IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL

VERONICA PHILLIPS, Plaintiff, vs. **RUPERTHA A. ANDREWS** Defendant.	**CIVIL NO. 794/1996** **ACTION FOR DAMAGES** **NOT FOR PUBLICATION**

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Cabret, P.J.

MEMORANDUM OPINION
(June 14, 2000)

Veronica Phillips sued Rupertha A. Andrews alleging that Andrews received insurance proceeds on Phillips' behalf and improperly remitted the funds to a third party. The matter came before the Court for trial without a jury. Phillips was represented by counsel and Andrews appeared *pro se*. After carefully considering the evidence presented and the applicable authority, the Court concludes that Phillips is not entitled to the relief requested and that judgment shall enter in Andrews' favor.

I. THE EVIDENCE

The evidence at trial showed that during the relevant time period Phillips resided in New York. Phillips desired to purchase residential real property on St. Croix and contacted Rupertha Andrews, a local real estate broker, for assistance. In May or June of 1995, Phillips decided to purchase a home located at Plot 230 Estate La Grange, St. Croix. Because she was living in New York, Phillips asked Andrews to act on her behalf to close the purchase transaction. Andrews agreed, and on June 1, 1995, Phillips executed a Special Power of Attorney which essentially authorized Andrews to take any action required to close the sale.[1]

Prior to closing, which occurred on December 22, 1995, the property was damaged by a hurricane. The seller had the house insured at the time and agreed to give Phillips the insurance proceeds to compensate for the damage. Because Phillips was going to be in New York when the insurance company issued the settlement check, on December 29, 1995, she executed a second Special Power of Attorney which authorized Andrews to "[r]eceive any and all insurance proceeds/interest of mine[.]"[2] On January 22, 1996, the insurance company issued a settlement check for $14,081.75.

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[1] It appears from the evidence that Andrews was both the seller's agent and Phillip's agent in this transaction. The regulations governing real estate brokers seemingly prohibit such a dual agency. Although of no consequence to the outcome of this case, the Court notes its concern that Andrews represented both the seller and the buyer in this transaction. *See* V.I. R. & Regs. tit. 27, § 422-51(k), (m) (1973).

[2] Plaintiff's Ex. 2, Power of Attorney dated December 29, 1995.

The parties are sharply divided on what Andrews was authorized to do with the check once she received it. According to Phillips, Andrews "was suppose[d] to collect that and send it to New York to me."[3] Phillips denied that she ever authorized Andrews to endorse the insurance check or deliver the proceeds to anyone else and further denied that she authorized anyone to repair the damage to the property. In support of her position, Phillips points to the Special Power of Attorney which, as stated above, authorized Andrews to "[r]eceive any and all insurance proceeds/interest of mine[.]"[4]

Andrews countered that Phillips instructed her to remit the proceeds to a contractor whom Phillips retained to perform repairs on the property. Andrews testified that Phillips came to her office in December of 1995 and told her that she had hired Andrews' brother, Wrigby Archibald, to repair the hurricane damage. According to Andrews, Phillips told her "to give [the money] to Wrigby Archibald to do the repairs and that's exactly what I did."[5]

At trial, Archibald corroborated Andrews' testimony that Phillips asked him to perform the repairs. Archibald stated that he met with Phillips, Andrews and a third individual, Janet Davis for lunch. During the lunch, Phillips told Archibald about the damage to the house she had purchased. Phillips explained that another contractor had looked at the damage but would not perform the repairs because the amount offered by the insurance company was insufficient. Archibald told Phillips that he did construction work and agreed to look at the damage.

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3 Transcript of Sept. 24, 1997 at 9.

4 Plaintiff's Ex. 2, Power of Attorney dated December 29, 1995.

5 Trial Transcript of August 11, 1997 at 7.

A few days later Archibald went to the house where he met with Davis, the insurance adjuster and two bank officers. Phillips was not there. Archibald showed the adjuster additional damage that needed repair, and the adjuster agreed to increase the insurance company's settlement offer. Archibald testified that he did not immediately speak with Phillips about the cost of repairs because Phillips told him that "Janet [Davis] is the one who was representing her at that point" and that he should talk with her first.[6]

Archibald stated that he later spoke with Phillips and she asked him to repair the damage and do some additional work on the house. According to Archibald, Phillips realized that because of the deductible, the insurance proceeds would be insufficient to pay for the repairs and that in any event, the proceeds would not cover any additional work. Archibald testified that Phillips told him "she won't be on island by the time the money gets here. And she is going to give [Andrews] the authority in a form of power of attorney, . . . [and Andrews] will be taking care of it for her."[7]

Archibald further testified about the work he did on the house. He stated:

> I had some fellas working there. . . . [He had] Christian Heavy Equipment clean the entire lot, the half acre or more. And the driveway was not usable after the storm and then we make it usable with the machine . . . and paint the house. Repair the sheet rock, do the roof, do the electrical work, put fans, tile the porch, clean the cistern, paint the porch, replace the gutters, refasten the roofs, paint the porch floors, the front floor porch, redecorate the lattice that was on there, the plumbing was done too.[8]

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[6] Trial Transcript of September 24, 1997 at 21.

[7] Trial Transcript of September 24, 1997 at 41.

[8] Trial Transcript of September 24, 1997 at 41-42.

Archibald said that Andrews paid him for these services and that he did not make a profit because from the beginning they all "sat down and realize that the money could just barely do the job. . . . I told her that time that my service will be given to her because of the situation that she claim she was in."[9]

Andrews contends that in April of 1996, Phillips called her to inquire about the status of the repairs. Andrews stated: "I explained to her that . . . it came more than she anticipated and I did what she asked me to do. I gave it to Wrigby Archibald to do the repairs on her house." In a letter dated April 4, 1996, from Andrews to Phillips, Andrews recounted the telephone conversation about how she disposed of the insurance proceeds:

> I did exactly what Janet instructed me to do. I had no reason to doubt Janet's request, especially when I was not present when the repairs estimate was given. As I have mentioned before. I followed instructions as requested of me by Janet to '<u>DEPOSIT YOUR INSURANCE CHECK. FOR REPAIRS TO YOUR PROPERTY IN MY ACCOUNT AND THEN GIVE ALL OF THE MONEY TO MR. ARCHIBALD IN ORDER FOR HIM TO DO THE REPAIRS</u>' So that is what was done."[10]

At trial, Andrews elaborated: "Janet [Davis] reinforced what she said to give the proceeds from the insurance to Mr. Wrigby Archibald that he can do the repairs on the house (sic)."[11]

Davis' testimony at trial conflicted with Andrews'. Davis testified that she never told Andrews to deposit Phillips' insurance settlement check or to pay the proceeds to Archibald for

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[9] Trial Transcript of September 24, 1997 at 43.

[10] Plaintiff's Exhibit 6, Letter from Rupertha Andrews to Veronica Phillips dated April 4, 1996.

[11] Trial Transcript of August 11, 1997 at 14.

the repair work. Davis did state, however, that "Phillips authorize[d] Mr. Archibald to make the repairs before she left, in front of me, in my present (sic)."[12] Davis also corroborated Archibald's testimony that he performed repairs and the nature of those repairs.

On rebuttal, Phillips again denied that she authorized Andrews to remit the insurance proceeds to anyone. Phillips further denied that anyone ever repaired the hurricane damage and stated that when she returned from New York, the house was in the same damaged condition as when she left for New York. Phillips further testified that in March of 1996 Andrews called her in New York and told her that there had been a misunderstanding about the insurance proceeds. According to Phillips, Archibald got on the phone and told her that he had been accused of stealing the insurance proceeds. Phillips stated that she responded "what insurance money. . . . I don't know anything about any insurance."[13]

II. DISCUSSION

It is clear from the evidence that Phillips appointed Andrews as her agent for at least limited purposes: to close the real estate purchase and to receive the insurance settlement funds. The Court must determine, however, whether Phillips also authorized Andrews to deposit the funds into Andrews' account and pay the proceeds to Archibald. The parties' relationship, as principal and agent, is governed by the Restatement (Second) of Agency. The Restatement

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12 Trial Transcript of September 24, 1997 at 61.

13 Trial Transcript of March 19, 1999 at 4.

defines an agency relationship as follows:

> (1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act.
> (2) The one for whom action is to be taken is the principal.
> (3) The one who is to act is the agent.

Restatement (Second) of Agency § 1 (1958).

A principal can authorize an agent to do an act by "written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account." Id. at § 26. In construing the authority granted by a principal to her agent, the Court can consider all the surrounding circumstances, including "the situation of the parties, their relations to one another, . . . the business in which they are engaged . . . [and] the formality or informality, and the care, or lack of it, with which an instrument evidencing the authority is drawn." Id. at § 34(a), (e). When authority is granted by a formal instrument, such as a power of attorney, the instrument "can be assumed to spell out the intent of the principal accurately with a high degree of particularity[,] . . . and it is assumed that the document represents the entire understanding of the parties." Id. at § 34, cmt. h.

Where, as in this case, a principal authorizes her agent to receive payment, the Restatement provides:

> Unless otherwise agreed, authority to receive payment includes authority:
> (a) to receive payment in full in money or other customary medium of exchange when the debt is due; and
> (b) to surrender to the payer any security for or evidence of the debt to which he is entitled and to give him such receipt as it is usual to give.

Id. at § 72. "Authority to receive a check in payment of a debt does not of itself include authority to endorse the principal's name on the check, although frequently an agent would be authorized to endorse it for deposit to an already existing account of the principal." Id. at § 72, cmt. e. If an agent remits collected funds to an individual without authority, then under section 402 of the Restatement, the agent is liable to the principal:

> An agent is subject to liability to the principal for the value of . . . money, which he holds for the principal and to the immediate possession of which the principal is entitled, together with interest thereon if the amount is liquidated, or damages, if the agent . . . makes delivery of it to a person to whom he is not authorized to deliver it."

In this case, the parties presented conflicting evidence concerning whether Phillips verbally authorized Andrews to deliver the insurance proceeds to Archibald. Although it is clear that Phillips' written Special Power of Attorney did not include such authorization, Andrews claims that Phillips verbally authorized this action. Phillips, of course, denies this assertion. After carefully considering the evidence and judging the credibility of the witnesses, the Court finds that Phillips did authorize Andrews to deliver the funds to Archibald.

In reaching this conclusion, the Court finds it significant that Phillips never contacted Andrews to inquire why the check was not sent to her in New York, that Phillips did not refute the abundant evidence showing that she spoke with Archibald about the necessary repairs and that Phillips did not present any evidence, other than her own conclusory testimony, depicting the condition of the home. Such circumstances lead the Court to find that Phillips did not immediately inquire as to the whereabouts of the check because she had previously retained Archibald to repair the damage and authorized Andrews to pay for the repairs with the insurance proceeds. And, though without consequence, it is obvious that Phillips is dissatisfied with the quality of the repairs. Again, however, Phillips did not present any evidence showing the state of repairs, and in any event she did not assert a cause of action for such damages.

III. CONCLUSION

For the reasons stated above, the Court concludes that Phillips failed to establish by a preponderance of the evidence that Andrews was required to send the insurance proceeds to her in New York. Instead, the Court finds that Phillips retained Archibald to perform repairs to her home and that she authorized Andrews to remit the proceeds to Archibald to pay for his services. Inasmuch as Phillips has failed to establish her claim by a preponderance of the evidence, Judgment will be entered in Andrews' favor.

Maria M. Cabret
MARIA M. CABRET
Territorial Court Judge

ATTEST:
DENISE D. ABRAMSEN
Clerk of the Court
By: Rita Johannes
Deputy Clerk
Dated: 6-14-00