

1946

AGENCY-LIABILITY OF AGENT ON CONTRACT FOR PRINCIPAL-EFFECT OF ADDING "AGENT" TO SIGNATURE

John A. Huston
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Contracts Commons](#), [Evidence Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

John A. Huston, *AGENCY-LIABILITY OF AGENT ON CONTRACT FOR PRINCIPAL-EFFECT OF ADDING "AGENT" TO SIGNATURE*, 45 MICH. L. REV. 206 (1946).

Available at: <https://repository.law.umich.edu/mlr/vol45/iss2/8>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

AGENCY—LIABILITY OF AGENT ON CONTRACT FOR PRINCIPAL—EFFECT OF ADDING “AGENT” TO SIGNATURE—Defendant, a real estate broker purporting to act for *X*, made a contract with plaintiff for the sale to plaintiff of *X*'s farm. The only evidence in the writing of defendant's agency was the word “agent” which he appended to his signature. Plaintiff paid defendant \$1000.00 as a deposit which defendant tendered to *X* who returned \$500.00 to defendant as his commission for the sale. Upon destruction of an important part of the premises before execution of the contract, plaintiff brought suit against *X* and defendant to rescind the contract and recover the deposit.¹ Recovery against *X* was limited to \$500.00 which *X* had already returned before suit, and the bill was dismissed as to defendant. Upon plaintiff's appeal, *Held*: defendant was liable in the sum of \$500.00 as a party to the contract, the word “agent” being sufficient neither to indicate that he acted solely in a representative capacity nor to raise an ambiguity as to parties. *Bissonnette v. Keyes*, (Mass. 1946) 64 N.E. (2d) 926.

When a duly appointed agent of another, acting within the scope of his authority, signs a simple contract which purports to obligate him personally, the

¹ Under the rule in Massachusetts where the subject matter of an executory contract for the conveyance of real property is destroyed or materially damaged, the loss is borne by the vendor. The court in the principal case cites *Libman v. Levenson*, 236 Mass. 221, 128 N.E. 13 (1920), and the cases and discussion in 22 A.L.R. 575 (1923). This is the minority view.

unvarying rule is that the agent himself is bound as a party to the contract.² Conversely it is equally clear that where the writing indicates unequivocally that the agent acted only as the representative of his principal, the principal and not the agent is obligated.³ The instant case poses the problem of determining the parties to a contract where an agent appears to have acted on his own behalf except for the appending of some word after his signature suggestive of a representative capacity.⁴ The weight of authority is for the proposition that where an agent signs simply as "agent," or as "trustee" or "director," and the contract does not name his principal or otherwise set forth the agency relationship, the added word is merely *descriptio personae* or "descriptive of the person" of the agent and not indicative of the capacity in which he acts.⁵ It is conceded, however, that where there are elements in a contract executed by an agent which render it ambiguous as to parties, extrinsic evidence may be examined to determine the intention of the signers;⁶ and there is authority to the effect that the addition to the agent's signature of a word describing him as such gives rise to an ambiguity explainable by this method.⁷ Sometimes it is stated that a contract signed in this fashion is *prima facie* the contract of the agent but that other evidence may be introduced to prove a different intent.⁸ The court in the principal case adopts the view, however, that a writing in this form is not ambiguous and must be taken to bind the agent personally.⁹ It must be confessed that however much various courts and textbook writers have spoken of the admissibility of extrinsic evidence to ascertain the intention of the signers under these facts, the cases where such evidence has been admitted to relieve the agent appear to be few.¹⁰ Investigation reveals that in many cases where the rule in general terms

² STORY, AGENCY, 9th ed., §155 (1882); MECHEM, AGENCY, §447 (1889); 1 WILLISTON, CONTRACTS, rev. ed., §284 (1936); 32 C.J.S., Evidence, §991a.

³ STORY, AGENCY, 9th ed., §154 (1882); MECHEM, AGENCY, §446 (1889); 2 C.J.S., Agency, §127.

⁴ The specific question here involved is discussed at length and numerous cases cited in 42 L.R.A.(NS) 1 at 16 (1923).

⁵ MECHEM, AGENCY, §447 (1889); 2 C.J.S., Agency, §127 d (3) (d). See the oft quoted opinion of Shaw, C.J., in *Simonds v. Heard*, 40 Mass. 120 at 126 (1839). The court in *Anthony v. Comstock*, 1 R.I. 454 at 462 (1851), terms the word "agent" thus used as "merely a descriptive epithet." In 1 AGENCY RESTATEMENT, §156, comment b (1933), it is said that the descriptive term serves only to inform the other party to the contract "that the agent is conducting the transaction as a fiduciary." The general view has not gone unchallenged, however. See the vigorous criticism of it in *Sayre v. Nichols*, 7 Cal. 535 (1857).

⁶ MECHEM, AGENCY, §449 (1889); 32 C.J.S., Evidence, §991 a (1942). For a recent Massachusetts decision applying this principle see *Stern v. Lieberman*, 307 Mass. 77, 29 N.E. (2d) 839 (1940), cited by the court in the principal case.

⁷ TIFFANY, HANDBOOK ON AGENCY, 2d ed. by Powell, 337 (1924); 32 C.J.S., Evidence, §991 a; 2 AGENCY RESTATEMENT, §323 (2), comment d (1933). The principle is not extended by the RESTATEMENT to negotiable instruments or contracts under seal. 1 AGENCY RESTATEMENT, §156 (1933).

⁸ TIFFANY, HANDBOOK ON AGENCY, 2d ed. by Powell, 337 (1924).

⁹ Principal case at 927.

¹⁰ In *Haile v. Peirce*, 32 Md. 327 (1870), parol evidence offered to rebut the liability of agents was held improperly excluded by the lower court and a new trial

is indeed approved, the purpose in admitting the extrinsic evidence was to establish the liability of the principal,¹¹ or to prove that the signer described as an agent was in fact a party and entitled to sue.¹² Where extrinsic evidence has been allowed to relieve the agent, there has usually been a stronger ground for treating the contract as ambiguous than merely that the agent described himself as such after his signature.¹³ An interesting point related to this problem is raised by the court's assumption in the instant case that the defendant's principal was properly held liable on the contract, even though, by the court's interpretation, the agency was in no way evidenced in the writing. The admissibility of extrinsic evidence to prove the principal's liability is clearly contemplated here, and it might be thought inconsistent not to allow such evidence to relieve the agent. It appears to be well settled, however, that even where a contract is unambiguous in its terms and purports to bind the agent alone, the fact of agency and the intention of one of the parties to bind the principal may be shown by other evidence, although the agent is not thus enabled to avoid liability himself.¹⁴ The rule is said to have been derived from the theory that "the act of the agent is the act of the principal,"¹⁵ so that the principal is made a party to the contract by the act of his agent even though his relation to the agent is not set forth. A further explanation given for the rule is that the introduction of extrinsic evi-

was awarded. The court in *Clark v. Talbott*, 72 W.Va. 46, 77 S.E. 523 (1913), affirmed a judgment where parol evidence had been admitted to discharge an agent, relying largely on the authority of *Mechem* who is quoted at length. In *Pratt v. Beaupre*, 13 Gilfillan (Minn.) 177 (1868), and *Solomon v. New Jersey Indemnity Co.*, 94 N.J.L. 318, 110 A. 813 (1920), affirmed, 95 N.J.L. 545, 113 A. 927 (1921), the propriety of parol evidence to relieve the agents was upheld but the evidence was insufficient. *Southern Badge Co. v. Smith*, (Tex. Civ. App. 1911) 141 S.W. 185, where the agent was allowed to escape liability by the use of parol evidence, disclosed a slightly more ambiguous writing. *Anthony v. Comstock*, 1 R.I. 454 (1851), cited in note 5, *supra*, and *Norfolk County Trust Co. v. Green*, 304 Mass. 406, 24 N.E. (2d) 12 (1939), offer examples of the cases where such contracts were held to present no ambiguity.

¹¹ *Mechanics' Bank of Alexandria v. Bank of Columbia*, 5 Wheat. (18 U.S.) 326 (1820); *Deering v. Thom*, 29 Minn. 120, 12 N.W. 350 (1882); *Southern Pacific Co. v. Von Schmidt Dredge Co.*, 118 Cal. 368, 50 P. 650 (1897); *Keeley Brewing Co. v. Neubauer Decorating Co.*, 194 Ill. 580, 62 N.E. 923 (1902).

¹² *Rhone v. Powell*, 20 Colo. 41, 36 P. 899 (1894); *Eddy v. American Amusement Co.*, 9 Cal. App. 624, 99 P. 1115 (1908).

¹³ Compare the situations in the following cases, for example: *Peterson v. Homan*, 44 Minn. 166, 46 N.W. 303 (1890); *Ellis v. Stone*, 21 N.M. 730, 158 P. 480 (1916); *Stern v. Lieberman*, 307 Mass. 77, 29 N.E. (2d) 839 (1940). In the second case cited (*Ellis v. Stone*), the agent added the title "president" to his signature but the court was additionally influenced to treat the contract as ambiguous by its having been written on the letterhead of the principal and by the occurrence of the words "we" and "president" at a significant place in the text.

¹⁴ *STORY, AGENCY*, 9th ed., §160 a (1882); *Higgins v. Senior*, 8 M. & W. 834, 151 Eng. Rep. 1278 (1841) (*STORY ON AGENCY* cited with approval); *Salmon Falls Mfg. Co. v. Goddard*, 14 How. (55 U.S.) 446 (1852) (*Higgins v. Senior* approved); *Byington v. Simpson*, 134 Mass. 169 (1883). See also cases cited in 32 C.J.S., *Evidence*, §991 a (1942).

¹⁵ Opinion of Holmes, J., in *Byington v. Simpson*, 134 Mass. 169 at 170 (1883).

dence to bind a principal not mentioned in the instrument only extends the obligation of the contract and does not actually vary its terms since all who appear to be parties on its face remain bound; while the use of such evidence to discharge the agent varies the contract in relieving a party unequivocally obligated in the writing.¹⁶ If the result in the principal case seems unfair, it is perhaps because it is not clearly evident that two persons who draw up a contract for the sale to one of them of another person's land intend nothing by the addition of the word "agent" to the signature of the one who undertakes to convey. Such a writing might at least be deemed ambiguous and other circumstances considered in ascertaining its intent. There is reason and some authority for this approach.¹⁷

John A. Huston

¹⁶ *Higgins v. Senior*, 8 M. & W. 834, 151 Eng. Rep. 1278 (1841).

¹⁷ Some might find merit in the dictum of the court in *Sayre v. Nichols*, 7 Cal. 535 at 538 (1857): "For I cannot believe that a person signing his name and appending the word "*agent*" to it, ever did intend anything else than a designation of the capacity in which he acted."