Michigan Law Review

Volume 30 | Issue 8

1932

AGENCY- LIABILITY OF PRINCIPAL FOR TORTS OF AGENT- APPARENT AUTHORITY

RECENT DECISIONS

AGENCY — LIABILITY OF PRINCIPAL FOR TORTS OF AGENT — APPARENT AUTHORITY — Defendant regularly delivered goods to plaintiff C. O. D. Lambert was employed by defendant to deliver such goods and collect for them, and for this purpose he was given blank receipts which he was authorized to fill out and sign upon being paid for the goods. The usual course of business was for Lambert to deliver to plaintiff's shipping clerk who signed the delivery bill, and then collect from plaintiff's cashier who was stationed in another room. Plaintiff's cashier never asked to see this delivery bill, but always took Lambert's word as to the amount due. For a period of three and a half years Lambert made excessive collections and often charged for goods that were never received or sent by defendant. This money was kept by Lambert. The court found that Lambert knowingly and fraudulently made false representations as to the amount due, that plaintiff rightfully and in good faith relied on such representations, that Lambert was acting within the scope of his employment and within his apparent authority, and that plaintiff in no way negligently contributed to the damage. *Held*, defendant is liable to plaintiff for the excess amounts paid in pursuance to the false representations by Lambert that such amounts were payable. *Ripon Knitting Works v. Railway Express Agency* (Wis. 1932) 240 N. W. 840.

A principal is liable for the torts of his agent committed within the scope of his employment, 2 C. J., sec. 533 (1915); *Tex. & Pac. Ry. Co. v. Scoville*, 62 Fed. 730 (1894); *Washington Gas and Light Co. v. Lansden*, 172 U. S. 534 (1899), and a tort of an agent is within the scope of his employment when it is done in endeavoring to promote the principal's business within the actual or apparent authority conferred upon him for that purpose. 2 C. J., sec. 536 (1915); *Gallagher v. Singer Sewing Machine Co.*, 177 Ill. App. 198 (1913). Apparent authority is that which, though not actually granted, the principal knowingly permits the agent to exercise or holds him out as possessing, *Dispatch Printing Co. v. Nat'l Bk. of Commerce*, 109 Minn. 440, 124 N. W. 236 (1910); *Zummach v. Polasek*, 199 Wis. 529, 227 N. W. 33 (1929), and arises because the facts which limit the agent's authority are necessarily and peculiarly within the knowledge of the agent. In such a case the principal is estopped from denying the lack of real authority. 2 C. J., sec. 211 (1915); *Small v. Housman*, 208 N. Y. 115, 101 N. E. 700 (1913). Thus, where a company gave messengers power to collect for telegrams previously sent, the company was held liable for excessive amounts collected on the ground that it was within their apparent authority to collect such amounts, *Wilmerding v. Postal Telegraph-Cable Co.*, 118 App. Div. 685, 103 N. Y. S. 594 (1907); *Birkett v. Postal Telegraph-Cable Co.*, 107 App. Div. 115, 94 N. Y. S. 918 (1905), and where a salesman padded his accounts when collecting for the company, the company was held liable, *Berkovitz v. Morton-Gregson Co.*, 112 Neb. 154, 198 N. W. 868 (1924). So also, where the agent of the corporation, whose duty it was to issue stock, issued fraudulent shares, the corporation was held liable. *Nat'l Bk. of Webb City v. Newell-Morse Realty Co.*, 259 Mo. 637, 168 S. W. 699 (1914); *Cincinnati, N. O. & T. P. Ry. Co.*

v. Citizens Nat'l Bk., 56 Ohio St. 351, 47 N. E. 249 (1897); *Fifth Ave. Bk. of N. Y. v. 42nd St. & Grand St. Ferry Co.*, 137 N. Y. 231, 33 N. E. 378 (1893). However, where the agent of a carrier fraudulently issues a bill of lading and no such goods have been received for shipment, the majority of the courts hold that the apparent authority of the agent is limited to issuing bills of lading only when goods have been received, and the principal is not liable. *Roy & Roy v. N. Pac. Ry. Co.*, 42 Wash. 572, 85 Pac. 53 (1906); *Schooner Freeman v. Buckingham*, 59 U. S. 182 (1855); *Williams Black & Co. v. Wilmington & Weldon R. R. Co.*, 93 N. C. 42 (1885); *Nat'l Bk. of Commerce v. Chicago, Burlington & Northern Ry. Co.*, 44 Minn. 224, 46 N. W. 342 (1890). The basis of such decisions is that a bill of lading is a mere contract to carry, and if no goods are received for shipment there is nothing on which the agent can act, and third parties, knowing that an agent has no power to issue bills of lading when no goods are sent, have no right to rely on the bill as evidence that the goods have been received for shipment by the carrier. *Friedlander v. Tex. & Pac. Ry. Co.*, 130 U. S. 416 (1889); see 4 MICH. L. REV. 199 (1906). A vigorous minority of the courts, however, hold that the agent's apparent authority extends to issuing bills of lading where no goods have been received on the ground that bills of lading are receipts as well as contracts to deliver, they assert possession on their face, and to deny a good faith purchaser the right to hold the principal would put an end to their usefulness. *Bank of Batavia v. N. Y., Lake Erie & Western Ry. Co.*, 106 N. Y. 195, 12 N. E. 433 (1887); *Brooke v. N. Y., Lake Erie & Western Ry. Co.*, 108 Pa. St. 529, 1 Atl. 206 (1885). The courts are also split where some goods have been delivered to the carrier but the agent makes the bill of lading for a greater quantity. *Sioux City & Pac. Ry. Co. v. First Nat'l Bk. of Fremont*, 10 Neb. 556, 7 N. W. 311 (1880); *Thomas v. Atlantic Coast Line*, 85 S. C. 537, 64 S. E. 220, 34 L. R. A. (N. S.) 1177 (1909). The minority view, it is submitted, is more logically sound, for it seems as though bills of lading assert as much title on their face as stock certificates, and it would greatly impair their quasi-negotiable character if third parties could not rely on them when regular on their face, 2 MECHEM, AGENCY, sec. 1801 (1914); *The Carso*, 43 F.(2d) 736 at 744 (1930); recognizing this, the United States Supreme Court has adopted the minority view, and, purely on grounds of agency, now holds the principal liable in tort. *Gleason v. Seaboard Air Line Ry. Co.*, 278 U. S. 349 (1929). See 27 MICH. L. REV. 697 (1929). The Federal Bills of Lading Act, Public Acts 239 (1916), and the Uniform Bills of Lading Act, sec. 23, make the principal liable on the contract to carry and deliver. Under the C. O. D. arrangement the carrier is to collect for goods delivered to the buyer. *Keller v. State* (Tex. Cr. 1905) 87 S. W. 669; *Commonwealth v. Fleming*, 130 Pa. St. 138 (1889). The instant case, then, even on the bills of lading analogy, seems in accord with the better authorities.

BANKS AND BANKING — PREFERRED CLAIMS OF SAVINGS DEPOSITORS — SET-OFFS — Members of the Michigan bar who have had to deal with perplexing receivership problems, growing out of the many recent bank failures, should welcome the case of *Reichert v. Farmers & Workingmens Savings Bank*, 257