by defendant in settlement of the claim. Plaintiff immediately instituted action to have the settlement stipulation deleted from the record and to have the case reinstated for hearing. On appeal from the trial court's decision for plaintiff, *held,* reversed. While the mere engagement of an attorney does not imply authority to compromise the claim, in the instant case defendant was justified in assuming that the attorney was authorized to effect a compromise. Of two innocent parties before the court the one more responsible for the wrong should bear the loss. *Cohen v. Goldman,* (R.I. 1957) 132 A. (2d) 414.

In England[1] and in a few jurisdictions in the United States[2] it has been held that a general retainer gives authority to an attorney to compromise his client's claim. But the decided majority of courts in the United States have held that an attorney derives from a bare general retainer no power to compromise his client's cause of action.[3] A client may disregard an unauthorized compromise[4] or move to have it set aside.[5] In the absence of apparent authority in the attorney a party dealing with him is presumed to be on notice of the limits of his authority[6] and acts at his own risk.[7] However, either subsequent ratification of the

1 Chown v. Parrott, 14 C.B.N.S. 74, 143 Eng. Rep. 372 (1863); Neale v. Lady Gordon Lennox, [1902] 1 K.B. 838; Prestwich v. Poley, 18 C.B.N.S. 806, 144 Eng. Rep. 662 (1865). *Contra,* Swinfen v. Swinfen, 24 Beav. 549, 53 Eng. Rep. 470 (1857).

2 Strattner v. Wilmington City Electric Co., 19 Del. 453, 53 A. 436 (1901); Bonney v. Morrill, 57 Me. 368 (1870). See 31 L.R.A. (n.s.) 523 at 526 (1911), stating that Maine is the only state positively to assert that an attorney has the power to compromise.

3 E.g., United States v. Beebe, 180 U.S. 343 (1900); Petition of Trinidad Corp., (2d Cir. 1955) 229 F. (2d) 423. See 30 A.L.R. (2d) 945, §2 (1953); 1 THORNTON, ATTORNEYS AT LAW 388 (1914), asserting that Massachusetts, New Hampshire, and South Carolina apply the rule but with variations.

4 Sherman & Sons Co. v. Princess Shirt Mfg. Co., 213 App. Div. 140, 210 N.Y.S. 100 (1925); Dawson v. Hotchkiss, 160 Va. 577, 169 S.E. 564 (1933).

5 National Bread Co. v. Bird, 226 Ala. 40, 145 S. 462 (1933); Melton v. Kemp, 209 Ky. 672, 273 S.W. 488 (1925); Dawson v. Hotchkiss, note 4 supra; Application of Glebe Juniors, Inc., 199 Misc. 943, 105 N.Y.S. (2d) 621 (1951), revd. without op. 279 App. Div. 653, 108 N.Y.S. (2d) 996 (1951).

6 Gibson v. Nelson, 111 Minn. 183, 126 N.W. 731 (1910); National Bread Co. v. Bird, note 5 supra.

7 Precious v. O'Rourke, 270 Mass. 305, 170 N.E. 110 (1930).

compromise by the client[8] or proof of his having clothed his attorney with apparent authority[9] will serve to sustain the compromise. Moreover, the compromise may be binding if made in an emergency situation in which the attorney had no opportunity to consult his client.[10] The opposing English and American doctrines are based on differing views of the attorney-client relationship.[11] A few courts have qualified the American rule by applying a test of reasonableness to the compromise,[12] but the vast majority of the courts adhere to the rule without qualification.[13] The court in the principal case acknowledged the American rule[14] but refused to apply it to the instant fact situation on the basis of two arguments: (1) the attorney had apparent authority to make the compromise;[15] and (2) since one of two innocent parties must suffer, the one who constituted the wrongdoer his agent should bear the loss.[16] The latter argument would appear to be unsound.[17] The court's basis for

8 Baumgartner v. Whinney, 156 Pa. Super 167, 39 A. (2d) 738 (1944); Dawson v. Hotchkiss, note 4 supra; National Bread Co. v. Bird, note 5 supra. See 30 A.L.R. (2d) 955, §12 (1953).

9 Rader v. Campbell, 134 W. Va. 485, 61 S.E. (2d) 228 (1950); Gelber v. Loew's, Inc., 51 N.Y.S. (2d) 798 (1944), affd. without op. 273 App. Div. 845, 77 N.Y.S. (2d) 132 (1948); Petition of Trinidad Corp., note 3 supra. See 30 A.L.R. (2d) 957, §13 (1953).

10 E.g., Lewis v. Vache, 92 Colo. 358, 20 P. (2d) 554 (1933).

11 The English view is that once the client selects his attorney he turns full control of his cause of action over to him. The rationale underlying this view is that the attorney should have the right to handle all matters involving the case he has been given because he is the expert in the law. See Neale v. Lady Gordon Lennox, note 1 supra; WHARTON, AGENCY AND AGENTS §590, p. 388 (1876). The American courts, on the other hand, view the attorney as a limited agent because they consider a claim to be a personal matter. Under this theory when a client hires an attorney he confers upon him the powers necessary for the conduct of the claim, but the right to conclude it for less than full value is the client's alone. See Seifert v. Gallet, 159 Minn. 131, 198 N.W. 664 (1924); WEEKS, ATTORNEYS AND COUNSELLORS AT LAW 474 (1892).

12 Holker v. Parker, 7 Cranch (11 U.S.) 436 (1813), appears to be the origin of this line of reasoning. Chief Justice Marshall, in deciding that an unauthorized compromise by an attorney was not binding on his client, indicated that the court would not disturb such a compromise if it was a reasonable one. Whipple v. Whitman, 13 R.I. 512 (1882), cited in the principal case, applies Marshall's reasoning in a decision upholding a compromise made by an attorney without the knowledge of his client. It should be noted, however, that in that case the court also found evidence of laches, ratification of the compromise, and an express delegation of authority to the attorney by the wife of the plaintiff for whom the plaintiff was bringing the suit on assignment.

13 See note 3 supra. To hold otherwise is to undermine the American rule by allowing the court to substitute its own opinion for that of the client.

14 Principal case at 416.

15 Id. at 417.

16 Ibid.

17 The advisability of using this nebulous and virtually unlimited equitable maxim to solve specific legal problems is subject to a good deal of question. A consistent and logical application of the principle in the present area would preclude the existence of any sort of limited agency and come close to making a principal responsible for every wrongful act of his agent.

applying the former argument to the present case is not clear. The doctrine of apparent authority is based upon estoppel;[18] it does not constitute an exception to the American rule, as does the emergency situation case, but is an independent legal principle. Consequently, it is essential that there be sufficient evidence to justify the application of estoppel before an unauthorized compromise is allowed to stand in the face of the general rule.[19] It would seem that the appearance of authority mentioned by the Rhode Island court refers to evidence that the client presented his attorney to the defendant.[20] Since making one's attorney known to the other party, either personally or through his attorney, is the almost universal case, in effect this is to say that the mere hiring of an attorney confers on him sufficient apparent authority to invoke the principle of estoppel against his client. This is in direct conflict with the American rule[21] and is not supported by the other cases which have sustained compromises on the basis of apparent authority.[22] Therefore, as an application of the American rule the decision in the principal case would not appear to be supported by policy, logic, or authority.

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18 Czesna v. Lietuva Loan & Savings Assn., 252 Ill. App. 612 (1929). See MECHEM, AGENCY, 4th ed., 54 (1952); FERSON, PRINCIPLES OF AGENCY 228 (1954). But see Cook, "Agency by Estoppel," 5 COL. L. REV. 36 (1905).

19 Jenkins v. Jenkins, 219 Ark. 219, 242 S.W. (2d) 124 (1951).

20 Principal case at 417.

21 If the mere hiring of an attorney were sufficient to invoke an estoppel against the client the rule would be completely destroyed. A rule of law that an attorney cannot compromise his client's claim without express authority is useless if the very act of hiring the attorney precludes the client from relying upon this limitation on the attorney's authority.

22 See note 9 supra.