IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

JOHN RODRIGUEZ AND RHENIA RODRIGUEZ, Plaintiffs, vs. MICHAEL JARRETT[1] AND JOHN'S AUTO CENTER, INC., Defendants.	)	SMALL CLAIMS NO. ST-12-SM-177 ACTION FOR DEBT

MEMORANDUM OPINION
(Dated: June ___, 2012)

SMITH, ALAN D., Magistrate

Summary

Michael Jarrett entered into an agreement on behalf of John Auto Center, Inc., to sell a vehicle located outside the Virgin Islands to the Rodriguezes. Although Jarrett was only authorized to sell vehicles presently on John's car lot, he nevertheless entered into the agreement, accepted $5,900.00 in partial payments, never remitted the payments to John's, and never ordered or delivered the vehicle to the Rodiguezes. Even through Jarrett did not have actual authority to enter into the agreement on behalf of John's, he did have the apparent authority to do so. Therefore, under agency law, the Rodriguzes can recover their losses from John's.

Facts

John's Auto Center, Inc. ("John's") sells new and used automobiles in St. Thomas, Virgin Islands. On January 20, 2012, John's and Paulie's Auto Sales, LLC ("Paulie's") signed a one-year contract in which Paulie's agreed "to provide services to [John's] with respect to Marketing Sales, Advertising and sales operations[,]" including being responsible for providing and managing auto sale personnel. As consideration, Paulie's was to receive a share of the profit of sales. Pursuant to this agreement, the sales personnel are not employees of John's. Also on January 20, 2012, Paulie's and Michael Jarrett signed a contract in which Jarrett agreed to work as a car salesman. That contract provided that Jarrett would "only represent John's Auto Center for the sale of vehicles[,]" and receive a commission on auto sales and other bonuses as compensation for his services.

[1] Jarrett was not found for service and did not appear at the trial or otherwise defend. Therefore, this action proceeded against John's Auto Center, Inc. alone on the theory that Jarrett was the agent of John's Auto Center, Inc.

Both John's and Paulie's occupy a common premises, consisting of a car lot and office space, known as John's Auto Center and located at Subbase, St. Thomas. Nothing on John's premises informs customers that Paulie's exists or that the car sales personnel are employed by Paulie's. Jarrett was issued and possessed business cars that he distributed to customers. The cards prominently displayed his name and "John's Auto Center, Inc.", but neither Paulie's nor its trade name appeared on them. Joseph Felicien, the general manager of John's, was aware that Jarrett had been issued and used these cards.

On Saturday, January 28, 2012, the Rodriguezes went to John's intent on purchasing a car. They were met by Jarrett, who gave them one of the business cards described above. That day, the Rodriguezes discussed with Jarrett their desire to purchase a car, looked at cars on the lot and ate lunch together at a restaurant across the street from John's. The Rodriguezes decided that there were no cars on the lot that they were interested in purchasing. At the suggestion of Jarrett, the conversation turned to the possibility of purchasing a car from the continental United States and having it shipped to the Virgin Islands. The Rodriquezes told Jarrett they wanted a Range Rover, and Jarrett told them that for $200.00 he could initiate a search for one. In response to Jarrett's offer and while at John's, the Rodriguezes gave Jarrett $200.00 in cash. Jarrett gave them a handwritten "Rent Receipt" for $200.00 to confirm his receipt of the money. The receipt did not contain any marks to suggest it came from John's or Paulie's. No cashier was on site.

Jarrett began the search. The first vehicle he identified was not acceptable to the Rodriguezes because it was not a Range Rover. On Sunday, January 29, 2012, Jarrett identified another vehicle, located at Whipz Auto, in Roswell, Georgia. Jarrett sent a picture of the car from his personal Gmail e-mail address to Rodriguezes and told them that he would need $500.00 to put on a hold on the car. The Rodriguezes went to John's on Monday, January 30, 2012 and gave Jarrett a check for $500.00. The check was made payable to the order of Jarrett. On Thursday, February 2, 2012, Jarrett came to the restaurant owned by the Rodriguezes and asked for a $3,500.00 down payment to ship the vehicle. The Rodriguezes gave him a check for $3,500.00, also made payable to the order of Jarrett. Jarrett gave them another "Rent Receipt" in exchange. Jarrett told the Rodriguezes that it would take seven to fourteen days for the vehicle to arrive. On February 6, 2012, the Rodriguezes gave Jarrett a third check, payable to the Order of Jarrett, in the amount of $1,700.00. John Rodriguez wrote on the check that it was for a "car payment". At some point, the Rodriguezes filled out forms and other paperwork but never received an order form that contained John's or its trade name. After having waited sufficient time, the Rodriguezes returned to John's and discovered that the vehicle had never been ordered and that Jarrett's employment had been terminated.

Ultimately, the Rodriquezes learned that Jarrett was running a scam. Jarrett never gave the search fee, hold fee, deposit, or other payment to Paulie's or John's but kept that money for himself. None of Jarrett's superiors were aware of the transaction with the Rodriquezes. Furthermore, John's business model does not involve identifying used vehicles for sale outside of the Virgin Islands for customers and then arranging to have them transported. Specifically, the contract between John's and Paulie's states that "[a]ll vehicles for sale will be placed and demonstrated on the premises of John's Auto Center, Inc. – no outside sales or business transactions other than that of John's Auto Center, Inc. is to be conducted on the premises."

Discussion

The Rodriquezes contend that John's is liable to them because Jarrett was acting as John's agent when they attempted to purchase a vehicle through him. Therefore, the Court will consider the facts, in light of the applicable principles of agency law, to determine whether Jarrett was John's agent and whether John's is liable for the loss suffered by the Rodriquezes as the result of Jarrett's conduct. The analysis will begin with whether Jarrett had actual authority or apparent authority to bind John's to this transaction.

Actual Authority

"An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act."[2] Even when an agent has actual authority from the principal, his scope of authority is limited to the principal's manifestations.[3] While actual authority extends to certain action that may be implied or incidental to the principal's manifestations, there are clearly occasions where an agent who otherwise has actual authority[4] acts outside of the scope. If so, there is no actual authority, and the principal is not bound by the actions of the agent.[5] Here, through the contract between John's and Paulie's and the contract between Paulie's and Jarrett, Jarrett only had actual authority to bind John's to the sale of vehicles on John's sales lot. Jarrett had no actual authority to bind John's to purchase the vehicle from Whipz and sell it to the Rodriguezes. Therefore, the Rodriguezes cannot recover from John's on a theory of actual authority.

Apparent Authority

"Apparent authority is the power held by an agent or other actor to affect a principal's legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations."[6] A principal can manifest assent through writing, spoken words, or other action.[7] In light of the foregoing law, the Court must determine (1) whether the Rodriguezes reasonably believed Jarrett had authority from John to sell them the vehicle from outside the Virgin Islands and (2) whether that belief is based on a manifestation of John's. Considering all the circumstances, the Court, for the following reasons, can conclude that Jarrett had apparent authority to sell a vehicle from outside the Virgin Islands and arrange to have it shipped. First, although the Rodriguezes had some interaction with Jarrett outside of John's premises, most of their dealings were onsite, either on the car lot or in the office. Furthermore, the arrangement for Jarrett to order vehicle from outside the Territory and have it shipped to the Virgin Islands still easily fits within the

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[2] RESTATEMENT (THIRD) OF AGENCY § 2.01 (2006).
[3] *See Id.*
[4] § 2.02(a).
[5] §§ 6.01(a), 7.03(2)(b).
[6] § 2.03.
[7] § 1.03.

broader industry of auto sales; the fact that the car would be purchased from an off-island source and shipped to the Virgin Island did not significantly change the nature of the transaction. Therefore, it was not unreasonable for the Rodriguezes to believe that a local automobile sales company could also order a car from a stateside source for a customer. Finally, John's knowingly allowed the creation and distribution of the business cards that prominently displayed Jarrett's name and John's name and allowed, through Paulie's, Jarrett to work on the sales lot. Indeed, it would be reasonable for any person who, while on John's car lot, received one of these cards to conclude that Jarrett had authority to act for John's in the sale of cars on and off the lot. Therefore, the Rodriguezes reasonably believed Jarrett had authority and also showed a manifestation on the part of John's.[8] Although the fact that Jarrett issued "Rent Receipt[s]" to the Rodriguezes, apparently directed for the checks to be made out to him personally, and did not use forms bearing John's name somewhat lessens the conclusion that the Rodriguezes reasonably concluded Jarrett to be an agent of John's, they are greatly outweighed by the above-mentioned bases for the Rodriguezes drawing such a conclusion.

Liability

When apparent authority exists, the principal is bound to and liable for contracts entered into by the agent.[9] The Rodriguezes first paid $200.00 to Jarrett to conduct a search and identify a vehicle. Both sides completed performance, so the Court will not analyze this part of the arrangement as an action lying in contract. The remaining portion of the contract, namely tender of the identified vehicle, will be analyzed as an action for breach of contract. Simply, the contract was for John's to deliver the vehicle to the Rodriguezes in exchange for payment. The Rodriguezes paid $5,700.00 towards purchase the purchase and shipment of the vehicle but never received. Therefore, the contract was breached, and John's is liable for the return of these payments.[10]

A principal is also liable for torts committed by an agent with apparent authority.[11] The Court will consider the tort of fraudulent inducement when analyzing the Rodriguezes claim for the $200.00 they paid for a vehicle search. The elements for this tort in the Virgin Islands are "(1) a misrepresentation of fact, opinion, intention or law; (2) knowledge by the maker of the representation that it was false; (3) ignorance of the falsity by the person to whom it was made; (4) an intention that the representation should be acted upon; and (5) detrimental and justifiable reliance."[12] Here, the premise for the Rodriguezes agreeing to a vehicle search was that they could order one after identifying one they would like to purchase. Here, Jarrett clearly and knowingly misrepresented his intention of subsequently ordering the identified vehicle. This

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[8] *See Hoddeson v. Koos Bros.*, 135 A.2d 702 (N.J. Super. Ct. 1957); *Luken v. Buckey Parking Corp.*, 68 N.E.2d 217 (Ohio Ct. App. 1945).
[9] RESTATEMENT (THIRD) OF AGENCY § 6.01(a).
[10] *See* V.I. CODE ANN. tit. 11A, §§ 2-713, 2-715 (2003).
[11] RESTATEMENT (THIRD) OF AGENCY §§ 7.03(2)(b), 7.08.
[12] *Fitz v. Islands Mechanical Contractor, Inc.*, 53 V.I. 806, 826 (D.V.I. 2010) (*citing Shillingford v. Hess Oil of the V.I.*, 2009 U.S. Dist. LEXIS 53371, at *28-29 (D.V.I. 2009)). *See also* RESTATEMENT (SECOND) OF TORTS, 525 (1977)).

misrepresentation, unknown to the Rodriguezes, was reasonably acted upon to their detriment. Therefore, the Rodriguezes can recover the $200.00 through an action in tort.[13]

Other Theories of Liability

The Court has concluded that Jarrett had apparent authority from John's to sell the Rodriguezes the car from Whipz Auto. It has also found that John's is liable for the loss the Rodriguezes suffered. Therefore, although alternative theories of how the Rodriguezes could recover may exist, namely John's being estopped from denying the existence of an agency relationship[14] or being liable for negligent selection and supervision of Jarrett,[15] the Court need not consider them.

Damages

As discussed above, the Court will award judgment to the Rodriguezes totaling $5,900.00, representing liability in contract and tort. Additionally, the Rodriguezes seek $4,100.00 in punitive damages. Most of the Rodriguezes damages lie in its contract claim. "Punitive damages[, however] are not recoverable for a breach of contract unless the conduct constituting the breach is also a tort for which punitive damages are recoverable."[16] As previously discussed, the Rodriguezes also demonstrated a cause of action for fraud, which is a tort. The law limits, however, the occasions when punitive damages can be awarded against a principal.

> Punitive damages can properly be awarded against a master or other principal because of an act by the agent if, but only if, (a) the principal or a managerial agent authorized the doing and the manner of the act, or (b) the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or (c) the agent was employed in a managerial capacity and was acting in the scope of employment, or (d) the principal or a managerial agent of the principal ratified or approved the act.[17]

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13 Likewise, this same fraudulent inducement analysis, as an alternative to the previously stated contract analysis, would allow the Rodriguezes to recover the full $5,900.00.

14 RESTATEMENT (THIRD) OF AGENCY § 2.05. "When a relationship of agency exists, a principal is often estopped to deny the existence of authority when the origin of the third party's belief, or the explanation for it, demarcates between the elements requisite to estoppel and those requisite to proving apparent authority . . . . Apparent authority is not present unless the third party's belief is traceable to the principal's own manifestations, which may include placing the agent in a position that leads third parties to believe the agent has authority consistent with the position. Estoppel does not require as close a fit between affirmative acts of the principal and the third party's belief. Instead, it protects third parties who reasonably believe an actor to be authorized as an agent when the belief cannot be shown to follow directly or indirectly from the principal's own manifestations."[14] § 2.05 cmt. d.

15 "[A] principal is subject to direct liability to a third party harmed by an agent's conduct when . . . the principal is negligent in selecting, supervising, or otherwise controlling the agent." § 7.03(1)(b).

16 RESTATEMENT (SECOND) OF CONTRACTS §355 (1981).

17 RESTATEMENT (SECOND) OF TORTS, 909 (1979)).

The evidence does not show that any of these four elements have been met. Accordingly, the Court will deny the award of any punitive damages and will only allow the Rodriguezes to recover compensatory damages.

Conclusion

Jarrett, acting with apparent authority, bound John's to the sale of a vehicle to be shipped from outside the Virgin Islands. Apparent authority existed because the Rodriguezes reasonably believed that Jarrett had authority from John's to make such a sale, and that belief was based on manifestations of John's in allowing, through Paulie's, Jarrett to work on the car lot and issue him business cards. The Court will award compensatory damages to the Rodriguezes totaling the aggregate payments made to Jarrett; it will not award punitive damages.

DATED: June 14, 2012

ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY:
HYACINTH M. LOCKHART
Senior Deputy Clerk 6/15/2012