

2/19/2016

Jury Instructions—Agency

An agent is a person who, by agreement with another person or entity, purports to represent that person or entity, in dealing with a third party. The person or entity for whom the agent performs is the principal.

An agent may bind his or her principal in dealings with a third party, with or without compensation, by oral, written, express or implied agreement. In order to find that the Principal is bound by an act of a purported agent, the agent must have authority to act on behalf of the principal.

The acts of an agent may impose liability on a principal for a particular transaction either because the principal: (a) expressly gave the agent authority to bind (him/her) by (his/her) actions (actual authority) or (b) because the authority of the agent to act on behalf of the principal may be implied from the circumstances (apparent authority).

I. Actual Authority

Actual authority may be express or implied. To determine whether the principal has given actual authority, express or implied, to the agent, the principal's conduct must demonstrate an intent, on the part of the principal, to give authority to act to the agent who purports to act of his/her behalf.

a. Express Actual Authority

To determine whether the principal intended to give actual authority, the principal must have acted voluntarily, knowing, with substantial certainty, that a particular result will follow. Proof of intent may be ascertained from direct evidence, such as an express oral directive or a written agreement or other writing. For example, a rental lease often directs that the leasing agent has the authority to bind the landlord.

b. Implied Actual Authority

While, express actual authority may be given to an agent via express written or oral agreement, you may also ascertain intent from circumstantial evidence, such as the principal's conduct and the circumstances surrounding the principal's actions. Implied actual authority is created by circumstances that reasonably led the agent to believe that she or he had authority, even if the principal has not granted the agent the express authority to act on his/her behalf. You may infer implied actual authority from words or conduct of the principal that the principal knows or should know indicates to the agent that he or she should act. Authority arises from, among other things, circumstances surrounding a particular transaction. Authority may be shown by the principal's acquiescence to acts the agent performs or from conduct by the principal where the agent acts in an emergency.

In this case, Plaintiff contends that Principal (P), through his/her conduct, gave implied actual authority to Agent (A) to sign an engagement agreement on behalf of P. P denies that he/she gave A any such authority.

Plaintiff bears the burden of proof to demonstrate that P, through his/her conduct and the circumstances surrounding the transaction, did give A implied actual authority to act of his/her behalf.

Plaintiff contends that the answer to this question is yes. P contends that it is no.

Plaintiff bears the burden of proof to demonstrate that P, through its conduct and the circumstances surrounding the transaction, did give A implied actual authority to act on his/her behalf.

[Plaintiff contends that P told everyone at a meeting on January 5, that A was his “right hand man” and that as a result, A had implied authority to sign the agreement. Defendant P contends that that is not what he meant when he said that, and, in any event, that never happened].

The first question you must answer is whether P, through his conduct, gave implied actual authority to A to sign the engagement agreement on his behalf.

II. Apparent Authority

Apparent authority, unlike actual authority, is ascertained from the interaction between the principal and a third party, rather than the interaction between the principal and the agent. While actual authority results from the principal’s consent or acquiescence conveyed by the principal to the agent, apparent authority is demonstrated by words or conduct of the principal that such words or conduct conveys to the third party, (generally the plaintiff), that the agent possesses the authority to enter into a transaction for the principal. The agent cannot, by his or her own acts, obtain or prove that he has this authority. Rather, apparent authority depends on and must be proven by conduct or words of the principal.

Apparent authority depends on a factual showing that the third party relied upon representations of the agent because of conduct or words of the principal, not because of any representations made by the agent.

A third party may rely on the appearance of authority, or apparent authority, only if it is reasonable. One who deals with an agent must make reasonable efforts to determine the actual scope of authority. A business entity acts reasonably if it acts in a manner in which a person of ordinary prudence familiar with the business would act, considering all of the circumstances.

Plaintiff contends that P, through its actions, conveyed to Plaintiff that A had authority to sign the agreement on behalf of P. P denies that it ever gave A authority through any of its interactions with P to act on its behalf.

Plaintiff bears the burden of proof to demonstrate that A had apparent authority to act on behalf of P.

The question you must answer is:

Did P, through its actions or words, lead plaintiff reasonably to believe that A had apparent authority to act on behalf of P?

Case Law

Actual Authority

Ferrarella v Godt, 131 A.D.3d 563, 567 (2d Dep't 2015) (plaintiff could not challenge execution of Stock Purchase Agreement based on fraud, where defendant had actual authority to bind the plaintiff pursuant to the power of attorney).

Site Five Housing Dev. Fund Corp., v. Estate of Bullock, 112 AD3d 479, 480 (1st Dep't 2013)(landlord's president lacked express actual authority to enter into amendment to store lease and nothing landlord did or said gave president the impression that he had that authority)

Art Finance Partners, LLC v. Christie's Inc., 58 AD3d 469, 470 (1st Dep't 2009) (factual issue existed as to whether a settlement between auction house and owner operated to release consignor as owner's agent where consignor contacted auction house with proposal to sell artwork while acting for his own benefit)

Dark Bay Intern. Ltd. v. Aquavella Galleries, Inc., 12 AD3d 211, 212 (1st Dep't 2004) (seller had neither actual authority, nor implied actual authority, to sell painting of behalf of gallery where older consignment agreements were for other artwork, an invoice for the painting did not discuss consignment and there was no evidence that gallery had any control over seller, a fugitive from justice)

Pyramid Champlain Co v. R.P. Brosseau & Co., 267 AD2d 539, 699 NYS2d 516, 522 (3d Dep't 1999)(no principal-agent relationship existed between owner/developer and contractor where the contracts between the owner/developer and the contractor contained neither an express provision creating an agency relationship nor language from which one could be implied)

Tauber v Haecker, 49 Misc.3d 135(A) at *1 (App. Term 1st Dep't 2015) (Landlords' attorney had actual authority to settle the case, and even if, arguendo, counsel lacked actual authority, there is no evidence that he lacked apparent authority to bind his clients)

Apparent Authority

Indosuez International Finance B.V. v National Reserve Bank, 98 NY2d 238, 246 (2002) (bank's deputy chairperson had apparent authority to sign confirmations where chairperson had signed confirmations on six prior occasions and bank had accepted payment into its New York account at those times)

Hallock v. State of New York, 64 NY2d 224, 231 (1984) (agency found where landowners allowed attorney to represent them in pretrial conference, litigation, and prior settlement negotiations, effectively clothing the attorney with apparent authority to enter into a binding settlement)

Greene v. Hellman, 51 NY2d 197, 205 (1980) (no apparent authority where agent did not act on owner's behalf during the actual sale, but instead, buyer dealt directly with owner, the principal)

Ford v. Unity Hosp., 32 NY2d 464, 473 (1973) (third party defendant, through its conduct, did not mislead third party plaintiffs into reasonably believing an agency relationship existed)

Scharf v Idaho Farmer's Market, Inc., 115 A.D.3d 500, 501 (1st Dep't 2014) (corporation's president and 66% shareholder had apparent authority to bind corporation by executing promissory note on behalf of corporation)

Thomas v Gray, 121 A.D.3d 1091, 1093 (2d Dep't 2014) (after landlord refused to sell premises upon tenant exercising purchase option, trial evidence showed that brother who signed lease containing option had authority to bind company where: plaintiff originally entered into lease to rent premises with company; ownership was eventually transferred to landlord without monetary consideration; principal of that company was brother to landlord; lease and addendum that contained option were both signed by another of landlord's brothers; landlord provided no evidence to support assertion that brother who signed documents was an alcoholic or intoxicated at time of signing, and landlord provided no evidence that signing brother lacked authority to enter into agreements for company)

ER Holdings, LLC, v 122 W.P.R. Corp., 65 AD3d 1275, 1277 (2d Dep't 2009) (summary judgment dismissing the complaint granted where lender failed to identify any act or word by which principal conferred apparent authority upon agent)

O'Brien v. Miller, 60 AD3d 555, 876 NYS2d 23, 24 (1st Dep't 2009)(defendants' motion granted where architect did not act as defendant firm's agent when he entered into agreement with client)

Gonzalez v Beacon Terminal Associates L.P., 48 A.D.3d 518, 520 (2d Dep't 2008) (issue of fact whether former executive vice president, acted without express, implied, or apparent authority when he entered into the joint venture agreement on behalf of the defendants)

1230 Park Assoc., LLC, et al., v Northern Source, LLC, 48 AD3d 355, 356 (1st Dep't 2008) (no apparent authority where no acts or statements by plaintiff conferred authority and the only "authority" arose from agent's own acts)

Jesmer v. Retail Magic, Inc. 55 AD3d 171, 182 (2d Dep't 2008) (where developer's brochure merely stated developer's customers are countrywide, owner could not have reasonably believed distributor acted as developer's agent)

Quantum Corporate Funding, Ltd v Southwestern Bell Telephone, LP, 45 AD3d 505 (1st Dep't 2007) (factual issues existed as to whether clerk had apparent authority to execute estoppel certificate on defendant's behalf and whether plaintiff's reliance thereon was reasonable, especially where plaintiff had previously procured an estoppel certificate from the same clerk without protest).

McGuire v Parties, Picnics & Promotions, LLC, 45 A.D.3d 1264, 1266 (4th Dep't 2007) (fact issue regarding the apparent authority of school district employee to execute gym equipment lease agreement precluded summary judgment where defendant had previously entered into similar agreements with other school employees)

Health-Loom Corp. v. Soho Plaza Corp., 709 NYS2d 165, 167-168 (1st Dep't 2000) (issue of fact existed as to whether prime lessee cloaked attorney and its managing agent with apparent authority when prime lessee permitted managing agent to deal with plaintiff and prime lessee remained silent while managing agent signed pleadings and attorney made numerous court appearances in litigation whose sole aim was removing obstacles to transfer of lease to plaintiff)

Speaking Authority

A significant consequence of an agency relationship is that the statements of an agent, spoken within the scope of his or her authority, may be admitted against the principal under the "speaking agent" exception to the hearsay rule.

Loschiavo v. Port Authority of NY and NJ, 58 N.Y.2d 1040 (1983) (the hearsay statement of an agent is admissible against his employer under the admissions exception to the hearsay rule only if the making of the statement is an activity within the scope of his authority),

Rodriguez v NYC Transit Auth., 118 AD3d 618, 619 [1st Dep't 2014] ("hearsay statement of an unidentified "MTA woman," "station cleaner" or "token booth agent" does not qualify under the speaking agent exception to the hearsay rule since there is no evidence supporting such a designation, nor is there evidence as to how it was known that this person was an "MTA" employee").

Candela v. City of New York, 8 A.D.3d 45, 48, 778 N.Y.S.2d 31, 34 (1st Dep't 2004) (project manager had speaking authority relating to hazardous conditions at site);

Johnson v. Hallam Enterprises Ltd., 208 A.D.2d 1110, 1111, 617 N.Y.S.2d 405, 407 (3d Dep't 1994) (president/treasurer, who had complete managerial responsibility over defendant's day-to-day operations, had speaking authority).

Milgrim, Thomajan & Lee, P.C., v Golden Gate Petroleum, P.C., 48 Misc3d 68, 70 [App. Term, 1st Dep't 2014] (the out-of-court statements defendant's (now) deceased chief financial officer made were admissible under the "speaking agent" exception to the hearsay rule).