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PRINCIPAL AND AGENT - IMPUTING KNOWLEDGE OF AGENT TO HIS PRINCIPAL

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PRINCIPAL AND AGENT — IMPUTING KNOWLEDGE OF AGENT TO HIS PRINCIPAL — Harriman, acting for himself, by fraudulent misrepresentation obtained some collateral from the plaintiff. He pledged these securities through

a dummy corporation to the Harriman National Bank & Trust Co., of which he was president at that time, and over which he exercised considerable control. The loan was formally approved by the loan committee of the bank. *Held*, plaintiff could recover his collateral because the agent's knowledge of the fraud was imputed to the bank. *Munroe v. Harriman*, (C. C. A. 2d, 1936) 85 F. (2d) 493, affirming (D. C. N. Y. 1935) 16 F. Supp. 341.

The generally accepted rule is that a principal is chargeable with knowledge received by the agent while acting within the scope of his authority.[1] The basis for this rule is usually phrased in terms of presumption that the agent has done his duty.[2] One of the recognized exceptions to this rule is where the agent is acting adversely to his principal or in his own interest.[3] The reason often given for this exception is that the facts overcome the presumption that the agent has performed his duty of conveying the information to his principal.[4]

[1] 2 MECHEM, AGENCY, 2d ed., § 1813 (1914); 1 AGENCY RESTATEMENT, § 268 (1933); 3 FLETCHER, CYCLOPEDIA CORPORATIONS, § 790 (1931); BALLANTINE, PRIVATE CORPORATIONS, § 112 (1927).

[2] Maryland Casualty Co. v. Tulsa Industrial Loan & Investment Co., (C. C. A. 10th, 1936) 83 F. (2d) 14 at 16. The court says, "A corporation is charged with knowledge of all material facts of which its officer or agent receives notice or requires knowledge while acting in the course of his employment and within the scope of his authority, because it is presumed in law that such facts will be disclosed to the principal. That rule rests upon considerations of sound policy and imperative expedience; otherwise rights would frequently be impaled upon uncertainty and instability." In the principal case, however, the court says [85 F. (2d) 493 at 495], "But to explain the cases in terms of presumptions is not a rational analysis. The presumption of communication is a pure fiction, contrary to the fact. . . . The rational explanation . . . is that common justice requires that one who puts forward an agent to do his business should not escape the consequences of notice to or knowledge of his agent."

[3] 2 MECHEM, AGENCY, 2d ed., § 1815 (1914); 104 A. L. R. 1246 (1936); Cheek v. Squires, 200 N. C. 661, 158 S. E. 198 (1931), noted in 10 N. C. L. REV. 68 (1931); Carlisle v. Norris, 215 N. Y. 414, 109 N. E. 564 (1915); Appeal of Metropolitan Life Insurance Co., 310 Pa. 17, 164 A. 715 (1932); Innerarity v. Merchant's Nat. Bank, 139 Mass. 332, 1 N. E. 282 (1885); Aetna Cas. & Surety Co. v. Local Bldg. & Loan Assn., 162 Okla. 141, 19 P. (2d) 612 (1933); Illinois Tuberculosis Assn. v. Springfield Marine Bank, 282 Ill. App. 14 (1935); Hurley v. John Hancock Mut. Life Ins. Co., 247 App. Div. 547, 288 N. Y. S. 199 (1936); Detroit Piston Ring Co. v. Wayne County & Home Savings Bank, 252 Mich. 163, 233 N. W. 185 (1930); Maryland Casualty Co. v. Tulsa Industrial Loan & Investment Co., (C. C. A. 10th, 1936) 83 F. (2d) 14, an excellent decision citing most of the important federal authority.

[4] American Nat. Bank v. Miller, 229 U. S. 517 at 522, 33 S. Ct. 883 (1913), where the Court says, "But if the fact of his own insolvency and of his personal indebtedness to the Nashville Bank were matters which it was to his interest to conceal, the law does not by a fiction charge the Macon Bank of which he was President, with notice of facts which the agent not only did not disclose, but which he was interested in concealing." Also, in Maryland Casualty Co. v. Tulsa Industrial Loan & Investment Co., (C. C. A. 10th, 1936) 83 F. (2d) 14 at 16, the court says, "if in the course of his employment the agent acts for his own benefit and to defraud his principal, the latter is not charged with constructive knowledge of the uncommunicated facts in the transaction since it is manifestly essential to the existence of such a fraud

Some courts have worked out an estoppel of the third party where he has knowledge of such facts as will overcome the presumption.[5] It would seem that the most plausible analysis is the one followed in the principal case, namely, that the agent is not acting within the scope of his authority.[6] However, there is a qualification to this exception which was relied upon in the principal case.[7] If the agent is the "sole actor" for the corporation, his knowledge is imputed to the corporation.[8] This seems to be in accord with the general trend of de-

that the agent conceal the facts and consequently the ordinary presumption that he will communicate to his principal all facts concerning the business does not arise."

[5] The leading case of this type is Mutual Life Insurance Co. v. Hilton-Green, 241 U. S. 613, 36 S. Ct. 676 (1916), where the Court says at 622-623, "The general rule which imputes an agent's knowledge to the principal . . . does not apply when the third party knows there is no foundation for the ordinary presumption—when he is acquainted with circumstances plainly indicating that the agent will not advise his principal. The rule is intended to protect those who exercise good faith and not as a shield for unfair dealing." Also: Jensen v. N. Y. Life Ins. Co., (C. C. A. 8th, 1932) 59 F. (2d) 957; Tilden v. Barber, (D. C. N. J. 1920) 268 F. 587; Rushville Nat. Bank v. State Life Ins. Co., (Ind. App. 1935) 197 N. E. 740, 1 N. E. (2d) 445.

[6] The court in the principal case quotes Thomson-Houston Electric Co. v. Capitol Electric Co., (C. C. A. 6th, 1894) 65 F. 341 at 343, "The truth is that where an agent, though ostensibly acting in the business of the principal, is really committing a fraud for his own benefit, he is acting outside of the scope of his agency, and it would therefore be most unjust to charge the principal with knowledge of it." 2 MECHEM, AGENCY, 2d ed., § 1822 (1914), states that the exception is too broad, concluding, "It rests properly upon the ground that . . . there was really no agency, and not upon the ground that the law presumes that the agent will violate his duty. It should be confined, therefore, to the cases which really fall within the reason: and notice should be imputed wherever there is agency or ratification." Giving the same reasons are: Carlisle v. Norris, 215 N. Y. 400, 109 N. E. 564 (1915); Allen v. South Boston R. R., 150 Mass. 200, 22 N. E. 917 (1889); Keyworth v. Nevada Packard Mines Co., 43 Nev. 428, 186 P. 1110 (1920).

[7] The circuit court said [85 F. (2d) 493 at 496], "but there is substantial authority in support of the 'sole actor' doctrine. For reasons already stated we think it is sound." There are numerous cases cited in the note appended to this case.

[8] State decisions which have followed the "sole actor" doctrine: National Bank of San Mateo v. Whitney, 40 Cal. App. 276 at 283-284, 180 P. 845 (1919). The court says: "Where the agent is the sole representative of the principal . . . the general law of agency is still applicable, and the knowledge of the agent is imputed to the principal. In such a case, it makes no difference that the agent has an opposing personal interest, or is engaged in a personal fraud against his principal." See also: McFerson v. Bristol, 73 Col. 214, 214 P. 395 (1923); Mays v. First Nat. Bank of Keller, (Tex. Comm. App. 1923) 247 S. W. 845; Atlantic Cotton Mills v. Indian Orchard Mills, 147 Mass. 268, 17 N. E. 496 (1888); Emerado Farmers' Elevator Co. v. Farmers' Bank of Emerado, 20 N. D. 270, 127 N. W. 522 (1910); Morris v. Georgia Loan Savings & Banking Co., 109 Ga. 12, 34 S. E. 378 (1899); Cook v. American Tubing & Webbing Co., 28 R. I. 41 at 77, 65 A. 641 (1905), where the court seems to talk identity of the agent and principal and says, "it seems more proper to call the knowledge which he has actual knowledge of the corporation, rather than to say it is imputed." Steam Stonecutter Co. v. Myers, 64 Mo. App. 527 (1896); see note, 2 L. R. A. (N. S.) 993 (1906).

cisions on the "sole actor" doctrine in the federal courts.[9] The courts have developed this doctrine because they feel if a principal accepts a benefit through a single agent it must accept it with the knowledge which was possessed by the agent.[10] If we were to be technical, the principal case might be called an extension of the "sole actor" doctrine, because other agents of the bank were involved in the deal.[11] However, this doctrine, if it is to have any value, should be extended beyond the case where the agent is the only representative to the cases where the agent controls the course of dealings.[12]

[9] Skud v. Tillinghast, (C. C. A. 6th, 1912) 195 F. 1, seems to be the forerunner of the sole actor doctrine in federal courts for the court says at p. 7, "It was not open to the bank to receive the benefit of Skud's individual promise, through either its president or cashier, or both, without bearing the burden of the knowledge which those officials had when receiving the benefit." This was followed by Curtis, Collins & Holbrook Co. v. United States, 262 U. S. 215, 43 S. Ct. 570 (1923). However, as is pointed out in Kean v. National City Bank, (C. C. A. 6th, 1923) 294 F. 214, the court did not rely upon the "sole actor" doctrine nor was it relied upon in the Kean case although both cases have often been cited in support of the doctrine. Pensacola State Bank v. Thornberry, (C. C. A. 6th, 1915) 226 F. 611; Ohio Millers' Mutual Ins. Co. v. Artesia State Bank, (C. C. A. 5th, 1930) 39 F. (2d) 400, intimates the possibility of the doctrine; Anderson v. Missouri State Life Ins. Co., (C. C. A. 6th, 1934) 69 F. (2d) 794; Bosworth v. Maryland Casualty Co., (C. C. A. 7th, 1935) 74 F. (2d) 519, which clearly recognizes the doctrine; likewise Maryland Casualty Co. v. Tulsa Industrial Loan & Investment Co., (C. C. A. 10th, 1936) 83 F. (2d) 14, where the court finds that the agent was not the "sole actor."

[10] Bosworth v. Maryland Casualty Co., (C. C. A. 7th, 1935) 74 F. (2d) 519 at 521, the court says, in regard to the "sole actor" doctrine, "Where the principal insisted on retaining the fruits of the adventure, it must be charged with knowledge of the agent through whom the fruits came."

[11] However, as Judge Knox said in the district court opinion, 16 F. Supp. 341 at 345, "What Harriman said and did was outwardly accepted by his subordinates, whatever their mental reservations, as the acme of wisdom and propriety. For all practical purposes Harriman was the bank. . . . The directorate of the bank, and its executive staff, through inaction and fear, permitted him in dealing with himself to be the exclusive agent of the bank."

[12] The closest decision to this effect besides the principal case is Bosworth v. Maryland Casualty Co., (C. C. A. 7th, 1935) 74 F. (2d) 519, where the court said a finding that the agent was the "sole actor" would not be disturbed because evidence showed he had given instructions to other employees which were carried out by them, saying (at 521) ". . . Tayler directed the business of the bank as a superior officer to all others of its employees and agents, and . . . in fact, he was the bank. In this entire transaction there is not the slightest indication that any officer . . . except Tayler, exercised any independent choice or judgment."