Michigan Law Review

Volume 45 | Issue 5

1947

# AGENCY-IMPLIED AGENCY-EFFECT OF PRINCIPAL'S ACQUIESCENCE IN AGENT'S COLLECTION WHERE SUCH AUTHORITY IS DENIED

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# RECENT DECISIONS

AGENCY—IMPLIED AGENCY—EFFECT OF PRINCIPAL'S ACQUIESCENCE IN AGENT'S COLLECTION WHERE SUCH AUTHORITY IS DENIED—Defendant's predecessor gave a promissory note in payment for goods delivered to him by a local merchant, who advertised himself as plaintiff's dealer. The note was payable at plaintiff's home office, and the conditional sale contract also provided that the payments were to be made at that office. The first two payments were made to the dealer, and subsequently accepted by the plaintiff. The third and final payment was also made to the dealer but not received by the company. Suit was instituted for the amount of the final payment. Judgment rendered on demurrer for the plaintiff. *Held*, the court below should have submitted to the jury the question whether there was an implied agency. *Campbell v. John Deere Plow Co.*, (Okla. 1946) 172 P. (2d) 319.

Generally, if the principal gives notice to a purchaser that a selling agent has no authority to collect payments, there can be no implied authority to collect.[1] The question in this case is whether the principal's acquiescence in the forbidden act may amount to a waiver. Authority to collect may be implied from the fact that an agent has previously received payments, and these collections have been approved by the principal.[2] The authority may be derived from a single act of the agent and a recognition of it by the principal, if it is of such a character as to ". . . place the authority of the agent to do similar acts for the principal beyond any question."[3] The court's theory here appears to be that the notice was not enough, in the face of the principal's apparent ratification of the agent's act in accepting the first two payments, necessarily to negative the existence of an implied agency. The case is to be distinguished from one in which a purchaser, unable to show sufficient facts to establish an estoppel, in the face of an express denial of authority to collect, tries to show an implied agency by evidence of transactions entered into between the agent and others. In that situation a court may well say as has the Pennsylvania court: ". . . .the acquiescence of appellant in collections made by its agent on other contracts with other parties cannot be construed as a manifestation of consent that the agent should have authority to receive payment on these contracts."[4] Where there is conflicting evidence, tending both to negative and to support implied agency, it is a question of fact for the jury to determine whether the necessary authority exists.[5] When this question is submitted, and a local buyer and corporate seller are the parties involved, the chances are relatively good that an implied agency

[1] Herman Nelson Corp. v. Welty, 313 Pa. 123, 169 A. 74 (1933); Pioneer Mortgage Co. v. Randall, 113 Kan. 62, 213 P. 668 (1923); Law v. Stokes, 32 N.J.L. 249 (1867). But see Luckie v. Johnston Bros., 89 Ga. 321, 15 S.E. 459 (1892); Trainer v. Morison, 78 Me. 160, 3 A. 185 (1886).

[2] Grant v. Humerick, 123 Iowa 571, 94 N.W. 510 (1903); Estey v. Snyder, 76 Wis. 624, 45 N.W. 415 (1890); Odiorne v. Maxcy, 15 Mass. 39 (1818).

[3] Wilcox v. Chicago, Milwaukee & St. Paul R.R. Co., 24 Minn. 269 at 270 (1877). See also 2 C.J., Agency, § 41. Cf. Cupples v. Whelan, 61 Mo. 853 (1876). 1 MECHEM, AGENCY, §§ 263, 271 (1914).

[4] Herman Nelson Corp. v. Welty, 313 Pa. 123, 169 A. 74 (1933).

[5] Principal case at 321.

will be found. The problem then is to avoid the jury question altogether. A really determined effort to put the purchaser on notice by instructions on the bills and by the seller's taking over the notes may be of no avail according to the theory of this case, if the principal acquiesces in the agent's collection. A simple answer, of course, is that the corporation should not acquiesce. Perhaps a neater solution, however, is indicated by a plan adopted by the International Harvester Co. Reference is made in the principal case to the case of *International Harvester Co. of America v. Snider*,[6] where the court, in reversing the lower court, found that the dealer was not the agent of the manufacturer. In that case, the manufacturer sold his goods to the dealer, taking the latter's note for the purchase price. On the dealer's subsequent sale of the property, the arrangement was that he should indorse the purchaser's notes to the company, and get back his own. Probably the court was unwarrantedly imputing altruistic motives to the company when it said the arrangement was not set up for its benefit, but solely to enable the dealer to realize his profit on the transaction expeditiously.[7] In the principal case, it was necessary for the court to say that, even though the agent did not have the notes when payment was made, the maker is protected when he pays to the ostensible agent of the principal who holds the notes.[8] If there were no agency relationship, the company holding the purchaser's note would have a good defense.

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[6] 184 Okla. 537, 88 P. (2d) 606 (1939).

[7] Id. at 607.

[8] Principal case at 321; 2 Am. Jur., Agency, § 163; I MECHEM, AGENCY §§ 938, 939 (1914).