

Michigan Law Review

Volume 33 | Issue 8

1935

AGENCY - FALSE REPRESENTATIONS BY AGENT - RATIFICATION

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Recommended Citation

AGENCY - FALSE REPRESENTATIONS BY AGENT - RATIFICATION, 33 MICH. L. REV. 1241 (1935).

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RECENT DECISIONS

AGENCY — FALSE REPRESENTATIONS BY AGENT — RATIFICATION — During an intensive stock-selling campaign of the defendant power company, the stock salesman represented to the complainant that the corporation would repurchase at par upon demand any of the stock then offered. Relying upon this representation the complainant purchased thirty shares of stock for \$3,000, the company apparently receiving his money and issuing the stock with knowledge of the false representations; when he later wished the company to repurchase the stock, it refused. On suit for (1) rescission and recovery of sum paid, or (2) reformation and specific performance, the company claimed among other things that the agreement made by its agent was unauthorized and therefore not binding. *Held*, that while complainant was entitled to recover on grounds of estoppel and sufficient authorization of the agent, the act of the corporation in accepting complainant's money with knowledge of the representations did not amount to a ratification of the representation. *Downs v. Jersey Central Power & Light Co.*, 115 N. J. Eq. 348, 174 Atl. 887 (1934).

It is stated as a general rule that if an agent, in entering into a contract for his principal, goes beyond his authority, the principal may at his election either ratify or repudiate the contract. If he elects to ratify, he becomes bound as effectively as if he had originally authorized.¹ Such ratification, if capable of being made by parol, may be made by accepting and retaining the benefits of the contract, provided the principal is aware of all the facts and acts voluntarily.² These rules apply as well to a corporate principal as to an individual.³ Therefore, the only question as to ratification in the instant case is whether the accepting of complainant's money with knowledge of the representation can of itself constitute ratification. Approaching the question upon principle, one would expect an affirmative answer, for the acceptance of money is surely an act, and, where the contract is to the benefit of the corporation, as it is here, a very slight act will suffice to constitute ratification.⁴ When payment of wages,⁵ occupation of prop-

¹ MECHEM, OUTLINES OF AGENCY, 3rd ed., sec. 159 (1923). But note that the rights of the principal against the third party are worked out on the lines of his acceptance of a continuing offer secured by the agent. *Ibid.*, secs. 160, 161.

² MECHEM, OUTLINES OF AGENCY, 3rd ed., sec. 148 (1923). Although acceptance of "benefits so inextricably commingled with other matters not involved as to be impossible of rejection" will not ratify, such a situation is not involved in the case under discussion.

The ratification so made is of the whole contract, and cannot be of only the part beneficial to the principal. *Wisconsin Lumber Co. v. Greene & Western Telephone Co.*, 127 Iowa 350, 101 N. W. 742, 69 L. R. A. 968 (1904); 3 FLETCHER, CORPORATIONS, sec. 826 (1931).

³ 3 FLETCHER, CORPORATIONS, sec. 826 (1932). However, it should be noted that "like other principals, a corporation cannot ratify acts or contracts which it could not have entered into itself. . . ." 2 *ibid.*, sec. 120.

⁴ *Love v. Metropolitan Church Ass'n*, 184 Ill. App. 102 (1913); 2 MORAWETZ, PRIVATE CORPORATIONS, 2nd ed., sec. 629 (1886). The statute of frauds is no bar here since the contract is partially performed. 4 FLETCHER, CORPORATIONS, sec. 1540 (1931).

⁵ *Klinck v. Chicago City Ry.*, 262 Ill. 280, 104 N. E. 188 (1914).

erty,⁶ making payments on a note,⁷ and execution of a note⁸ are held sufficient acts to ratify, it would seem that receiving money and issuing stock would be also, and it is so held.⁹ Ratification might also be found in the corporation's apparent acquiescence, accepting silently the complainant's money given it in reliance upon false beliefs, of which false beliefs the corporation was aware.¹⁰ The prior New Jersey law was definitely in accord with this general view.¹¹ A California case points out the unfairness of a holding such as that of the principal case in that the advantage of knowledge is all upon the side of the corporation.¹² It is submitted, therefore, that the view of the court in the principal case is unsatisfactory.

R. E. W.

⁶ *Love v. Metropolitan Church Ass'n*, 184 Ill. App. 102 (1913).

⁷ *California Nat. Supply Co. v. Flack*, 183 Cal. 124, 190 Pac. 634 (1920).

⁸ *Western Timber Co. v. Kalama River Lumber Co.*, 42 Wash. 620, 85 Pac. 338, 6 L. R. A. (N. S.) 397 (1906).

⁹ "And the acceptance of the proceeds of a sale of stock under an agreement to repurchase at par or at the price paid therefor precludes it from objecting to the agreement to repurchase as beyond the power of the selling officer or agent." 2 FLETCHER, CORPORATIONS, sec. 773 (1931). *Davies v. Montana Auto Finance Corp.*, 86 Mont. 500, 284 Pac. 267 (1930); *Gasser v. Great Northern Ins. Co.*, 145 Minn. 205, 176 N. W. 484 (1920); *Wisconsin Lumber Co. v. Greene & Western Telephone Co.*, 127 Iowa 350, 101 N. W. 742, 69 L. R. A. 968 (1904); *Gilman v. F. O. Bailey Carriage Co.*, 127 Me. 91, 141 Atl. 321 (1928).

¹⁰ "... the corporation . . . must promptly disaffirm the contract or act, and not allow the other party or third persons to act in the belief that it was authorized or has been ratified. If it acquiesces, with knowledge of the facts, or fails to disaffirm, a ratification will be implied, or else it will be estopped to deny a ratification." 2 FLETCHER, CORPORATIONS, sec. 769 (1931). *Pittsburgh, C. & St. L. R. R. v. K. & H. Bridge Co.*, 131 U. S. 371, 9 Sup. Ct. 770 (1889); *Smith v. Fletcher*, 75 Minn. 189, 77 N. W. 800 (1899); 31 A. L. R. 607 n. (1924). It seems that a year should be sufficient time in which to disaffirm, and while the report is not clear, the corporation probably had at least that much.

While ratification by estoppel [MECHEM, OUTLINES OF AGENCY, 3rd ed., sec. 146 (1923)] and ratification by silence or acquiescence (*ibid.*, sec. 152) do not always arise from the same sets of facts, probably either will apply here.

¹¹ *Garrison v. Technic Electric Works*, 55 N. J. Eq. 708, 37 Atl. 741 (1897). See also, *Looschen Piano Case Co. v. Steinberg*, 76 N. J. L. 130, 68 Atl. 1072 (1908); *Straus v. Norris*, 78 N. J. Eq. 488, 79 Atl. 611 (1911).

¹² *Tidewater Southern R. R. v. Harney*, 32 Cal. App. 253, 162 Pac. 664 (1917).