PRINCIPAL AND AGENT - LIABILITY OF AGENT ON A WRITTEN CONTRACT IN HIS OWN NAME

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Principal and Agent — Liability of Agent on a Written Contract in His Own Name — The plaintiff, a football coach, entered into a written contract with the defendant whereby the plaintiff was employed to act as coach and director of athletics for a period of ten years at any college in the city of New Orleans designated by the defendant. In the event of non-employment of the plaintiff by any of such colleges, the plaintiff was to advise the defendant in any athletic matters with which the defendant might be concerned. The defendant covenanted to pay a stipulated salary. In pursuance of this contract, the plaintiff served as coach at Loyola University in New Orleans for several years, but alleged that he entered no contract with that school. His salary was partially paid by both the university and the defendant. Plaintiff brought this action to recover a balance due for services rendered and damages for breach of the contract. On appeal from a judgment dismissing the suit for want of a cause of action, held, reversed and remanded. Shaughnessy v. D'Antoni, (C. C. A. 5th, 1939) 100 F. (2d) 422.

In holding that the plaintiff had stated a cause of action for a balance of salary earned, the court rejected the defendant’s contention that in making the contract he was only an agent for a disclosed principal.1 Considering the express language of the contract in question and the lack of any evidence of authority granted to the defendant to so contract for the university, as the court well pointed out, it is submitted that the court was correct in its ruling. The failure of the defendant to produce any evidence of his authority to act as an agent for the university in employing the plaintiff made it necessary for the court to proceed on the premise that there was no such authority. With that hypothesis, the plaintiff could not possibly succeed against the university even if the defendant had represented to the plaintiff that he was an agent for the university, because it is an elementary principle of the law of agency that a person dealing with an agent is bound at his peril to ascertain the nature and extent of the agent’s authority.2 But suppose we assume that the defendant in fact had authority in the instant case and also that the university was the disclosed principal in the transaction. Would that enable the defendant to escape liability? There is a division of the authorities in such situations as to whether or not the principal is liable to the third party,3 but all courts concede that the third

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1 The main contention of the defendant involved the interpretation of a Louisiana statute prohibiting engagements of service under certain conditions for a period in excess of five years.


3 A leading case denying recovery by the third party against the principal is Chandler v. Coe, 54 N. H. 561 (1874). The contrary line of authority is based on
party may also sue the agent if he elects to do so. It is well settled that the agent makes himself personally liable upon the contract, entirely aside from the question whether the plaintiff could also have elected to hold the university as a subsequently discovered principal. It would seem that the only possibility of the defendant being able to shift the liability to the university would be to establish by parol evidence that the real agreement which constituted the contract was not in writing, and that the written contract was only a colorable affair which neither of the parties thereto ever intended as a binding contract.

Apparently, little evidence was adduced in the trial court as to the exact nature of the connections between the three parties here. Whether there were any in fact is a matter of conjecture, but it taxes credulity to believe that the real agreement between these parties was integrated in the written document found in the record.

Henry L. Pitts

Calder v. Dobell, L. R. 6 C. P. 486 (1871). Also see Byington v. Simpson, 134 Mass. 169 (1883). 1 AGENCY RESTATEMENT, § 149 (1933), provides: "A disclosed or partially disclosed principal is subject to liability upon an authorized contract in writing, if not negotiable or sealed, although it purports to be the contract of the agent, unless the principal is excluded as a party by the terms of the instrument or by the agreement of the parties."

§ 2 MECEM, AGENCY, 2d ed., § 1716 (1914).

§ 1 MECEM, AGENCY, 2d ed., § 1408 (1914).

§ 2 MECEM, AGENCY, 2d ed., § 1729 (1914). Anomalously enough, the courts more generally agree that an undisclosed principal may be held by the third party than they do in the case of the disclosed principal. See 2 ibid., §§ 1730, 1731.

§ Rogers v. Hadley, 2 Hurl. & C. 227, 159 Eng. Rep. 94 (1863); Lavalleur v. Hahn, 152 Iowa 649, 132 N. W. 877 (1911); Southern St. Ry. Adv. Co. v. Metropole Shoe Mfg. Co., 91 Md. 61, 46 A. 513 (1900). Cf. 5 WIGMORE, EVIDENCE, 2d ed., § 2406 (1923). While accepting the logic of this principle, Professor Wigmore would allow parol evidence to the effect that a document is a mere sham only when the pretence is a morally justifiable one.