

1946

## PRINCIPAL AND AGENT-RIGHT OF AGENT TO WAIVE STATUTE OF LIMITATIONS-ESTOPPEL

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### Recommended Citation

Howard A. Jacobs, *PRINCIPAL AND AGENT-RIGHT OF AGENT TO WAIVE STATUTE OF LIMITATIONS-ESTOPPEL*, 44 MICH. L. REV. 1152 (1946).

Available at: <https://repository.law.umich.edu/mlr/vol44/iss6/19>

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PRINCIPAL AND AGENT—RIGHT OF AGENT TO WAIVE STATUTE OF LIMITATIONS—ESTOPPEL—Plaintiff was injured in an automobile accident. Defendant's insurance adjuster informed the father of the plaintiff that no settlement could be made of her claim for personal injuries until she had fully recovered, and represented to him that defendant company would pay all her damages if the plaintiff did not consult an attorney. *Held*, where adjuster, having apparent authority to promise a settlement, lulled plaintiff into a false sense of security and caused her to permit Massachusetts one year statute of limitations<sup>1</sup> to run, defendant was estopped by the conduct of the adjuster from pleading the statute as a defense to plaintiff's action for personal injuries. *Bergeron v. Mansour*, (C.C.A. 1st, 1945) 152 F. (2d) 27.

This case raises the question of the right of an agent to waive the statute of limitations. If he has been expressly granted the authority to waive or to do some act constituting waiver, his right to waive the statute is indisputable.<sup>2</sup> Where this express authority is lacking, the apparent authority vested in the agent may so enlarge his actual authority that he may exercise this right,<sup>3</sup> the

<sup>1</sup> Mass. Gen. Laws (1932) C. 260, § 4.

<sup>2</sup> *Watts v. Devor*, 1 Grant (Pa. S. Ct.) 267 (1855); 1 AGENCY RESTATEMENT § 17 (1933). Promise to waive the statute of limitations need not be in writing, 130 A.L.R. 8 at 26 (1941). Acknowledgement of an indebtedness by an agent who is the proper person from whom to demand payment will take the case out of the statute of limitations. *Burt v. Palmer*, 5 Esp. 145, 170 Eng. Rep. 766 (1804). Part payment by agent will have the same effect. *McAbee v. Wiley*, 92 Ark. 245, 122 S.W. 623 (1909). However, a general or special authority or a former course of dealing by the agent from which the existence of such authority might have been inferred, is necessary. *Beal & Simons v. Adams Exp. Co.*, 13 Pa. Super Ct. 143 (1900).

<sup>3</sup> MECHEM, *OUTLINES OF AGENCY*, 2d ed. § 236 (1903). Generally, no officer

theory being that the principal, by holding the agent out to the world as apparently possessed of this authority, is estopped to deny it.<sup>4</sup> This power in the agent has been held to exist where he is a corporate officer,<sup>5</sup> business manager,<sup>6</sup> or claim agent.<sup>7</sup> The apparent authority of the agent to promise a settlement may constitute a proper foundation on which to predicate an apparent authority to waive the statute.<sup>8</sup> In such a case, assuring the plaintiff that the statutory limitation would not be interposed,<sup>9</sup> representing that defendant was going to settle for injuries coupled with a request not to sue,<sup>10</sup> or inducing plaintiff to withdraw suit<sup>11</sup> have been held sufficient grounds for estoppel. Estoppel is equally applicable whether the action be *ex delicto* or *ex contractu*.<sup>12</sup> Certainly the invocation of this equitable doctrine, as in the instant case, is justified where an innocent person has relied on the statements of the agent, who had apparent authority to waive the statute, and has been led reasonably to believe that the statute would not be pleaded.<sup>13</sup>

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or agency of the state has a right to waive the defense of the statute of limitations. *Nagel v. Department of Labor and Industries*, 189 Wash. 631, 66 P. (2d) 318 (1937). But, misleading conduct may estop governmental agencies from pleading the statute. *Hubbell v. City of South Hutchinson*, 64 Kan. 645, 68 P. 52 (1902). Where there is a contractual limitation of time within which an action may be brought against a liability insurer, a situation somewhat analogous to that in the instant case, it has been held that the conduct of an agent may be such as to waive the limitation clause, or to estop his principal from setting it up as a bar. 83 A.L.R. 748 at 764 (1933), 2 *COUCH, CYCLOPEDIA OF INSURANCE LAW*, 554 (1929).

<sup>4</sup> *Johnston v. Milwaukee & Wyo. Inv. Co.*, 46 Neb. 480, 64 N.W. 1100 (1895).

<sup>5</sup> *Holman v. Omaha & C. B. Ry. & Bridge Co.*, 117 Iowa 268, 90 N.W. 833 (1902).

<sup>6</sup> *Palethorp v. Furnish*, 2 Esp. 511, note, 170 Eng. Rep. 437 (1783).

<sup>7</sup> See the principal case.

<sup>8</sup> *Ibid.* Reasonable reliance on the part of the plaintiff is an essential element of estoppel. 31 C.J.S., Estoppel, § 71, p. 267 (1942). Note that the conduct justifying an estoppel must occur before the statutory bar has run. *Missouri Pac. R.R. Co. v. Davis*, 186 Ark. 401, 53 S.W. (2d) 851 (1932); 130 A.L.R. 8 at 18 (1941).

<sup>9</sup> *Holman v. Omaha & C.B. Ry. & Bridge Co.*, 117 Iowa 268, 90 N.W. 833 (1902).

<sup>10</sup> *Clover Splint Coal Co. v. Lorenz*, 270 Ky. 676, 110 S.W. (2d) 457 (1937). But a mere request not to sue or a request for delay in bringing suit is not in itself a ground for estoppel. 34 AM. JUR., Limitations of Actions, § 419, p. 331.

The converse of the proposition is also true. Representations made to an agent, thus inducing the principal to refrain from commencing an action until the action has been barred by the statute of limitations will estop the person making said representations from setting up the statute as a bar. *Baker-Matthews Mfg. Co. v. Grayling Lumber Co.*, 134 Ark. 351, 203 S.W. 1021 (1918).

<sup>11</sup> *McLearn v. Hill*, 276 Mass. 519, 177 N.E. 617 (1931).

<sup>12</sup> *McCampbell v. Southard*, 62 Ohio App. 339, 23 N.E. (2d) 954 (1937); 77 A.L.R. 1044 (1932).

<sup>13</sup> *Howard v. West Jersey & Seashore R.R. Co.*, 102 N.J. Eq. 517, 141 A. 755 (1928). In general, see Dawson, "Estoppel and Statutes of Limitation," 34 MICH. L. REV. 1 (1935).

The agency itself may be contemplated as a dangerous instrumentality. 42 HARV. L. REV. 685 (1929).