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Agency: Apparent Authority Doctrine as Applied to Tort Recovery

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CASE COMMENTS

AGENCY: APPARENT AUTHORITY DOCTRINE AS APPLIED TO TORT RECOVERY

Stuyvesant Corp. v. Stahl, 62 So.2d 18 (Fla. 1952)

Plaintiff, while crossing the driveway of defendant hotel in which he was a guest, was struck by an automobile driven by an assistant doorman. The assistant was hired by the head doorman, who by a verbal understanding with defendant was to have charge of the door. The doorman paid defendant $1500 per year for this concession. The hotel furnished parking tickets with the hotel name on them, and the doorman furnished uniforms[1] for himself and his assistants. These uniforms bore the name of the hotel. The doorman's compensation was entirely from tips.[2] Testimony during the course of the trial indicated that sufficient control was exercised over the doorman by defendant to negative an independent contractor situation. Plaintiff recovered. On appeal, HELD, the assistant doorman had the authority or apparent authority to act for defendant in parking automobiles, and such parking would create injurious consequences unless proper care was exercised. Judgment affirmed.

In considering tortious conduct of an agent or servant there is no basic distinction to be drawn between the liability of the principal for the tort of the agent and the liability of the master for tort of the servant.[3] The basis of liability of the master is the doctrine of *respondeat superior*.[4] The fact that the servant was hired to do the master's business by another servant does not mitigate the master's liability.[5] If the person employed is an independent contractor and not a servant, however, the general rule is that the employer is not liable for the torts of the contractor or those working under him.[6]

[1]Drennen & Co. v. Smith, 115 Ala. 396, 22 So. 442 (1897) (fact that materials are furnished by employee, indicating an independent contractor, disregarded when employer reserves control over work).

[2]Todd v. Natchez-Eola Hotels Co., 171 Miss. 577, 157 So. 703 (1934) (parking lot attendant held servant of defendant hotel regardless of fact attendant received no salary but depended entirely on tips).

[3]Hardeman v. Williams, 150 Ala. 415, 43 So. 726 (1907).

[4]Williams v. Hines, 80 Fla. 690, 86 So. 695 (1920).

[5]Bucki v. Cone, 25 Fla. 1, 6 So. 160 (1889).

[6]Gulf Refining Co. v. Wilkinson, 94 Fla. 664, 114 So. 503 (1927); MECHEM, AGENCY

Florida has clearly recognized that the right of the employer to control the method of work as opposed to its results is one of the principal considerations in determining whether the employee is an independent contractor or a servant.[7] Applying this consideration to the instant case, it would be a factual determination as to whether the doorman was a servant or an independent contractor.

Protection of the employer of an independent contractor from liability[8] fails when the work is of such a nature as to be inherently dangerous.[9] The question of what is inherently dangerous may be for the court or for the jury.[10] The Court in the instant case seemed to have no trouble in determining, as a matter of law, that the parking of automobiles is inherently dangerous.[11] Finding this, the defense that the employee was an independent contractor or was hired by an independent contractor would not exonerate the defendant from liability. Recovery could be justified under this theory of law.[12]

The "apparent authority" language used by the Court is an agency concept which is applied most frequently to contract situations.[13] In rare instances, however, this concept is applied to allow a tort recovery.[14] One of the bases in these latter holdings is reliance by a

§427 (4th ed. 1952); RESTATEMENT, TORTS §409 (1934).

[7]Maule Industries, Inc. v. Messana, 62 So.2d 737 (Fla. 1953); Gulf Refining Co. v. Wilkinson, *supra* note 6.

[8]See note 6 *supra.*

[9]Wright-Nave Contracting Co. v. Alabama Fuel & Iron Co., 211 Ala. 89, 99 So. 728 (1924); Massachusetts Bonding & Ins. Co. v. Dingle-Clark Co., 142 Ohio 346, 52 N.E.2d 340 (1943); *accord,* Alabama Power Co. v. Pierre, 236 Ala. 521, 183 So. 665 (1938). *But see* Gulf Refining Co. v. Wilkinson, 94 Fla. 664, 671, 114 So. 503, 505 (1927). For an excellent discussion of inherently dangerous work as an exception to the general rule see 38 KY. L.J. 283 (1950).

[10]See 14 N.C.L. REV. 274 (1936).

[11]For a full treatment of automobile liability see Note, 5 U. OF FLA. L. REV. 412 (1952).

[12]See note 9 *supra.*

[13]Stiles v. Gordon Land Co., 44 So.2d 417 (Fla. 1950); Thompkin Corp. v. Miller, 156 Fla. 388, 24 So.2d 48 (1945); Piedmont Operating Co. v. Cummings, 40 Ga. App. 397, 149 S.E. 814 (1929); see MECHEM, AGENCY §424 (4th ed. 1952).

[14]Marchetti v. Olyowski, 181 F.2d 285 (D.C. Cir. 1950); Rhone v. Try Me Cab Co., 65 F.2d 834 (D.C. Cir. 1933); Augusta Friedman's Shop, Inc. v. Yeates, 216 Ala. 434, 113 So. 299 (1927); Manning v. Leavitt Co., 90 N.H. 167, 5 A.2d 667 (1939); Fields, Inc. v. Evans, 36 Ohio App. 153, 172 N.E. 702 (1929); Santise v. Martins, Inc., 258 App. Div. 663, 17 N.Y.S.2d 741 (2d Dep't 1940); Hannon v. Siegel-Cooper Co., 52 App. Div. 624, 167 N.Y. 244 (2d Dep't 1901) (a leading case). *Contra:* Piedmont Operating Co. v. Cummings, *supra* note 13; Jung v. New Orleans Ry. & Light Co., 145 La. 727, 82 So. 870 (1919).

third party on the cloak of authority which the principal has allowed his agent to assume to the detriment of the third party.[15] The Florida Court has previously held in cases where no tort was alleged that reliance was an essential element for recovery on the apparent authority concept.[16] The Court, speaking through Justice Sebring, has stated:[17]

> "Apparent authority rests on the doctrine of estoppel and arises from the fact of representations or actions by the principal and a change of position by a third person who in good faith relies on such representations or actions."

Even conceding that the assistant doorman was given "apparent" authority to act for the defendant, there was no showing of any reliance or change of position by the plaintiff in reliance thereon which contributed to the accident and would bring the concept into play.

The Florida Court has seemingly extended the apparent authority concept to allow a recovery in tort against the principal when there has been no reliance by the injured party on that authority. Extending liability is the vogue today, but the need for this extension is questionable. On the facts set forth in the opinion the plaintiff could have recovered against the defendant under either of the two theories of law[18] enunciated earlier in this comment without doing violence to established legal principles.

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[15]Marchetti v. Olyowski, *supra* note 14, criticized in 4 VAND. L. REV. 375 (1951) because writer felt that there was no reliance; Augusta Friedman's Shop, Inc. v. Yeates, *supra* note 14; Hannon v. Siegel-Cooper Co., *supra* note 14; RESTATEMENT, AGENCY §267 (1933). *Contra:* Jewison v. Dieudonne, 127 Minn. 163, 149 N.W. 20 (1914) (but see strong dissents, at p. 170, 149 N.W. at 23, by two justices because no reliance by the injured party).

[16]Stiles v. Gordon Land Co., *supra* note 13; Fidelity & Casualty Co. of N.Y. v. Morrison Constr. Co., 116 Fla. 66, 156 So. 385 (1934); *accord,* Thompkin Corp. v. Miller, *supra* note 13.

[17]Stiles v. Gordon Land Co., 44 So.2d 417, 422 (Fla. 1950).

[18]See notes 4, 9 *supra.*