§ 1 Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

Comment on Subsection (1):

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(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 so to act.

(2) The one for whom action is to be taken is the principal.

(3) The one who is to act is the agent.

Comment on Subsection (1):

a. The relation of agency is created as the result of conduct by two parties manifesting that one of them is willing for the other
to act for him subject to his control, and that the other consents so to act. The principal must in some manner indicate that the
agent is to act for him, and the agent must act or agree to act on the principal’s behalf and subject to his control. Either of the
parties to the relation may be a natural person, groups of natural persons acting for this purpose as a unit such as a partnership,
joint undertakers, or a legal person, such as a corporation.

b. Agency a legal concept. Agency is a legal concept which depends upon the existence of required factual elements: the
manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking and the understanding
of the parties that the principal is to be in control of the undertaking. The relation which the law calls agency does not depend
upon the intent of the parties to create it, nor their belief that they have done so. To constitute the relation, there must be an
agreement, but not necessarily a contract, between the parties; if the agreement results in the factual relation between them to
which are attached the legal consequences of agency, an agency exists although the parties did not call it agency and did not
intend the legal consequences of the relation to follow. Thus, when one who asks a friend to do a slight service for him, such as
to return for credit goods recently purchased from a store, neither one may have any realization that they are creating an agency
relation or be aware of the legal obligations which would result from performance of the service. On the other hand, one may
believe that he has created an agency when in fact the relation is that of seller and buyer. See § 14J. The distinction between
agency and other relations, such as those of trust, buyer and seller, and others are stated in Sections 14A to 14O. The distinction
between the kind of agent called a servant and a non-servant agent is stated in Section 2.

When it is doubtful whether a representative is the agent of one or the other of two contracting parties, the function of the
court is to ascertain the factual relation of the parties to each other and in so doing can properly disregard a statement in the
agreement that the agent is to be the agent of one rather than of the other, or a statement by the parties as to the legal relations which are thereby created. See § 14L. The agency relation results if, but only if, there is an understanding between the parties which, as interpreted by the court, creates a fiduciary relation in which the fiduciary is subject to the directions of the one on whose account he acts. It is the element of continuous subjection to the will of the principal which distinguishes the agent from other fiduciaries and the agency agreement from other agreements. The characteristics which tend to indicate an agency or a non-agency relation are stated in Sections 12 to 14O.

Illustrations:

1. P and A enter into an agreement which is stated to be a “contract of sale.” It provides that for one year A shall purchase a specified amount of goods from P; that the risk of loss of such goods after purchase is upon P, if A uses care in their custody; that A is to pay for and to sell them at prices to be fixed by P from time to time and is to keep the proceeds as a separate account, remitting monthly 90 per cent. and keeping the remainder for himself; that unsold goods can be returned to P; and that P will pay A one-half of A’s selling expenses. A is P’s agent.

2. B, wishing to borrow money, goes to A, the local representative of an insurance company employed by it to lend money and collect interest, and signs a document which states that A is B’s agent for the purpose of borrowing money from the company, for which B is to pay A one per cent. of the money borrowed, and that payments of interest are to be made to A. Both B and A understand that A is primarily to protect the interests of the company. A is not B’s agent, and payment of interest by B to A is payment to the insurance company.

3. A, the secretary of the local branch of a fraternal organization, collects money from the members of the branch, remitting it each month to the national body. The rules of the order provide that the members must pay their dues in this manner; that the local secretary is subject to the orders of the national organization as to the collection and disposition of dues, but that in receiving and forwarding dues he is the agent for the members of the local branch. It may be found that, for the collection of dues, he is the agent of the national organization and not of the members of the local branch.

Comment:

c. Confusion of terms. It is sometimes said that agency does not exist until the agent does something for the principal. In fact, the relation may exist before such time. Reciprocal duties between the parties together with a power of the agent to bind the principal are normally created at the time of the agreement. This is true although there is no binding contract between the parties. See § 16. Thus, where one asks another to purchase property for him which the other gratuitously promises to do, the other immediately has a power to bind the first by the purchase of the property and immediately becomes subject to a fiduciary duty not to buy it on his own account. This is true irrespective of the fact that either can properly terminate the relation at any time.

The agency relation is to be distinguished from other relations sometimes called agency but which do not include the elements here stated. Thus, there is sometimes said to be an “agency by necessity”, in cases in which the so-called agent has no duty to respond to the will of the principal. See §§ 14I and 141. Sometimes a power of attorney given for security has been thought to be a form of agency although the power holder has no duty to respond to the will of the one creating the power. See §§ 14H, 138, 139. In such cases the rules of agency as herein stated do not apply.
Comment on Subsection (2):

d. “Principal” is a word used to describe a person who has authorized another to act on his account and subject to his control. It includes, therefore, both a person who has directed another to act on his account in business dealings or to represent him in hearings or proceedings, but who has no control or right of control over the other's physical conduct, and also a person who employs another to act in his affairs, having such control or right to control over his conduct that the other is termed a servant, whether or not he renders merely manual service. The word “master” as defined in Section 2 is not used in contrast to the word “principal,” but is included within it. Thus, the owner of a business is a principal not only with regard to brokers who, as to their physical acts, are independent of his supervision, but also with regard to salesmen who conduct business transactions under supervision as to such conduct and who therefore come within the definition of servant. Likewise, the owner of a house is the principal as well as the master of the janitors whom he employs and whose jobs are confined to the performance of manual acts on the premises under the owner's supervision. The word “principal,” therefore, includes both persons who are masters and persons who are principals but not masters.

Comment on Subsection (3):

e. “Agent” is a word used to describe a person authorized by another to act on his account and under his control. Included within its meaning are those who, whether or not servants as described in Section 2, act in business transactions and those who perform only manual labor as servants. An agent may be one for whose physical acts the employer is not responsible and who is called an independent contractor in order to distinguish him from a servant, also an agent, for whose physical acts the employer is responsible. Thus, the attorney-at-law, the broker, the factor, the auctioneer, and other similar persons employed either for a single transaction or for a series of transactions, are agents, although as to their physical activities they are independent contractors. These are to be contrasted with others, such as clerks, train conductors, and others who conduct transactions with third persons but who fall within the category of servants. Likewise, the janitor of a building or the driver of a truck is an agent, as that word is used in the Restatement of this Subject, if he is employed under such circumstances that he becomes a servant. For many purposes it is immaterial whether or not one who is an agent is also a servant. However, the liability of a master for the torts of his servant is greater in extent than the liability of a principal for the torts of an agent who is not a servant (see §§ 219-255), and a master's duties to servants are different from those of a principal to agents who are not servants. See §§ 472-528.

f. Statutory use. Whether the word “agent” as used in a statute corresponds to the meaning here given depends, with other factors, upon the purpose of the statute. Thus, the purpose of statutes providing for substituted service of process on a public official is to satisfy the due process requirement of the United States Constitution. Although such a statute may label the public official an “agent” for receiving service of process, he is not an agent in the sense used herein. He is not in fact designated by the one on whose account he “accepts service”, nor does he respond to that person's directions. So, in a statute which fixes the method of payment of all “public officers and agents”, the word “agents” may be interpreted in a restricted sense to exclude a clerk employed by the state. The word “agent” in a criminal statute does not normally include other fiduciaries such as receivers, although some statutes may be interpreted to include them.

g. Power holders not agents. The language of agency has been used to describe as agents persons who bind others, or even act in the name of others, but do so for their own purposes. This has resulted from various causes. Thus, at a time when contracts were considered to be purely personal relations between the parties, a contractor could not transfer his right to another. However, one could appoint an agent to collect money due on the contract, the document of agreement being called a power of attorney. When economic reasons made it desirable to recognize assignments, it was not too difficult to hold that one could agree with an “attorney” that the latter should keep the proceeds. In accordance with this point of view, a mortgagee was given a “power
of attorney” to sell the mortgagor's interests in the mortgaged property. In doing this the courts created a power for security. Such a power is not an agency power and the holder of one is not an agent of the one who created it. See § 138.

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- Ct. Int'l Trade
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- C.D.Cal.
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- N.D.Cal.
- S.D.Cal.
- D.Colo.
- D.Conn.
- D.Del.
- D.D.C.
- M.D.Fla.
- S.D.Fla.
- N.D.Ga.
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D.Hawaii
C.D.Ill.
N.D.Ill.
N.D.Ind.
N.D.Iowa
D.Kan.
W.D.Ky.
E.D.La.
D.Me.
D.Md.
D.Mass.
E.D.Mich.
D.Minn.
N.D.Miss.
W.D.Mo.
D.N.H.
D.N.H.Bkrtcy.Ct.
D.N.J.
D.N.J.Bkrtcy.Ct.
E.D.N.Y.
E.D.N.Y.Bkrtcy.Ct.
N.D.N.Y.
N.D.N.Y.Bkrtcy.Ct.
S.D.N.Y.
S.D.N.Y.Bkrtcy.Ct.
W.D.N.Y.
W.D.N.C.
N.D.Ohio
S.D.Ohio
N.D.Okl.
W.D.Okl.
D.Or.
E.D.Pa.
M.D.Pa.
W.D.Pa.
D.P.R.
D.R.I.
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D.S.C.
E.D.Tenn.
E.D.Tex.
N.D.Tex.
S.D.Tex.
D.Utah.
D.Utah
D.Vt.
E.D.Va.
W.D.Va.
D.V.I.
W.D.Wash.
N.D.W.Va.
S.D.W.Va.
E.D.Wis.
W.D.Wis.
D.Wyo.
Ala.
Alaska
Ark.
Colo.
Colo.App.
Conn.
Conn.App.
Conn.Super.
Del.
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D.C.App.
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N.C.App.
N.D.
Ohio
Ohio App.
Ohio Com.Pl.
Ohio Prob.
Okl.
Or.
Or.App.
Pa.
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S.C.
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U.S.

U.S. 2005. Com. (e) cit. in sup. In separate suits, two taxpayers who had received litigation settlement proceeds but failed to include fees paid to their attorneys under contingency-fee agreements as gross income petitioned for redetermination of Commissioner of Internal Revenue's determination of a tax deficiency, which Tax Court upheld. Both courts of appeals reversed as to attorneys' fee issue. This court reversed and remanded, rejecting, inter alia, taxpayers' argument that attorney-client relationship should be treated as a sort of business partnership or joint venture for tax purposes. The court stated that the attorney-client relationship, regardless of variations in particular compensation agreements or amount of skill and effort the attorney contributed, was a quintessential principal-agent relationship. C.I.R. v. Banks, 543 U.S. 426, 434, 125 S.Ct. 826, 832, 160 L.Ed.2d 859.

U.S. 2004. Cit. but dist. Manufacturer whose cargo of machinery was damaged in train derailment brought suit against railroad. Railroad claimed recovery could not exceed limitations in bills of lading issued by freight forwarder and ocean carrier. District court granted summary judgment for railroad, but the court of appeals reversed and remanded. Reversing and remanding, this court held, inter alia, that manufacturer's recovery was limited by liability limitation to which freight forwarder and carrier agreed; even though forwarder was not an agent under traditional agency law, it was manufacturer's agent for single limited purpose of contracting with subsequent carriers for liability limitations. Norfolk Southern Railway Co. v. Kirby, 543 U.S. 14, 33, 125 S.Ct. 385, 399, 160 L.Ed.2d 283.

U.S. 2003. Cit. in disc. Interracial couple that unsuccessfully tried to buy a house sued real-estate corporation, its president, and its salesman, alleging violations of Fair Housing Act and vicarious liability. District court dismissed claims against corporation's president, because statute did not impose personal vicarious liability on a corporate officer. The court of appeals reversed, holding that statute imposed strict-liability principles beyond agent/principal or employee/employer relationships. This court vacated and remanded, holding that statute did not make corporate officers liable for unlawful acts of a corporate employee simply on basis that officer controlled or had the right to control employee's actions. Congress said nothing in the legislative history about extending vicarious liability in that manner. Meyer v. Holley, 537 U.S. 280, 285, 123 S.Ct. 824, 829, 154 L.Ed.2d 753, on remand 386 F.3d 1248 (9th Cir.2004).

U.S. 1995. Cit. in disc., com. (a) cit. in disc. Union members filed a complaint with the National Labor Relations Board (NLRB), alleging that a company and an employment agency had refused to interview them or retain them because of their union membership. NLRB held that the company committed unfair labor practices and that plaintiffs were protected employees under the National Labor Relations Act. The Eighth Circuit reversed, holding that the statutory word “employee” did not cover those who work for a company while a union simultaneously pays them to organize that company. This court vacated and remanded, holding that a worker may be a company's employee, within the terms of the National Labor Relations Act, even if, at the same time, a union pays that worker to help the union organize the company. The court noted that the Board's interpretation of the term “employee” was consistent with the common law. N.L.R.B. v. Town & Country Elec., Inc., 516 U.S. 85, 92, 116 S.Ct. 450, 455, 133 L.Ed.2d 371.
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U.S. 1984. Quot. in diss. op. A city designated a local social-service organization as its subgrantee in charge of the administration of federal block grants. Two officers of the subgrantee were convicted of violations of the federal bribery statute in their capacities as “public officials.” The Seventh Circuit upheld the convictions. This court affirmed, holding that the definition of “public official” under the federal bribery statute, which included all persons acting for or on behalf of the United States, was not restricted to those persons with an agency or contractual bond to the government, but instead encompassed all who occupy a position of public trust with official federal responsibilities, including the disbursement of federal funds. The dissent argued that the evidence of congressional intent was insufficient to reach the majority's conclusion as to the scope of the statutory definition of “public official.” Rather, the dissent stated that federal grant programs were categorically different from other types of federal activity because of the principle of grantee autonomy, which allowed grantees considerable discretion in executing federal programs. Dixson v. United States, 465 U.S. 482, 104 S.Ct. 1172, 1184, 79 L.Ed.2d 458.

U.S. 1982. Subsec. (1) quot. and quot. in part in disc. The plaintiffs, the Commonwealth of Pennsylvania and several black individuals, brought an action alleging racial discrimination in the operation of an exclusive hiring hall and an apprenticeship program, both of which were established under a collective bargaining agreement negotiated between a union on the one side and several construction trade groups and employers on the other, all defendants in the present suit. The hiring hall was managed solely by the union while the apprenticeship program was directed by a committee of trustees half of whom were appointed by the union, half by the trade groups. The trial court found that the union had intentionally discriminated against blacks in the operation of the hiring hall; discrimination in the apprenticeship program was also found. The trial court found the union, the committee of trustees, and the trade groups liable under 42 U.S.C. § 1981 and imposed injunctive relief. Despite their lack of discriminatory intent, the trade groups were found liable for the unions' discriminatory conduct under agency principles. The trade groups appealed, the intermediate court affirmed, and the trade groups appealed again. This court reversed the decision below and ruled that 42 U.S.C. § 1981 requires proof of intentional racial discrimination before liability may be imposed. No proof of the trade groups' intentional discrimination was ever submitted. Citing the Restatement, this court also ruled that the trial court's attempt to attribute the union's discrimination to the trade groups on agency principles must fail. Such principles, the court found, require the right to control the agent's conduct. Here, no evidence was submitted to show that the trade groups controlled the union's discriminatory conduct or that the trade groups' appointed trustees were not independent of the trade groups. In summation, this court found the trade groups not subject to the trial court's injunctive relief because those trade groups had refrained from intentionally discriminating against the plaintiffs and because the union was not the agent of the trade groups. Statutory liability for racial discrimination was thus never triggered and agency principles were inapplicable. A dissenting opinion would have found such statutory liability by eliminating the intent requirement. General Bldg. Contractors Ass'n. v. Pennsylvania, 102 S.Ct. 3141, 3151.

C.A.1

C.A.1, 2003. Cit. in disc. Former municipal employees in Puerto Rico sued municipality, its mayor, and its human resources director under 42 U.S.C. § 1983, alleging that a politically discriminatory animus accounted for their sudden unemployment after mayor was elected. District court entered judgment on jury verdict awarding plaintiffs damages. This court reversed and remanded, holding, inter alia, that because the record revealed no evidence sufficient to sustain a finding that mayor's wife acted as an agent for either mayor or municipality in connection with hiring of employees, district court abused its discretion in failing to exclude as hearsay one plaintiff's testimony as to the substance of discussions with mayor's wife. Wife's ties to mayor's political party and her support for her husband's candidacy were insufficient to make wife an agent of mayor or municipality. Gomez v. Rivera Rodriguez, 344 F.3d 103, 117.

C.A.1, 2003. Cit. in disc. Company that contracted to review retail leases for overcharges by landlords sued tenant retailer for breach of contract, conspiracy, and quantum meruit. Plaintiff alleged that defendant conspired with its attorney to enter secret side deals with its landlords in an attempt to avoid compensating plaintiff under the contract. District court granted
defendant summary judgment. This court affirmed in part, holding, inter alia, that plaintiff's conspiracy claim failed, because defendant's attorney was its agent, and a corporation could not conspire with itself. Plaintiff did not allege that the attorney had any independent interest making it possible for him, under Texas law, to conspire with defendant. Leasehold Expense Recovery, Inc. v. Mothers Work, Inc., 331 F.3d 452, 463.

C.A.1, 2002. Cit. in disc. Sports-car dealer that contracted with Italian car manufacturer's North American distributor sued manufacturer and its parent for breach of contract. Massachusetts federal district court granted defendants summary judgment. This court affirmed, holding, inter alia, that manufacturer's attorney was its agent, and it rejected plaintiff's assertion that distributor was manufacturer's agent. There was no showing that distributor signed the contract “for” manufacturer, as distributor signed solely on its own behalf. Motorsport Engineering, Inc. v. Maserati SPA, 316 F.3d 26, 30.

C.A.1, 1999. Cit. in disc., com. (b) cit. in disc. A man who was convicted of being a felon in possession of ammunition appealed his sentence, alleging that testimony against him by two fellow prisoners should have been suppressed because it was obtained in violation of defendant's right to counsel. This court affirmed, holding, inter alia, that a defendant's right to counsel was not violated where a jailmate simply agreed to report to the government whatever he learned about crimes from other inmates in general. United States v. LaBare, 191 F.3d 60, 65.

C.A.1, 1998. Cit. in headnotes, quot. in case quot. in disc. After an inn manager raped a guest at the inn, the guest sued the inn owner and its corporate parent for negligence and vicarious liability. The federal district court entered judgment on a jury verdict for plaintiff. This court affirmed, holding that there was sufficient evidence to hold defendants vicariously liable. The court concluded that under Maine law a master may be liable for the torts of his or her servants who are acting outside the scope of their employment when they are aided in accomplishing the tort by the existence of the agency relation. Because he was the defendants' agent, the manager knew that plaintiff was staying at the inn, he was able to find plaintiff's room late at night, he had the key to the room, and he used the key to gain access to plaintiff's room and rape her. Costos v. Coconut Island Corp., 137 F.3d 46, 47, 48.

C.A.1, 1994. Subsec. (1) and com. (b) cit. in case quot. in disc. Closings attorney for purchase of condominium units improperly diverted loan proceeds to seller instead of using them to discharge prior mortgages. Prior mortgagees foreclosed, thereby extinguishing buyer's mortgages. When buyer filed notice of claim with title insurer, insurer filed action seeking declaratory judgment relieving it from liability under policies. Buyer counterclaimed for breach of contract and bad faith refusal to pay. District court held insurer liable, but dismissed counterclaims as premature. Circuit court remanded because district court erroneously burdened insurer with disproving attorney's authority to issue clean title insurance policies on its behalf. On remand, district court dismissed one of insured's claims with prejudice, but dismissed without prejudice insured's claims under remaining policies. Affirming in part and reversing in part, this court held, inter alia, that policy exclusion for encumbrances created, suffered, assumed, or agreed to by insured was inapplicable here because attorney did not act as insured's agent at closing. Insured did not instruct or exert any control over attorney and did not pay attorney. American Title Ins. Co. v. East West Financial, 16 F.3d 449, 456.

C.A.1,1993. Coms. (a) and (b) cit. in sup. The sublicensee of a patented pain-killing drug sued the licensor, alleging that the licensor was liable for fraud perpetrated by the primary licensee, which was now in the middle of bankruptcy proceedings, in hiding negative studies on the drug during the negotiations for the sublicense. Affirming the district court's grant of summary judgment for the licensor, this court held, inter alia, that, under Massachusetts law, as the licensing agreement between the licensor and primary licensee gave the licensor no right to participate in or control negotiations for grant of sublicenses, in absence of evidence of actual control, the licensor could not be vicariously liable for the licensee's alleged fraud. Maruho Co., Ltd. v. Miles, Inc., 13 F.3d 6, 11.
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C.A.1, 1992. Quot. in case quot. in sup. Purchasers of four condominiums sued the sellers and the financers, alleging that a salesman had made material misrepresentations to them about the apartments and asking for rescission, restitution, and damages. A Massachusetts state trial court entered a judgment for rescission and restitution, but not for damages. On special appeal, this court affirmed, holding, inter alia, that there was sufficient evidence to support jury's finding that salesman was acting within his actual or apparent authority as the agent of one of the financers when he materially misrepresented the appraisal value to purchasers, making financer responsible for salesman's materially false statements, which were sufficient to constitute fraud and support the court's award of rescission and restitution. The court reasoned that salesman was the financer's agent for soliciting purchasers' mortgage application because financer manifested consent to the salesman that he act on the financer's behalf and be subject to financer's control. Putnam v. DeRosa, 963 F.2d 480, 484.

C.A.2, 2013. Quot. in case quot. in sup., cit. in ftn. Customers brought a putative class action against online retail vendor of travel accommodations, asserting, among other things, a claim for breach of fiduciary duty arising from defendant's alleged failure to disclose that it would not accept a customer's bid unless it could locate a hotel room satisfying the customer's parameters at a rate lower than the bid amount, with defendant keeping the difference as a profit in addition to its stated service fee. The district court granted defendant's motion to dismiss. Affirming, this court held that, because plaintiffs did not sufficiently allege facts showing that an agency relationship existed between the parties, they failed to state a claim that defendant breached an agent's fiduciary duty of disclosure. The court reasoned that, once defendant's customers chose the reservation date, location, hotel quality, and bid price, they retained no right of interim control over defendant's procurement of the desired reservation, and this right of control was what distinguished an agency relationship from a mere contractual one. Johnson v. Priceline.com, Inc., 711 F.3d 271, 277.

C.A.2, 2010. Com. (b) cit. in disc. Prospective tenants, both of whom were African-Americans, brought suit under the Fair Housing Act (FHA) to hold landlord vicariously liable for the allegedly discriminatory renting of an apartment by its property manager. The district court dismissed at the pleadings stage for failure to allege agency. This court vacated and remanded, holding that plaintiff pleaded facts that could have supported a finding that defendant exercised control over the property manager so as to establish an agency relationship for purposes of the FHA. The court stated that the property-management agreement, which was incorporated into the complaint by reference, provided that the property manager would perform all reasonable services requested by defendant in regard to operating, maintaining, servicing, and leasing the property. Cleveland v. Caplaw Enterprises, 448 F.3d 518, 522.
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C.A.2, 2004. Quot. in case quot. in disc. Defendant was convicted in district court of inducing church representative to travel in furtherance of a scheme to defraud, and, on appeal, claimed that there was insufficient evidence to show that defrauded church's representative, who was church's financial advisor, was agent of church. Affirming defendant's conviction, this court held, inter alia, that sufficient evidence existed of an agency relationship between church and financial advisor to uphold defendant's conviction, where financial advisor was "hired" to secure financing for family-life center being planned by church, was paid monthly salary by church, was available to church whenever church wished, had access to church stationery and letterhead, and represented church's financial situation to potential lenders. U.S. v. Thomas, 377 F.3d 232, 238.

C.A.2, 2003. Com. (b) quot. in case quot. in disc. Attorney in California law firm who also served as president for New York corporation brought breach-of-contract action against corporation, claiming that settlement agreement with corporation entitled him to indemnification for $2.43 million he paid to law firm's bankruptcy trustee. District court granted corporation new trial after jury verdict for attorney, based on provision in settlement agreement that stated that corporation would indemnify claims against attorney individually, not attorney as corporation working for firm. Affirming, this court held, inter alia, that trial court did not abuse its discretion in granting corporation new trial based on finding that corporation agreed to indemnify attorney only, not attorney as a corporation. Manley v. Ambase Corp., 337 F.3d 237, 246.

C.A.2, 2003. Quot. in sup. Investor who suffered losses on fund recommended by broker-dealer brought arbitration proceeding against broker-dealer, its parent corporation, and broker-dealer's sister company, which served as fund's investment adviser. Investment adviser sought preliminary injunction enjoining arbitration. District court granted injunction. Affirming, this court held, inter alia, that investment adviser was not bound by arbitration clause under agency principles where adviser was an unwilling nonsignatory, and investor failed to establish incorporation by reference, assumption, agency, veil-piercing, or estoppel. Merrill Lynch Investment Managers v. Optibase, Ltd., 337 F.3d 125, 130.

C.A.2, 1994. Com. (b) cit. in headnotes and quot. in sup. A nonprofit organization whose primary purpose was to promote equal opportunity in housing investigated real estate brokerage firm to see whether it was complying with consent decree not to discriminate in providing housing services. Based on test results, organization and minority testers sued landlords, real estate firm, and firm's brokers, alleging civil rights violations. New York federal district court entered judgment on jury verdict for plaintiffs. Affirming in part, this court held, inter alia, that plaintiffs presented sufficient evidence regarding existence of agency relationship between landlords and real estate firm to take the issue to the jury. Brokers' admission that they acted as landlords' agents, as well as one landlord's admission that real estate firm was his agent could help establish that firm and brokers believed they were acting on landlords' behalf. The court noted that the question of whether an agency relationship existed was a mixed question of law and fact. Cabrera v. Jakabovitz, 24 F.3d 372, 375, 386, 387, cert. denied 513 U.S. 876, 115 S.Ct. 205, 130 L.Ed.2d 135 (1994).

C.A.2, 1984. Subsec. (1) quot. in disc., com. (b) cit. in disc. A creditor, a carrier of air freight, appealed from a trial court decision rejecting the creditor's claim of superior interest in the monies collected by a bankrupt enterprise. The creditor had argued that the bankrupt firm, which forwarded air freight, was involved in an agency relationship with a trade association of which the creditor was a member. Thus, the creditor had contended, all monies collected by the bankrupt firm became the property of the transporting carrier. The court disagreed, concluding that no agency relationship existed. The creditor had no control over the bankrupt firm's collection or handling of funds, the court observed, and the bankrupt firm had the right to sue to recover from shippers who defaulted. The court found no evidence of a fiduciary relationship where in the bankrupt firm had acted on behalf of the creditor and was subject to its control. In re Shulman Transport Enterprises, Inc., 744 F.2d 293, 295.

C.A.2, 1982. Cit. but dist. The plaintiff filed suit to compel the defendant to comply with the provisions of the Foreign Agents Registration Act. The lower court found the defendant to be an agent of the Irish Republican Army and granted the plaintiff's motion for summary judgment to enjoin the defendant from violating the act. The defendant appealed, but the court affirmed. The court did not accept the defendant's claim that the standard for agency set forth in the Restatement governed its determination
of an agency relationship for the purpose of complying with the act. Attorney General of U.S. v. Irish Northern Aid, 668 F.2d 159, 161.

C.A.2, 1982. Quot. in disc. and com. (b) cit. in disc. The Internal Revenue Service seized all of the debtor's tangible property for unpaid federal taxes. The debtor sought to require the IRS to turn over the property, contending that it was absolutely necessary for an effective reorganization of the debtor. The bankruptcy court granted the turnover and the IRS appealed. The turnover was reversed by the district court and an appeal was taken by the debtor. This court noted that the IRS was authorized to seize a debtor's property for the purpose of securing a lien; however, the authorization was imposed by law and not because any type of fiduciary relationship existed between the debtor and the IRS. Therefore the IRS was not a “custodian” required to turn over property of the debtor under § 543 of the Bankruptcy Code. However, this court held that the bankruptcy court had the power under § 542 to order the turnover of property repossessed by a secured creditor, following the debtor's default and prior to his bankruptcy. The court further held that this applied even to property levied by the IRS. The court ordered that the case be remanded to bankruptcy court to determine whether the turnover order was appropriate in the present circumstances. United States v. Whiting Pools, Inc., 674 F.2d 144, 148.

C.A.2, 1979. Cit. in sup. Former United States representative for an Austrian steel mill brought an action against his successor for breach of contract. The trial court entered judgment in favor of the plaintiff. On appeal, the court held, inter alia, that proof of performance was a necessary part of the plaintiff's case, since the contract was not a pure commission or royalty contract providing compensation solely for past efforts, but explicitly contemplated continuing performance by the plaintiff. Also, the court found that the defendant properly placed before the court the issue of the plaintiff's lack of performance. In addition, the court noted that if the plaintiff accepted commercial bribes from a customer of the defendant, which were designed to influence the way in which the plaintiff fulfilled his duties as the defendant's agent, the defendant would be entitled to recover those payments, and the plaintiff would be barred from recovering on the contract. British Am. & Eastern Co., Inc. v. Wirth Ltd., 592 F.2d 75, 80.

C.A.2, 1979. Cit. in diss. op. This action arose from a malpractice case brought in a state court which the plaintiffs, a brain damaged child and his mother, settled for $185,000. In that case, the plaintiffs sued the defendant hospital for personal injuries resulting from the hospital's negligence. Prior to settlement the defendants stated that their insurance policy limit was $200,000, when there was in fact an additional one million dollars in excess coverage issued by reinsurers. The plaintiffs brought this action for fraud against the defendant hospital and its insurers. The lower court found, inter alia, the vice president of the hospital's primary insurer liable for misrepresentation. The jury awarded damages to the plaintiffs, but the lower court granted a judgment notwithstanding the verdict to the defendants on the ground that the plaintiffs had waived their right to sue. This court found the judgment notwithstanding the verdict was an error. This court stated that the plaintiffs needed to prove that the primary insurer's vice president was acting as an agent of the reinsurers when he testified concerning the insurance. The court held that on the basis of all the testimony, there was sufficient evidence to show an agency relationship and therefore the case against the reinsurers should have been sent to the jury. The court stated that a person can testify as to the facts which create his authority, and his testimony can be introduced either by or against the alleged principal. Generally, whether the primary insurer's vice president was acting within the scope of his agency can be determined by deciding whether the statement was one which, if true, the agent would have been authorized or apparently authorized to make. If so, then the principal would be subject to liability for that statement even if the agent had made the statement deceitfully. The court stated that evidence of a statement made by an agent concerning the extent of his authority was admissible against the principal where it appears by other evidence that the making of such a statement was within the authority of the agent or, as to persons dealing with the agent, within the apparent authority or other power of the agent. The court stated that there had been questions for the jury and that there was sufficient evidence to support a finding that an agency relationship existed and that the vice president was acting within the scope of his agency. Therefore, the court held that the reinsurers could be liable for misrepresentation. Slotkin v. Citizens Cas. Co. of New York, 614 F.2d 301, 322, certiorari denied 449 U.S. 981, 101 S.Ct. 395, 66 L.Ed.2d 243 (1980), on remand 530 F.Supp. 789 (D.C.N.Y.1982).
§ 1 Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

C.A.2, 1975. Com. (b) cit. in sup. Plaintiff brought this suit to compel defendants to submit a dispute to arbitration. Plaintiff had negotiated through a broker to charter a ship to defendant. Negotiations later broke down over a provision as to when the ship was to be returned to dry dock. Plaintiff then attempted to proceed to arbitration as provided for in the terms of the charter party alleged to have been agreed to. Defendants refused and plaintiff obtained an order in the District Court compelling arbitration. The order was reversed and remanded by this court on a prior appeal, finding there was sufficient evidence to warrant trial on whether a valid charter agreement existed, whether the broker had authority to bind both defendants, and whether both defendants, the charterer and its parent company, were parties to it. On remand the District Court held for plaintiff, and ordered the parties to proceed to arbitration. This court affirmed, but eliminated the parent company from the arbitration, finding that it was only a guarantor and not a party to the agreement. On the issue of the broker's authority to act for the defendants, the court found that there was no error in the District Court's conclusion that on the basis of the conduct of one of the key principals of both firms the broker had been authorized to represent defendants. The court noted that this was evident in the language used in communications to the broker, the fact that all negotiations took place through him, past relations between the parties, the principal's request that broker obtain a firm offer from plaintiff, confirmation of an offer, and trade customs. The court also noted that it was immaterial that the broker considered himself a broker rather than an agent of any of the parties and that the defendant did not intend to make him an agent, stating that agency is a legal concept based on manifest conduct of the parties rather than intentions or beliefs as to what they have done. Interocan Shipping Co. v. National Shipping & Trade Corp., 523 F.2d 527, 537, cert. denied, 423 U.S. 1054, 96 S.Ct. 785, 46 L.Ed.2d 643 (1976).

C.A.2, 1971. Cit. in fn. in sup. This was a suit in admiralty to recover, from the shipper and the operator of the terminal, the value of goods which vanished from the terminal area before delivery to the plaintiff. The court, inter alia, reversed and remanded a judgment against the terminal operator for breach of contract. The terminal operator was acting as agent on behalf of the shipper when cargo was entrusted to it after discharge from the ship. Consequently, it was not liable for breach of a contract between its disclosed principal and a third party, although a claim based on negligence could be established. Leather's Best, Inc. v. S.S. Mormaclynx, 451 F.2d 800, 808.

C.A.2, 1966. Sec. and com. (b) quot. in sup. in diss. op. Klein was the general manager of a Canadian corporation which sold liquor to various people in New York. The New York buyer was allegedly the agent of Klein, and hired friends and relatives of Klein, and payed them according to Klein's suggestions. After Klein's death, the state brought an action for collection of taxes due as a result of these transactions by suit in New York, naming Klein's executor as the defendant. Jurisdiction was attained by service of process upon defendant in Canada under the terms of the New York "long-arm statute." The majority held that the contacts with the state were sufficient to gain jurisdiction. The dissent did not feel that Klein had any agents in New York since there was no control over their conduct and therefore found no basis for jurisdiction. United States v. Montreal Trust Co., 358 F.2d 239, 254, 255, certiorari denied 384 U.S. 919, 86 S.Ct. 1366, 16 L.Ed.2d 440, rehearing denied 384 U.S. 982, 86 S.Ct. 1858, 16 L.Ed.2d 693.

C.A.3

C.A.3, 1998. Subsec. (1) quot. in disc. National Labor Relations Board (NLRB) sought enforcement of an order requiring union to cease and desist from restraining and coercing employees of nonunion contractor seeking access to their job site. Union filed exceptions to the order, which was based on findings that it was vicariously liable for the actions of other unions, with which first union was found to be engaged in a joint venture. Denying NLRB's request for enforcement, the court held that union was not responsible for other unions' conduct under a joint venture agency theory, as unions, over whom first union had no control, were not first union's agents. N.L.R.B. v. Sheet Metal Workers' Int'l Ass'n, 154 F.3d 137, 143.
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

C.A.3, 1996. Com. (b) quot. in conc. and diss. op. Clients of attorneys who purchased photocopies of clients' hospital records for the purpose of prosecuting clients' personal injury and medical malpractice claims sued hospitals and copy-service companies for violations of antitrust law, inter alia, alleging that defendants conspired to charge excessive prices for the photocopies. The district court granted defendants summary judgment on the antitrust claim. Affirming in part, this court held that the attorneys, rather than plaintiffs, were the direct purchasers of the photocopies and thus plaintiffs lacked standing to bring their antitrust claim. The partial dissent argued that the attorneys, as agents for their disclosed client-principals, purchased the copies for plaintiffs and that plaintiffs were the direct purchasers. McCarthy v. Recordex Service, Inc., 80 F.3d 842, 857, cert. denied 519 U.S. 825, 117 S.Ct. 86, 136 L.Ed.2d 42 (1996).

C.A.3, 1995. Cit. in headnote, com. (a) quot. in sup. Administratrix of estate of worker who died of asbestos-induced mesothelioma sued asbestos manufacturer for damages, alleging that exposure to dust from defendant's product caused worker's death. The district court entered judgment on a jury verdict awarding plaintiff $2,000,000 but this court reversed and remanded. It held, inter alia, that the lower court erred in permitting plaintiff to read to the jury damaging expert testimony from earlier, similar litigation involving defendant, as the testimony was not an admissible nonhearsay statement made by someone authorized by the party-opponent to speak. The court explained that experts were not agents subject to the control of the party that hired them but were independent professionals paid to provide their impartial opinion and, therefore, could not make admissions binding the retaining party. Kirk v. Raymark Industries, Inc., 61 F.3d 147, 149, 164.

C.A.3, 1994. Cit. in sup. Seller of telecommunications services sought injunctive relief against reseller of its services, alleging various infringing acts in violation of the Lanham Act. The district court denied plaintiff's motion for a preliminary injunction. This court vacated, holding, inter alia, that, although the district court properly found that defendant's sales representatives, who allegedly committed the infringing acts, were independent contractors, remand was required to determine whether the sales representatives were agent or nonagent independent contractors and whether the representatives acted with apparent authority. AT & T Co. v. Winback and Conserve Program, Inc., 42 F.3d 1421, 1434, cert. denied 514 U.S. 1103, 115 S.Ct. 1838, 131 L.Ed.2d 757 (1995).

C.A.3, 1994. Quot. in case quot. in sup. After the IRS levied on a bank account, owned jointly by taxpayer and his wife, to enforce a judgment for a tax deficiency obtained against taxpayer in his individual capacity, bank filed a complaint in interpleader. The district court upheld the levy. Reversing in part with the direction to dissolve the levy, this court held that, because taxpayer did not have the ability to withdraw funds unilaterally from the account, the IRS levy was improper. The court said that taxpayer's retitling of the signature card to require the signatures of both taxpayer and his wife to withdraw funds from the account was legally effective, even though wife never executed a document evidencing her assent to the change, since, in light of wife's ratification of taxpayer's execution of the change, taxpayer was acting as his wife's agent under Delaware law when he retitled the card. I.R.S. v. Gaster, 42 F.3d 787, 793.

C.A.3, 1980. Cit. in ftn. in sup. Defendant solicited political contributions in the Western District of Pennsylvania, later repaying the contributors out of his own pocket. While physically in the Western District, defendant gave the receipts to an individual for transmission to the candidate's political headquarters which was located in the Middle District of Pennsylvania where the receipts were deposited. Defendant was convicted in the District Court for the Middle District of Pennsylvania of violating federal law by making contributions to a candidate for federal office in excess of $1000 and of making a contribution in the name of another person. Defendant appealed. The Court of Appeals reversed, holding that the evidence was insufficient to support a finding that crimes were committed by defendant in the Middle District, and, therefore, venue in that district was improper. The court held that the act of making a contribution in the name of another person is complete on the date that such a contribution is mailed or received, but before it is deposited, by the recipient. Defendant received the contributions in the Western District, and there were no facts in the record to support the conclusion that the individual who received the checks from defendant in the Western District and who then took them to the Middle District for deposit was an agent of defendant, whose actions, if done in defendant's behalf would fairly be attributable to defendant. If anything, it appeared from the record
that the person to whom defendant gave the contributions took the checks in his capacity as an agent for the candidate. There was no indication whatsoever that this person was in any respect subject to defendant's control. United States v. Passodelis, 615 F.2d 975, 978, rehearing denied 622 F.2d 567 (1980).


C.A.4

C.A.4, 1998. Subsec. (1) quot. in disc. Transferee of standby letter of credit brought action against issuer after borrower defaulted. The district court entered judgment for transferee. Affirming, this court held, in part, that transferor was not an agent of transferee, and that transferee took free of all defenses issuer had against transferor, which allegedly acquired letter of credit amendment by deceit. Banca Del Sempione v. Provident Bank of Maryland, 160 F.3d 992, 995.

C.A.4, 1995. Subsec. (1) quot. in sup. After a worker was asphyxiated by the release of carbon dioxide during a test of a United States vessel's fire suppression system, the administratrix of the worker's estate brought suit in state court against several contractors and subcontractors engaged to perform maintenance and repair tasks aboard the vessel. The action was removed to federal district court, which denied plaintiff's motion to remand to state court. Reversing and remanding, this court held that, pursuant to basic principles of agency law, defendants were not “agents” of the United States for purposes of the exclusivity provision of the federal Suits in Admirality Act, but were merely nonagent independent contractors of the United States; thus, plaintiff's action could go forward in state court. Servis v. Hiller Systems Inc., 54 F.3d 203, 207.

C.A.4, 1989. Subsec. (1) cit. in disc. The FSLIC, in its capacity as receiver for a construction lender, sued the project manager of the construction project for damages, alleging that it misappropriated money allocated for condominium furnishings to reimburse itself for unpaid invoices and operating expenses allegedly owed by the project owner. The district court entered judgment for the plaintiff for breach of fiduciary duty and awarded it simple prejudgment interest. Affirming in part, vacating in part, and remanding, this court held that the defendant was the lender's agent for the purpose of seeing that the money disbursed was spent as authorized and, consequently, that a fiduciary relationship existed between the defendant and the lender. The court also held that, because the defendant, regardless of its title, was subject to essentially the same duties as a trustee, it was liable as a trustee for compound prejudgment interest. Federal Sav. & Loan Ins. Corp. v. Quality Inns, 876 F.2d 353, 356.

C.A.5

C.A.5, 2003. Subsec. (1) quot. in disc. Argentinean corporations brought suit to confirm an international arbitration award rendered in their favor against the Government of Turkmenistan and a production association that became government's wholly owned oil company. District court held that the government was bound to arbitrate the dispute with plaintiffs because production association signed the joint-venture agreement as an agent of the government. This court vacated and remanded in part, holding, inter alia, that although plaintiffs put forth ample evidence regarding the extent to which association was controlled by the government subsequent to the signing of the joint-venture agreement, plaintiffs did not satisfy their burden to establish that association had apparent authority to bind government in 1993. Bridas S.A.P.I.C. v. Government of Turkmenistan, 345 F.3d 347, 357.

C.A.5, 2000. Cit. in case cit. in disc. Minority customers of service stations sued franchisor for civil rights violations in connection with the discriminatory treatment to which they were allegedly subjected when attempting to buy gas and other items
at defendant's branded stores. The district court dismissed the complaint. Affirming in part, reversing in part, and remanding, this court held, among other things, that, while no agency relationship existed between defendant and the independently owned stations, a factfinder could find such a relationship between defendant and the particular employee involved if it determined that she was acting within the scope of her employment when the complained-of incidents occurred, and that defendant's duty not to discriminate was not nondelegable. Arguello v. Conoco, Inc., 207 F.3d 803, 807 cert. denied 531 U.S. 874, 121 S.Ct. 177, 148 L.Ed.2d 121 (2000).

C.A.5, 2000. Cit. in ftnt. Mississippi seller that had sold to buyer 80% of its oil and gas working interest in a field sued buyer to recover for its breach of the purchase agreement. After learning that an energy management corporation had agreed to buy through its subsidiary 75% of buyer's 80% working interest, seller moved to join subsidiary. Following magistrate judge's denial of the motion, seller brought second suit against buyer and subsidiary. The district court ordered subsidiary dismissed from the suit for, in part, lack of personal jurisdiction. This court reversed and remanded, holding, inter alia, that subsidiary had sufficient contact to justify district court's exercise of specific jurisdiction. Because seller established a prima facie case of agency to justify the reach of the long-arm statute, since evidence existed that buyer acted on behalf of subsidiary, an undisclosed principal, and that sufficient control by subsidiary existed, such agency permitted a conclusion that subsidiary contracted with a Mississippi resident and could have anticipated being haled into Mississippi court. Stripling v. Jordan Production Co. LLC, 234 F.3d 863, 871.

C.A.5, 2000. Cit. in ftnt. Louisiana federal district court entered judgment on jury verdict convicting a parish tax assessor and a political ally of conspiracy, fraud, theft, money-laundering, and perjury, among other claims. This court affirmed the convictions in part, but reversed with respect to statutory theft involving a federally funded program, because there was no adequate relationship between the tax assessor's office and the federal funds. The court held, inter alia, that the tax assessor was not an agent of the parish under the federal statute, because he was not a parish employee or officer, he was not authorized to act on behalf of the parish with respect to its funds, and he did not control parish employees or administer parish programs or funds. United States v. Phillips, 219 F.3d 404, 412.

C.A.5, 1997. Cit. in disc. Criminal defendants appealed their convictions on multiple counts related to loans received from a Louisiana bank to finance various real estate transactions in California. Among other things, they argued that the evidence was insufficient to demonstrate that an employee of the bank's subsidiary acted as an agent or employee of the bank or that defendants improperly rewarded him for providing them with a loan. The employee had collected loan documentation for the bank, including financial statements and corporate documents, had assisted in negotiations, and was present at the loan closing. This court affirmed, holding, inter alia, that a rational jury could conclude beyond a reasonable doubt that the subsidiary's employee was an agent of the bank. The criminal defendants used the employee as their contact with the bank, and evidence showed that the employee acted on the bank's behalf, under its control, and with its consent. U.S. v. Dupre, 117 F.3d 810, 820, cert. denied 522 U.S. 1078, 118 S.Ct. 857, 139 L.Ed.2d 756 (1998).

C.A.5, 1986. Cit. in case quot. in disc. Investors sued a stockbroker for breach of a fiduciary duty for failing to inform the investors of changing market conditions that affected the price of the stock they ordered. The trial court found the stockbroker's failure to inform the investors of the changing market conditions to be a breach of fiduciary duty and awarded the investors the difference between what they actually paid and what they should have paid. Affirming, this court held that the implicit agreement between the parties was that the broker would use reasonable efforts to execute the order promptly at the best obtainable price. Furthermore, the law imposed on the broker the duty to disclose to the customers information that was relevant and material to the order. Magnum Corp. v. Lehman Bros. Kuhn Loeb, Inc., 794 F.2d 198, 200.

C.A.5, 1979. Subsec. (2) and (3) and coms. (d) and (e) cit. in sup. Taxpayers brought an action against the United States seeking a refund of the money seized from them during a federal law enforcement raid of their gambling operation. The District Court ordered that the taxpayers be given refunds. On appeal, the court affirmed and held, inter alia, that the taxpayer who had picked
up the money from the writers and turned it over to the bank was not liable for the wagering tax. The court noted that no agency relationship existed between the writers and the taxpayer, since the writers had no power to commit the taxpayer to business relationships with third parties. Griffin v. United States, 588 F.2d 521, 529.

C.A.5, 1972. Cit. and quot. in part in sup. In an action involving two reinsurance treaties, the court held that where the reinsurers had no right to regulate the conduct of the reinsured's chief underwriter, who made the decision to cede reinsurance to two reinsurers, where the death, retirement, or replacement of the chief underwriter would not have affected the reinsurers' obligation to accept reinsurance ceded to them under the treaties, and where the reinsurers were liable for reinsurance ceded if it were within the treaty provisions, regardless of who served as the underwriter, no agency relationship existed under Georgia law between the reinsurers whose treaties excluded coverage for uncontrolled inland marine risk and the underwriter who mistakenly ceded such a policy to the reinsurers. Aetna Insurance Co. v. Glens Falls Insurance Co., 453 F.2d 687, 691.

C.A.6

C.A.6, 2006. Quot. in case quot. in disc. Customer of bank that followed customer's written instructions to disburse her funds to an investment advisor whose unscrupulous practices resulted in large losses sued bank for allegedly breaching a variety of fiduciary duties, including the duty of good faith and the duty to disclose material facts. Affirming the district court's grant of summary judgment for bank, this court held, inter alia, that the claim failed because bank, as customer's agent, did not violate its primary fiduciary duty not to make unauthorized distributions, since all of its disbursements were directed by the advisor pursuant to customer's written authorization; in addition, bank honored its contractual obligations and was bound to no other fiduciary duty outside the terms of the parties' custody agreement and trading letter. Pavlovich v. National City Bank, 435 F.3d 560, 567.

C.A.6, 1999. Quot. in ftn. to conc. and diss. op. African-American applicants for union membership brought class action against local and international unions, alleging racial discrimination in violation of Title VII and 42 U.S.C. § 1981. The district court entered judgment for plaintiffs, finding, in part, that the international union was liable for the local's discriminatory practices because the local was acting as the international's agent. This court affirmed. The concurring and dissenting opinion argued that the international's mere acquiescence in the local's practices was not enough to make it liable under an agency theory. Alexander v. Local 496, Laborers' Intern. Union, 177 F.3d 394, 427, cert. denied 528 U.S. 1154, 120 S.Ct. 1158, 145 L.Ed.2d 1070 (2000).

C.A.6, 1997. Cit. in disc. University bookstore employees sued their former employer and the state of Tennessee pursuant to the Age Discrimination in Employment Act (ADEA) and the Americans with Disabilities Act (ADA), claiming that they were discharged from their jobs because of their age or disability. The state university had entered into an agreement with a national bookstore chain, whereby the chain was to act as an independent contractor responsible for the operation and management of the bookstore for three years. Plaintiffs argued that the university could be held liable for the bookstore chain's actions because the chain was the university's agent. Tennessee federal district court granted the state's motion to dismiss. This court affirmed, holding, inter alia, that the university could not be considered plaintiffs' employer under the ADEA and/or the ADA on the basis that the bookstore chain was acting as its agent. The university did not delegate to the chain the authority to make employment decisions on its behalf, nor did it exercise the requisite control over the chain's employment decisions. Swallows v. Barnes & Noble Book Stores, Inc., 128 F.3d 990, 996.

C.A.6, 1997. Quot. in disc. University professors who provided students, primarily military and other government personnel, with advanced university degrees in exchange for government contracts challenged their convictions for mail fraud. Affirming in part, reversing in part, and remanding, this court held, inter alia, that private individuals, such as professors, could commit mail fraud by breaching a fiduciary duty and thereby depriving the person or entity to which the duty was owed of the intangible right to the honest services of those individuals; that professors were fiduciaries of the university, which had a property right in
its unissued degrees; and that professors should have foreseen that the breach of their fiduciary duty would create an economic risk to its victim, the university. U.S. v. Frost, 125 F.3d 346, 366, cert. denied … U.S. …, 119 S.Ct. 40, 142 L.Ed.2d 32 (1998).

C.A.6, 1990. Cit. in sup. An oil and gas producer sued its general liability insurers, seeking a declaratory judgment of liability against the defendants for the costs it incurred as a result of an expensive cleanup of toxic chemicals. The district court granted the defendants summary judgment, and this court affirmed, holding that lack of notice of a claim to the defendants was materially prejudicial. The court explained that the plaintiff’s president gave notice of the claim only to its independent insurance agent and the agent discouraged turning in a claim to the defendants since it would make the securing of renewal insurance premiums much more expensive; the plaintiff’s president agreed, and the defendants were never notified. The court said that the independent agent was a major investor of the plaintiff and that none of the defendants had ever taken any action to confer actual or apparent authority on the agent, who was at all times and by all parties understood to be the agent of the plaintiff alone. West Bay Exploration v. AIG Specialty Agencies, 915 F.2d 1030, 1035.

C.A.6, 1987. Cit. in sup. The plaintiff sought a position as an emergency medical technician that was to be funded initially by the federal Comprehensive Employment and Training Act (CETA). She sued the governing body of the county ambulance service, alleging that representatives of CETA had denied her employment application because of her gender, thus violating Title VII of the Civil Rights Act of 1964. The district court entered judgment for the plaintiff. Affirming, this court held, inter alia, that the governing body was liable for the discriminatory actions of the CETA representatives because they were acting as agents of the governing body. The court explained that, under Title VII, an employer may be held liable for discriminatory actions that are perpetrated by its agents, an agency relationship is found only where there has been a manifestation by the principal that the agent may act on his account and the agent has consented to do so, and an agency relationship may be established without a formal contract and without consideration paid by either party. Terbovitz v. Fiscal Court of Adair County, Ky., 825 F.2d 111, 116, 117.

C.A.6, 1983. Cit. in diss. op. The plaintiff brought this class action suit seeking injunctive and declaratory relief from a county welfare department decision that the amount of a federal Basic Educational Opportunity Grant given by a college be included in her income for purposes of determining food stamp eligibility. Because of this decision, the total of food stamps received by the plaintiff and her family was substantially reduced. The defendants included the county and state welfare departments charged with certifying recipient eligibility under the federal food stamp program. After the plaintiff food stamp recipient class was conditionally certified and before a proposed settlement was entered into, the United States Department of Agriculture (U.S.D.A.) intervened as a party defendant. The U.S.D.A. moved for summary judgment asserting the proposed settlement was inconsistent with the federal food stamp law. The plaintiff also moved for summary judgment. The trial court issued a decision finding that the defendants improperly included the amount of educational grant money in the plaintiff’s income. The trial court also decertified the class and found the proposed settlement to be improper. Both the plaintiff and defendants appealed. This court reversed part of the trial court’s decision and determined instead that, under the federal food stamp statute and under the facts of this case, only those federal educational grant funds specifically earmarked by the grantor for education expenses were excludible from the plaintiff’s income. Here, the court found the “grantor” having the power to earmark funds to be the Department of Education, not the college. According to this court, a college could become a “grantor”, and hence an agent of the Department of Education for earmarking purposes, only by having discretionary authority in excess of that given by federal law. The college in this case merely administered federal regulations, had no such discretion, and was thus not an agent for earmarking purposes of the Department of Education. Because the provisions of the grant from the Department of Education, the grantor, did not sufficiently earmark the grant funds as educational, and because the restrictions placed on the funds by the college were of no consequence since it was not the grantor, this court found the grant funds to be includible in the plaintiff’s income for food stamp eligibility purposes. A dissenting opinion cited the Restatement among other authorities in arguing that the college was an agent of the Department of Education and therefore a “grantor” under the federal food stamp statute. The very purpose of an agent is to carry out the ministerial, non-discretionary tasks of the principal. Here, the dissent argued, the
college was an agent and thus a grantor, and the restrictions imposed by it were sufficient to exclude the educational grant funds from the plaintiff's income. Shaffer v. Block, 705 F.2d 805, 821.

C.A.6, 1975. Quot. and dist. Plaintiff general liability insurer brought suit against catastrophe insurer and husband of deceased, both individually and as executor of his wife's estate, for a declaration of rights and duties of the parties with respect to claims growing out of a collision of vehicles. At the time of the accident, the wife was on a trip for a dual purpose, one objective being personal, and the other business for a corporation in which she and her husband were officers and stockholders. From an adverse judgment, the catastrophe insurer appealed. The court affirmed. As deceased was driving a car owned by her husband, a member of her household, she was not covered under the terms of the corporation's liability policy. Therefore, the catastrophe policy covered all liability over and above the coverage of the basic homeowner's policy, unless deceased was excluded from coverage under the terms of the catastrophe policy itself. Deceased was deemed to be within the definition of “insured” as used in the catastrophe policy. The question then became whether two conditions of exclusion were met: (1) that the automobile involved was “hired by or loaned to the Named Insured”; and (2) that the person or other entity sought to be covered was the “owner or a lessee” of the automobile, or the “agent or employee” of such owner or lessee. The fact that the corporation paid for the gasoline was not enough to label the vehicle as “hired.” And the mere fact that the automobile was being used on company business would not classify it as “loaned.” Furthermore, under common understanding, deceased was not the “agent” of her husband in driving the car. The defendant's catastrophe policy, therefore, extended coverage to deceased. Trinity Universal Ins. Co. v. Cincinnati Ins. Co., 513 F.2d 915, 920.

C.A.7,

C.A.7, 2014. Subsec. (1) quot. in ftn. Former gang leader was indicted by federal authorities based on statements to state authorities in which he confessed to playing a central role in a triple murder. A jury convicted defendant on all counts after the district court denied his pretrial motions to suppress the statements and dismiss the indictment, in which he argued that state authorities violated his due-process rights by prompting federal authorities to prosecute him based on the statements despite a prior immunity agreement, and that the federal government was responsible for the state's actions because it became the state's agent by investigating him and prosecuting him at the state's suggestion. Affirming, this court held that, even if state authorities violated defendant's due-process rights, a principal-agent relationship could not arise without the agent's agreement to be controlled by the principal, and defendant failed to present any evidence that the United States consented to be controlled by the state. U.S. v. Bryant, 750 F.3d 642, 651.

C.A.7

C.A.7, 2000. Subsec. (1) and illus. 2 cit. in disc. Buyer sued automobile dealer for, inter alia, RICO violations, alleging that defendant committed a breach of fiduciary duty when it split with finance company the additional fees it collected as a result of negotiating higher interest rates with purchasers. The district court dismissed the complaint. Affirming in part, reversing in part, and remanding, this court held, among other things, that any undisclosed self-dealing on defendant's part was not actionable, since defendant was not plaintiff's agent. Balderos v. City Chevrolet, 214 F.3d 849, 853.

C.A.7, 1998. Subsec. (3), com. (e) cit. in disc. Former chemical company employee sued employer for sex discrimination under Title VII and discrimination based on disability under the Americans with Disabilities Act (ADA). Plaintiff also alleged that a telephone call from defendant's human resources manager to her new employer, detailing her lawsuit and the medical restrictions on her employment, constituted retaliation under both Title VII and the ADA. Affirming the district court's entry of summary judgment for defendant on the discrimination claims and its dismissal of the retaliation claim, this court held that plaintiff did not prove discrimination based on sex; that defendant was not liable for failing to make reasonable accommodations for plaintiff's respiratory condition; and that the call that human resources manager placed to plaintiff's new employer, which
was justified, was not absolutely privileged because, even though manager contacted employer on the advice of defendant's attorneys, he was acting as defendant's representative, not attorneys' agent. Steffes v. Stepan Co., 144 F.3d 1070, 1075.

C.A.7, 1995. Cit. in headnote, com. (e) quot. in part in sup. (cit. as com. to subsec. (3)). General partner of partnership that owned motel sued United States for refund of employment and federal income taxes he paid to IRS. Affirming the district court's grant of summary judgment for plaintiff, this court rejected government's argument that, since motel's management agency acted as partnership's agent, partnership, as principal, was liable for management agency's acts and omissions and accordingly liable for the unpaid taxes. The court said that partnership did not possess physical control over management agency's activities sufficient to establish a master-servant relationship rather than an independent contractor relationship. Kittlaus v. U.S., 41 F.3d 327, 328, 330.

C.A.7, 1988. Quot. in part in ftn., com. (b) cit. in ftn. The defendants in a cocaine delivery conspiracy appealed a district court decision refusing to suppress evidence found in an intercepted parcel. This court affirmed, holding that the security employee of the parcel carrier who discovered the illicit drug within the parcel was not acting under governmental control at the time the cocaine was discovered, and that the evidence was sufficient to support the defendants' conviction. U.S. v. Koenig, 856 F.2d 843, 847.

C.A.7, 1985. Subsec. (1) quot. in disc., com. (b) cit. in disc. The plaintiff and defendant were engaged in acquiring and reselling name-brand products to discounters not otherwise authorized to buy directly from the manufacturer. Because the defendant was authorized to sell a particular manufacturer's products and the plaintiff was not, the plaintiff bought the products through the defendant. The plaintiff sued the defendant, alleging breach of an agency agreement, unauthorized competition, and misuse of confidential information. The defendant counterclaimed, alleging breach of contract, tortious interference, and unlawful trade restraint. The trial court granted partial summary judgment for the defendant, awarded damages on its breach of contract claim, and dismissed its two other claims. Affirming, this court reasoned that the defendant's receipt of a fixed commission from the plaintiff indicated an agency relationship, which ended when the manufacturer terminated the defendant's dealership rights. The unexpected termination excused the defendant from its obligations to the plaintiff. Since the defendant was free to solicit the plaintiff's customers, said the court, no misuse of confidential information or unauthorized competition was recognized, and any interference by the plaintiff was justified in this case. Federal Pants, Inc. v. Stocking, 762 F.2d 561, 564.

C.A.8

C.A.8, 1996. Subsec. (1) quot. in sup. Insurer sued for a declaration that a pilot was not covered under an aviation liability insurance policy issued by it to an air charter business and that it had no duty to defend or indemnify the pilot in two underlying state court actions in Georgia. The district court ruled that the pilot was covered by the policy. Reversing and remanding, this court held, inter alia, that the district court erred in admitting, pursuant to the hearsay exception for admissions of a party-opponent, an insurance agent's statements to the pilot's wife that the pilot was covered under the air charter company's insurance policy, since there was no evidence that the insurance agent was insurer's, rather than the air charter company's, agent at the time he made the relevant statements. American Eagle Ins. Co. v. Thompson, 85 F.3d 327, 333.

C.A.8, 1996. Com. (b) quot. in disc. Nonunion construction contractor that claimed it lost a contract with a paper mill because of the actions of the local paperworkers' and carpenters' unions sued unions for, inter alia, violations of § 303(a) of the Labor Management Relations Act. Contractor alleged that paperworkers' representatives, acting, in part, as carpenters' agents, threatened mill owner at a mutual interest meeting held two weeks before work on the job was to begin. The district court entered judgment on a jury verdict for contractor. Reversing and remanding, this court held that paperworkers' union was entitled to a new trial because the jury heard inadmissible evidence, and that carpenters' union was entitled to judgment as a matter of
law because contractor, having failed to prove that carpenters had the right to control paperworkers' actions, had not shown the existence of an agency relationship between the unions. BE&K v. United Broth. of Carpenters, 90 F.3d 1318, 1326.

C.A.8, 1995. Quot. in disc. Manufacturer of palletizers sued its sales agent for, inter alia, breach of fiduciary duty when defendant canceled an order for one of plaintiff's machines in order to sell a competitor's palletizer to a New Jersey client. Defendant actually had two separate relationships with plaintiff, one in which he was its sales agent for the states of Arkansas, Louisiana, Oklahoma and Texas, the other as a purchaser and reseller of plaintiff's palletizers outside those four states. The district court dismissed the fiduciary portion of the complaint and this court affirmed, holding that defendant was serving as purchaser and reseller of the palletizers when he closed the New Jersey deal, and because he was acting outside the scope of the agency relationship, his conduct, even though injurious to plaintiff, did not amount to a breach of any fiduciary duty. Productive Automated Systems v. CPI Systems, Inc., 61 F.3d 620, 622.

C.A.8, 1992. Cit. in case quot. in disc. An insurance company that issued a director's and officer's liability policy to a bank sought a declaratory judgment that it was not obligated to pay the FDIC damages for losses suffered by the bank as a result of the officers' improper securities trading. Insurer had sent to the bank's vice president the renewal policy, which included a statement that liability was subject to several new endorsements, including a regulatory exclusion. Minnesota federal district court entered summary judgment for insurer. Affirming, this court held, inter alia, that there was no genuine issue of material fact as to vice president's authority to act as bank's agent, including the authority to accept notice of policy changes. Vice president had full responsibility for handling all of bank's insurance matters, he was listed on the renewal application as authorized to receive notices, and insurer knew of and did not object to vice president's dual status as insurer's representative and as a bank officer with the authority to act on behalf of the bank in insurance matters. St. Paul Fire and Marine Ins. Co. v. F.D.I.C., 968 F.2d 695, 700.

C.A.8, 1991. Com. (b) cit. in disc. When a bank failed, the FDIC became its receiver and sued former bank officers for negligence. The officers sought the protection of their insurance company, which filed this declaratory judgment action against the FDIC to settle the officers' right to coverage. The district court found, inter alia, that the bank officials were covered under two policies, despite a clause excluding coverage for actions brought by the FDIC. Reversing and remanding in part, this court held that, although the bank's vice president, as the bank's agent, did not have actual authority to agree to the policy exclusion, he had apparent authority to bind the bank to the insurance policy and the limitation clause. American Cas. Co. of Reading, Pa. v. FDIC, 944 F.2d 455, 457.

C.A.8, 1987. Com. (b) cit. but dist. An agricultural equipment leasing company leased equipment to a farmer through a salesman who represented to the farmer that the lease could be cancelled after one year and the equipment returned if he was not satisfied. All of the lease documents bore the name of the leasing company and an employee of the leasing company visited the farm with the salesman prior to the acceptance of the lease. When the farmer attempted to return the equipment, the leasing company refused to cancel the lease, so the farmer stopped making payments. The leasing company sued for replevin and damages, and the farmer counterclaimed for misrepresentation. The district court granted summary judgment for the leasing company. Reversing, this court held, inter alia, that the conduct of the leasing company created an agency relationship with the salesman and gave the salesman implied authority to bind the company. AgriStor Leasing v. Farrow, 826 F.2d 732, 739.

C.A.8, 1985. Com. (a) quot. in case cit. in disc. A company engaged in the business of financing insurance agreements agreed to finance insurance premiums for a trucking company through an intermediary transportation company, an underwriter and the underwriter's general agent. Following disbursement of the total annual premium by the finance company to the intermediary, the trucking company defaulted. After agreeing to dismiss the trucking company from suit, the financing company sued the intermediary, the underwriter, and the underwriter's general agent for breach of the financing agreement. The district court granted the defendants' motion for summary judgment. The court of appeals reversed and remanded, holding, inter alia, that there was a material issue of fact as to whether an agency relationship existed between the intermediary and the underwriter's
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general agent, in view of the finance company's direct contact with the general agent regarding the annual premium quotation. Premium Financing Spec. v. Transportation Spec., 768 F.2d 282, 284-285.

C.A.8, 1985. Com. (a) quot. in sup. An injured railroad employee brought an action under the Federal Employers' Liability Act for an injury that disqualified him from continuing employment. The employee met with his lawyers, who negotiated a settlement with the employer. The lawyers alleged that the employee verbally accepted the settlement, but the employee alleged that he refused it. The employer counterclaimed for specific performance of the settlement. The district court entered judgment for the employee. The court of appeals reversed and remanded, holding, inter alia, that the district court reversibly erred in instructing the jury that the employer had the burden of showing the attorneys' authority to agree to the settlement. The court also held that the employer was not entitled to judgment on its counterclaim, because the employee's conduct was ambiguous regarding his authorization to his attorneys to accept the settlement as his agents. Turner v. Burlington Northern R. Co., 771 F.2d 341, 345.

C.A.8, 1981. Cit. in sup. The plaintiff shipped goods to the defendants. The defendants were shipper-members of a shippers' association which was exempt from I.C.C. regulation. The shipper-member defendants exerted individual control over when and if goods were to be delivered. When the shipping association did not pay the shipping charge, the plaintiff sued the defendants in order to recover. The lower court found that an agency relationship existed between the shippers' association and the defendants and therefore held that each defendant was liable as a principal of the bankrupt shippers' association for the shipping charges. On appeal, this court affirmed. The court defined agency as a fiduciary relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf, subject to his control and the other consents to so act. Agency is a legal relationship which depends on the existence of a manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking and the understanding that the principal is to be in control of the undertaking. The court therefore held that the defendants were principals of the shippers' association, because the association had actual authority to act as the agent for the member defendants and the association was controlled by its members. Southern Pac. Transp. v. Continental Shippers, 642 F.2d 236, 238.

C.A.8, 1980. Quot. in sup. and com. (b) quot. in sup. The plaintiff, a partner in a company which was organized to own, build upon and then lease a 6.5 acre tract of land, hired the defendant as a mortgage broker who acted as a loan correspondent. The defendant broker found long term financing and submitted a loan application to the defendant company for the plaintiff for which the plaintiff paid the defendant broker $14,000. The defendant company accepted the application and granted the loan. Subsequently the defendant broker suggested that the plaintiff not contact the defendant company directly and when extensions on loan closings were necessary the defendant broker successfully negotiated and obtained them from the defendant company. When the defendant company notified the defendant broker that it would not finance any further agreements, the defendant broker arranged for a compromise agreement between the plaintiff and the defendant company which provided that the plaintiff would prepay the original loan at a four per cent penalty fee. The plaintiff did not know that this four per cent fee was to be divided equally between the defendants. Upon discovery of this secret agreement the plaintiff filed suit claiming, inter alia, that the broker had violated its fiduciary duty as an agent for the plaintiff. The jury granted the plaintiff compensatory damages from both defendants and punitive damages from the defendant broker. The broker claimed on appeal that his agency obligation to the plaintiff ended when the plaintiff accepted the company's loan commitment because the broker's fee was paid at the time of acceptance. This court found, however, that the broker had acted as the plaintiff's agent during the loan prepayment negotiations and had breached his duty to the plaintiff. Testimony concerning the broker's instructions to the plaintiff not to have any direct contact with the defendant company and the broker's active participation in the prepayment negotiations provided sufficient evidence to support the conclusion that the broker was a special agent. After the broker had created the fiduciary relationship with the plaintiff by entering the negotiations, the court held that the broker had secretly competed with and was disloyal towards the plaintiff when he negotiated with the defendant company and agreed to the prepayment terms which benefitted him. The court upheld the trial court's finding that the broker was a special agent who had breached his fiduciary duty to the plaintiff. The court also upheld all damages awarded by the lower court. Armstrong v. Republic Rly. Mfg. Corp., 631 F.2d 1344, 1348.
C.A.8, 1977. Com. (b) quot. in ftn. and subsec. (1) quot. in disc. but not fol. After judgment was entered against a corporate agricultural marketing association in an action brought by a buyer of grain due to the association's failure to fulfill a grain sale contract, the association sought indemnification from a farmer as the alleged principal of the transaction. The trial court held that where the marketing association had served only as the farmers agent for the purpose of procuring buyers for the farmer's grain and where due to the farmer's failure to deliver to the buyer, the association was forced to pay damages, the farmer was obligated to indemnify the association. On appeal, the court affirmed, holding that there was sufficient evidence for a jury to conclude that the farmer and the association were principal and agent, that under general principles of agency law the association was entitled to indemnification for its loss due to the farmer's failure to perform a contract which he had authorized the agent to enter into, and that it was proper to award the association damages subject to a reduction in the amount of any losses the farmer sustained due to alleged breaches by the principal. Minnesota Farm Bur. v. North Dakota Agr. Marketing, 563 F.2d 906, 910.

C.A.8, 1976. Subsec. (1) quot. in sup. A dealer, characterized in a contract with defendant as an independent contractor, set up and sold dry cleaning franchises as "going businesses", in the course of which activity he made misrepresentations to potential franchisees and tied the availability of the franchises to purchases of cleaning equipment and other products. In a suit by franchisees on fraud and antitrust claims, the court held, inter alia, that where the defendant engaged in an extensive and continuous campaign to direct the dealer in the distribution of the franchises, there was sufficient evidence to submit the issue of agency to a jury. Northern v. McGraw-Edison Co., 542 F.2d 1336, 1343.

C.A.9

C.A.9, 2009. Quot. in case quot. in sup. Member of Roman Catholic Church who was allegedly sexually abused as a minor by his parish priest sued the Holy See and others, claiming, inter alia, that the Holy See was vicariously liable for the actions of priest's bishop/employer and the archdiocese and religious order to which priest belonged; Holy See asserted immunity as a foreign sovereign under the Foreign Sovereign Immunities Act (FSIA). The district court denied the Holy See's motion to dismiss plaintiff's claims of vicarious liability that were not based in fraud. Reversing that portion of the decision, this court held that the district court lacked jurisdiction under the FSIA over the Holy See for the tortious acts allegedly committed by the archdiocese, the bishop, and the order; while plaintiff alleged that those entities were agents of and corporations created by the Holy See, plaintiff failed to allege the type of day-to-day control required to overcome the presumption of separate juridical status. Doe v. See, 557 F.3d 1066, 1080.

C.A.9, 2006. Com. (e) cit. in sup. Insured carrier sued its cargo-liability insurer for breach of contract, seeking indemnification after it settled shippers' claims for lost and damaged packages in underlying lawsuits. The district court granted summary judgment for defendant. Reversing in part and remanding, this court held, inter alia, that genuine issues of material fact existed as to whether the United States Postal Service (USPS) was a covered agent of plaintiff, and as to whether, for purposes of coverage, plaintiff retained responsibility and liability for packages once they were handed off to the USPS for delivery to the final consignee. The court stated that coverage under a cargo-liability policy that insured the cargo while it was under the carrier's care, custody, and control was not dependent on a formal agency relationship between the primary carrier and any independent contractors. Airborne Freight Corp. v. St. Paul Fire & Marine Ins. Co., 472 F.3d 634, 636.

C.A.9, 2006. Cit. in sup. Debtors sued collection agency, its employee, and its attorney, alleging, among other things, that employee contacted them in violation of the Fair Debt Collection Practices Act. The district court, inter alia, granted summary judgment for attorney. Affirming that portion of the decision, this court held that attorney was not vicariously liable for the actions of agency or employee, in part because debtors failed to present any evidence that attorney exercised control over agency's or employee's conduct or activities. The court observed that, on the contrary, the evidence demonstrated that agency
instructed attorney not to speak with debtors, and that attorney complied with that instruction. Clark v. Capital Credit & Collection Services, Inc., 460 F.3d 1162, 1173.

C.A.9, 2004. Cit. in disc. Interracial couple and builder filed complaint against real-estate company, its president/owner, and the individual salesman who allegedly violated fair housing laws and prevented couple from buying builder’s house. District court dismissed the action. On remand, this court reversed and remanded, holding, inter alia, that, pursuant to the general common law of agency, president had personal duty to supervise sales force, he had delegated this duty to salesman, and salesman's alleged discrimination was within the scope of his agency and sufficient to impose liability on president, as principal, for failure of agent to fulfill duties of principal. Holley v. Crank, 386 F.3d 1248, 1255.

C.A.9, 1997. Subsec. (1) quot. in disc. A seaman was injured when he slipped and fell down a stairway that led from the deck into the engine room. The seaman sued the company to which the United States Navy had chartered the ship, alleging causes of action under the Jones Act, the Suits in Admiralty Act, and general maritime law for negligence and unseaworthiness. District court granted the chartering company summary judgment. This court affirmed, holding that because it concluded that the charterer was operating the ship as the agent for the government, the seaman's action against the charterer was barred under the Suits in Admiralty Act. A number of provisions in the agreement indicated that the charterer consented to operate the ship on the government's behalf and subject to its overall control. Dearborn v. Mar Ship Operations, Inc., 113 F.3d 995, 997.

C.A.9, 1994. Subsec. (1) cit. in headnote and in disc. Two of three banks that participated in a multibank loan to a computer company that subsequently went bankrupt sued the third bank for, inter alia, gross negligence in breach of its fiduciary duty as agent for the plaintiffs, alleging that they were damaged as a result of defendant's failure to file a new financing statement listing all three banks as secured creditors under a new line of credit. This court reversed the district court's grant of summary judgment for defendant and remanded. Stating that the credit agreement signed by the parties provided that defendant was liable only for its own gross negligence or willful misconduct, the court held that whether defendant was guilty of gross negligence or willful misconduct could not be determined as a matter of law; what was gross negligence in a particular case was an issue of fact to be determined by the trier of fact. Chemical Bank v. Security Pacific Nat. Bank, 20 F.3d 375, 375, 377.

C.A.9, 1993. Subsec. (1) quot. in sup. The consignee of a precision lathe sued an ocean carrier and others for damage to the lathe after it was unloaded but before it was released from the seaport. Cumulative liability was limited, under the package liability limit of the Carriage of Goods by Sea Act, to $500 for all defendants, including the stevedore services firm alleged to have caused the damage, and this outcome was affirmed on appeal. The “Himalaya clause” in the bill of lading extended the carrier's liability limits to third parties performing services on its behalf. This was based on the finding that the seaport operator was acting as agent for the carrier when it hired the stevedore services firm, so that the carrier was a party to that contract. Mori Seiki USA, Inc. v. M.V. Alligator Triumph, 990 F.2d 444, 450.

C.A.9, 1990. Cit. and quot. in ftn. The National Labor Relations Board (NLRB), adopting the recommendations of a hearing officer, held that an employer had violated the National Labor Relations Act by refusing to bargain and to provide requested information to a union that had just won a representation election. Affirming, this court held that the fact that an employee uttered religious and ethnic slurs against the employer during the election did not warrant invalidating the election, and that because the employee was not acting as the union's agent when he uttered the slurs, the slurs were not attributable to the union. The court stated that despite the employee's vigorous support for the union, he participated in its campaign only to a limited degree; he attempted to solicit only three signed union authorization cards and never obtained even one. Also, the union neither knew of nor condoned the employee's abhorrent comments; thus, the employee lacked apparent authority to represent the union. Did Bldg. Services, Inc. v. N.L.R.B., 915 F.2d 490, 496.

C.A.9, 1989. Cit. in disc. An employee sued her employer and an employee-sponsored credit union for sex discrimination under Title VII after she was denied credit disability benefits for two pregnancies. The district court denied the plaintiff's motion for
partial summary judgment and granted the defendants’ cross-motion for summary judgment on the ground that the employer had no control over the credit union’s management or personnel decisions or over its credit disability insurance policy. Affirming, this court held that the district court correctly found that the credit union was not the agent of the employer for Title VII purposes. The court rejected the plaintiff’s argument that, to establish agency, control by the principal was not required and that it was sufficient to establish cooperation, participation, and interaction between the employer and the third party. Morgan v. Safeway Stores, Inc., 884 F.2d 1211, 1214.

C.A.9, 1984. Subsec. (1) cit. in sup. Employer sought review of an NLRB order requiring it to recognize a local union as the exclusive representative of its employees. Contending that only the international union was the authorized representative, the employer had refused to bargain with the local unless the international was also a party to any agreement. The local responded that the international did not want to be a party so as to avoid liability in the event of a breach. This court vacated the order and remanded, finding that the employer had no duty to bargain with the local because the local was not the agent of an authorized representative where its behavior was inconsistent with having consented to agency status. Whisper Soft Mills, Inc. v. N.L.R.B., 754 F.2d 1381, 1386.

C.A.9, 1983. Cit. in ft. in disc. The petitioner, an employer, brought this action to set aside an order of a Regional Director of the National Labor Relations Board (N.L.R.B.). The N.L.R.B. cross-petitioned to enforce the order. A union had been attempting to organize and represent workers at the employer's factory. An organizing committee of pro-union workers had been formed and its members trained by the union to convince the workers to support the union drive. The union also used its own employees to aid in organizing the workers. A representation election was held and the union prevailed. The employer objected to the election results on the ground that union agents and supporters had created an atmosphere of fear of intimidation prior to the election. The N.L.R.B. conducted an ex parte investigation and overruled the employer's objection. The N.L.R.B. did this despite the testimony and affidavits of workers who said their persons and property were threatened by organizing committee members and other pro-union workers. The employer's request for a formal evidentiary hearing was denied, and the union was certified by the N.L.R.B. as the bargaining agent. The employer refused to deal with the union and the presently contested bargaining order was issued. This court denied the N.L.R.B.'s motion to enforce the bargaining order and remanded the matter to the N.L.R.B. for a full evidentiary hearing. This court found the proffered evidence of the employer too substantial to be dismissed out of hand by the N.L.R.B. A hearing was necessary to determine if the members of the organizing committee and other pro-union workers were agents of the union or were cloaked by the union with apparent authority to act in its behest. Abusive acts by agents of the union could cause the election to be overturned. The Restatement was quoted to define the agency concepts. May Dept. Stores Co. v. N.L.R.B., 707 F.2d 430, 433.

C.A.9, 1982. Subsec. (1) cit. in sup. The defendants, who fraudulently purchased a majority of a corporation's stock from the plaintiff on behalf of the members of a pooling agreement, and who were the record owners of the control group's stock but were the beneficial owners of only 30 percent of the stock, were ordered by the federal district court to completely disgorge all profits received by them only for the shares for which they were the beneficial owners. The plaintiff appealed, alleging that the damage computation, on the remand to the district court, was inconsistent with the mandate of this court. On appeal, the plaintiff argued that the defendants should have had to disgorge the profits from the sale of all shares which they purchased because they were the agents for the undisclosed principals, the control group, in purchasing the shares, and as such were controlling persons against whom liability should have been fixed. This court responded that agency was the fiduciary relationship resulting from the joint manifestation of consent by one person that another shall act on his behalf and subject to his control, and of consent by that other so to act. Since the control group merely provided funds for the stock purchases and had no other involvement in the defendant's management, the relationship between the two was more like that of a trust. The court held that the defendants were not the control group's agents. Judgment affirmed. Nelson v. Serwold, 687 F.2d 278, 282.

C.A.9, 1974. Quot. in sup. Consolidated suits arising out of a collision between a steamship and a drydock. The plaintiff, owner of the steamship, brought suit against the defendant, operator of the drydock into which the ship was attempting to enter, for
damages to the vessel and resultant damages. Defendant filed a counterclaim against plaintiff for damages to the drydock and for money spent in repairing the ripped hull. Defendant also filed a third party complaint against the towboat which employed the special pilot and the tugboats. While entering under the control of a special pilot employed by Shipowners & Merchants Towboat Company, Ltd., the steamship, either on account of the flowing tide or an eastward breeze, struck a submerged portion of the drydock. This collision ripped a hole in the vessel damaging it and its cargo. This cargo was insured by four companies who were also involved in suits and cross-suits with the plaintiff and defendant. The court found the plaintiff, the towboat, and the special pilot not liable. The court reversed, however, the lower court's decision on the defendant's exemptions and immunities.

The court held that the defendant was a contractor employed by the steamship owner in performing work undertaken in bills of lading and was intended by the parties to be entitled to the immunities of the Carriage of Goods by Sea Act with respect to liability for negligence in navigation and management. The court also held that the drydock operator was the agent of the carrier with respect to the repair of the steamship and could not contractually be exculpated from its negligence, case law not having modified the old common law rule. Even though the bill of lading attempted to extend certain immunities of the carrier to the noncarrier defendant, the court would not permit the complete exemption of liability for negligence, since this was repugnant to public policy. Grace Line, Inc. v. Todd Shipyards Corp., 500 F.2d 361, 373.

C.A.9, 1973. Quot. but dist. The plaintiff automobile dealer brought an action under the federal and state Automobile Dealer's Franchise Acts against defendants, an automobile manufacturer and a distributor, for injunctive relief and damages, alleging that defendants unlawfully terminated plaintiff's nonexclusive dealership, and that the manufacturer insisted that plaintiff accept allotted automobiles under a threat of non-renewal of the dealership. On plaintiff's appeal from summary judgments for defendants, the court affirmed, and held that plaintiff had no cause of action under either act where the agreements between the plaintiff and the manufacturer, and between the distributor and the manufacturer had terminated prior to the alleged conspiracy to unlawfully terminate plaintiff's dealership, and where the plaintiff did not show that the distributor was the agent of the manufacturer in entering into past contracts with the plaintiff, or that the manufacturer's representatives were acting as the distributor's agents while allegedly attempting to coerce plaintiff. Stansifer v. Chrysler Motors Corporation, 487 F.2d 59, 64.


C.A.9, Bkrtcy.App. 2011. Sec. and com. (b) cit. in disc. Debtor objected to proofs of claim filed by party to master repurchase agreements through which party had sold debtor's loans to buyer, alleging that party failed to show that it had express authority to file the proofs of claim as buyer's authorized agent. The bankruptcy court held that party had authority to file the proofs of claim. Affirming, this court held that the bankruptcy court did not err when it determined that buyer's express authorization for party to pursue buyer's interests in debtor's case necessarily included an authorization to file the disputed claims. In re Palmdale Hills Property, LLC, 457 B.R. 29, 47.

C.A.9, Bkrtcy.App. 1995. Com. (b) quot. in case quot. in sup. Trustee in bankruptcy brought suit to recover funds transferred in fraudulent conveyance involving purchase of property. Shortly before an involuntary Chapter 7 petition was filed against debtor, its president transferred funds into an escrow account for the purpose of buying a personal residence. Trustee sought to recover the realtor's commission, contending that realtor was the initial transferee of the funds and that, under the relevant sections of the Bankruptcy Code, the transaction could be avoided. Affirming the bankruptcy court's grant of summary judgment for realtor, this court held that debtor's president was the initial transferee since he was the first one to possess the sums in that he, as principal, had dominion and control over them upon their deposit with the escrow agent. In re Presidential Corp., 180 B.R. 233, 238.

C.A.10
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

C.A.10, 2007. Subsec. (1) cit. in sup. Gibraltar corporation brought action for breach of fiduciary duty against Swiss corporation that it retained to administer its day-to-day finances, alleging that defendant permitted a Colorado attorney to overcharge it for legal services and misappropriate its funds. The district court granted defendant's motion to dismiss for lack of personal jurisdiction. Affirming that portion of the decision, this court held, inter alia, that Colorado attorney was not defendant's agent. Noting that plaintiff, rather than defendant, had hired attorney, the court reasoned that there was no indication that defendant had control over, or even the right to control, attorney's actions, that attorney was acting on defendant's behalf, or that attorney's actions could legally bind defendant in any way. Melea, Ltd. v. Jawer SA, 511 F.3d 1060, 1069.

C.A.10, 2003. Subsec. (1) quot. in sup. Registered broker-dealer and investment adviser, who was also chief executive officer of investment firm, petitioned for review of disciplinary order by Securities and Exchange Commission for securities laws violations, including fraud and misrepresentation. This court held, inter alia, that firm committed fraud and breached fiduciary duties to customers by misrepresenting reasons for amendment to customer agreement and failing to inform customers that it was profiting by trading as principal. The court also held that disciplinary order against broker responsible for firm's nondisclosures was warranted. Geman v. S.E.C., 334 F.3d 1183, 1189.

C.A.10, 2003. Quot. in disc. Homeowners who were unsuccessfully charged with felony menacing and ethnic intimidation sued Jewish civil rights group and its director for defamation, invasion of privacy, and violations of federal wiretap statute arising from statements made by group and director regarding plaintiffs' allegedly anti-Semitic behavior against their Jewish neighbors, which were based on intercepted cordless phone conversations. Jury awarded plaintiffs damages. This court affirmed in part, holding that there was sufficient evidence of principal/agent relationship between group and neighbors' attorneys to support jury's verdict against group on federal wiretap claims based on attorneys' conduct in representing neighbors. Quigley v. Rosenthal, 327 F.3d 1044, 1064, certiorari denied 540 U.S. 1229, 124 S.Ct. 1507, 158 L.Ed.2d 172 (2004).

C.A.10, 2003. Quot. in case quot. in disc., cit. and quot. in ftn. Federal grand jury indicted president and vice president of Salt Lake City Bid Committee for 2002 Olympic Winter Games on 15 bribery-related counts of criminal conduct, after defendants bribed members of International Olympic Committee (IOC). On government's appeal of district court's dismissal, defendants argued that IOC members were not IOC's agents or fiduciaries under criminal bribery statute. This court reversed and remanded, holding, inter alia, that the question of a principal-agent/fiduciary relationship between IOC and its members was one of fact that government must establish and against which defendants may defend. IOC entrusted its members with power to select, on IOC's behalf, the host city for Olympic Games, and members appeared subject to IOC's control. U.S. v. Welch, 327 F.3d 1081, 1102.

C.A.10, 2002. Quot. in disc. Departmental Appeals Board of the Department of Health and Human Services upheld the imposition of a civil monetary penalty against hospital for violation of the “reverse-dumping” provisions of the Emergency Medical Treatment and Active Labor Act. Denying hospital's petition to set aside the determination, this court held, inter alia, that, because hospital physician had actual authority to refuse the patient transfer, hospital was bound by the refusal under principles of Oklahoma agency law. St. Anthony Hosp. v. U.S. Dept. of Health and Human Services, 309 F.3d 680, 703.

C.A.10, 2000. Cit. in diss. op. Non-Indian operator of hotel on property held in fee simple but surrounded by tribal lands brought a declaratory-judgment action against members of the Navajo Tax Commission, seeking a ruling that the Navajo Nation had no jurisdiction to impose a hotel occupancy tax on plaintiff's guests. Affirming the district court's grant of summary judgment for defendants, this court held, inter alia, that the Navajo Nation's exercise of civil authority over plaintiff's non-Indian guests arose out of a consensual relationship between the Nation and the guests. The dissent argued, in part, that the fact that the guests were served by plaintiff's Navajo employees in no way gave rise to a consensual relationship between the guests and the Nation, since, under agency law, plaintiff's employees represented plaintiff, not the Nation. Atkinson Trading Co. v. Shirley, 210 F.3d 1247, 1271, reversed 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889 (2001).
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

C.A.10, 1996. Quot. in case quot. in disc. A Missouri tourist who was seriously injured in a skiing accident in Wyoming sued the Austrian manufacturer of the ski bindings for breach of warranty, strict product liability, and negligence, alleging that the bindings were defectively designed, manufactured and/or assembled. Wyoming federal district court denied the manufacturer's motion for summary judgment, holding that it had in personam jurisdiction over defendant. This court reversed and remanded, holding, inter alia, that plaintiff did not meet her prima facie burden of establishing that the district court could exercise general jurisdiction over defendant. Although it was not inconceivable that an agency relationship existed between defendant and its American independent distributor, plaintiff did not introduce evidence sufficient to permit the court to draw that conclusion. Thus, the court could not impute to defendant any contacts its distributor had with Wyoming in its efforts to market products made by defendant. Kuenzle v. HTM Sport-Und Freizeitgerate AG, 102 F.3d 453, 459.

C.A.10, 1990. Cit. in disc. A director of a corporation was also a director and shareholder of several other companies. The corporation purchased a gold mine and sold working interest in it to investors, who each paid a share of the mine development expenses. When the development capital was exhausted and the mine yielded no gold, the corporation billed the investors for additional expenses. It then sued the investors, who refused to pay. The investors counterclaimed for fraud and impleaded the corporation's director, alleging that his other companies were his alter ego and seeking to make those companies responsible for the director's misdeeds. The district court found for the investors. Reversing, this court held, inter alia, that, although the director had participated in breaching the duty of care inherent in the principal-agent relationship between the corporation and its investors, that was not sufficient grounds for piercing the corporate veil because each company was organized and managed as a separate entity. Cascade Energy and Metals Corp. v. Banks, 896 F.2d 1557, 1577, cert. denied 498 U.S. 849, 111 S.Ct. 138, 112 L.Ed.2d 105 (1990).

C.A.10, 1989. Quot. in disc., quot. in case cit. in disc. An employee who was injured while performing maintenance on a plastic injection molding machine sued the plant manager, alleging that the manager had knowingly instructed the plaintiff to use a hazardous maintenance method. The district court entered judgment on a jury verdict for the defendant, and the plaintiff appealed the court's exclusion as hearsay of testimony of the plaintiff's wife concerning a conversation between her husband and the plant's foreman about a new maintenance procedure for the molding machine. Affirming, this court rejected the plaintiffs' argument that the challenged testimony was nonhearsay concerning a statement by an opposing party's agent, made within the scope of the agency: an agency relationship between the declarant foreman and his coemployee, the defendant, was not established since it was not clear whether the defendant, at the time of the foreman's statements, had exercised any control over the foreman's activities. Boren v. Sable, 887 F.2d 1032, 1038.

C.A.10, 1986. Cit. in disc. A brokerage house customer sued the brokerage house after he lost nearly $50,000, asserting state law claims for breach of contract and breach of fiduciary duty and claims under the federal Commodity Exchange Act. The trial court awarded the customer $47,000 in damages and $2 million in punitive damages. This court reversed and remanded, holding, inter alia, that on remand the trial court should not refer to fiduciary duty in instructing the jury on the cause of action under the Commodity Exchange Act and that, when referring to fiduciary duty under the state claims, the jury instructions must be narrower than those given by the trial court. Finally, the court held that the customer had ratified any trading irregularities in his account. Hill v. Bache Halsey Stuart Shields, Inc., 790 F.2d 817, 824.

C.A.10, 1975. Quot. and fol. and com. (b) quot. in part in sup. Plaintiffs brought suit to rescind oral contracts for the purchase of interests in oil and gas ventures, alleging that they had done so on the basis of fraudulent representations made by one of defendants, an agent for the other. The agent contended that he resided in the same state as plaintiffs and was dropped as a party defendant. The other defendant, the principal of the exploration corporation, and resident of another state, moved to vacate that order, alleging that the agent was an indispensable party and moved to dismiss on the ground that should the agent be reinstated as a party, there would be a lack of complete diversity between all plaintiffs and all defendants, defeating the court's subject matter jurisdiction. He also alleged that the agent was, in fact, not acting as his agent in the state, and that thus there was no basis for in personam jurisdiction over a nonresident principal. The trial court ruled that the agent was an indispensable party
and granted the principal's motion to dismiss on both grounds claimed. This court reversed, holding that the agent was not an indispensable party, as the contract they sought to rescind was with the principal, not with the agent, and the checks had been made payable directly to the principal. Under these circumstances, the agent had no personal interest in the contract, and relief could be accorded between the parties. The court rejected defendant's argument that the agent was not really acting as his agent, and held that the principal was subject to service under the state long-arm statute. It also rejected the defendant's distinction between "agent" and "independent contractor" and stated that the terms were not necessarily mutually exclusive. Milligan v. Anderson, 522 F.2d 1202, 1205-1206.

C.A.10, 1970. Cit. in sup. The petitioner dairy company sought review of an NLRB order requiring it to cease and desist from refusing to bargain with a newly certified union of milk distributors. The petitioner contended that the milk distributors were independent contractors and not employees. The court granted the petition for review, citing the facts that the company paid no commission, salary, or expenses to the distributors, and that the distributors did not collect money for the company or represent it in any manner, in order to distinguish the relationship between the company and the distributors from agency. Meyer Dairy Inc. v. NLRB, 429 F.2d 697, 702.

C.A.10, 1960. Sec. and com. (e) cit. in dictum. In action for sum allegedly promised to plaintiff by defendant for services rendered to defendant, defendant disclaiming liability because of breach of agency relationship, question of whether plaintiff was agent of defendant in particular transaction was for jury. Appleby v. Kewanee Oil Co., 279 F.2d 334, 336.

C.A.10, 1959. Cit. in sup. In action by employer against national union and local union, extrinsic evidence was allowed to establish whether national union could be cited as principal or agent when it participated “for and on behalf of” local and signed “for and on behalf of” local. United Packinghouse Workers v. Maurer-Neuer, Inc., 272 F.2d 647, 648, certiorari denied 362 U.S. 904, 80 S.Ct. 611, 4 L.Ed.2d 555.

C.A.11

C.A.11, 2012. Quot. in fn. After his state-court conviction for first-degree murder was affirmed, death-row inmate petitioned for federal habeas corpus relief. The district court dismissed the petition. Affirming, this court held that inmate was not entitled to equitable tolling of the one-year limitations period for filing his federal habeas corpus petition by his lawyers' miscalculation of the filing deadline for his state petition. The concurring opinion argued that an exception for death-row inmates should be made to the principle that a client was responsible for his lawyer's actions, so that the lawyer's negligence did not preclude federal review of constitutional claims. Hutchinson v. Florida, 677 F.3d 1097, 1104.

C.A.11, 2012. Cit. in case quot. in fn. Home purchasers sued companies involved in the development and marketing of a residential community, alleging, among other things, that defendants, as seller's agents, breached their duty to disclose that the houses were located in close proximity to a World War II bombing range laden with unexploded bombs, ammunition, and related chemicals. The district court dismissed this claim with prejudice. Affirming, this court held, inter alia, that plaintiffs failed to prove that defendants marketed the community and participated in the sales to plaintiffs as seller's agents, since plaintiffs' claim was missing the critical element of any agency relationship—that the principal exercised, or had the ability to exercise, control over the agent; nothing in plaintiffs' complaint came close to alleging that seller controlled defendants, and the fact that defendants were agents of one another and acted in concert did not establish this control element. Virgilio v. Ryland Group, Inc., 680 F.3d 1329, 1336.

C.A.11, 2011. Subsecs. (1) and (2) and com. (e) cit. in fn., com. (c) quot. in fn., com. (d) cit. and quot. in fn. After worker, who had been sent by labor broker to assist operator of longshoring facilities in loading a cargo ship, was paralyzed from the waist down when a heavy piece of cargo being loaded into the ship's hold fell on him, he brought a negligence action against operator,
claiming that the negligence of defendant's employees caused his injury. The district court granted summary judgment for defendant. Affirming, this court held that plaintiff's negligence claim against defendant was barred by the Longshore and Harbor Workers' Compensation Act, which had created a federal no-fault workers' compensation program that compensated injured maritime employees; defendant was plaintiff's borrowing employer at the time of plaintiff's injury, and thus was immune from tort liability under the Act's exclusivity provision. The court reasoned that plaintiff consented to being defendant's borrowed servant, he was doing defendant's work when he was injured, and defendant had the right to control his work. *Langfitt v. Federal Marine Terminals, Inc.*, 647 F.3d 1116, 1120, 1121.

**C.A.11, 2009.** Cit. in sup. Independent federal regulatory agency that administered and enforced the Commodities Exchange Act (CEA) sued, among others, nonbank futures commission merchant and corporation that solicited members of the public to invest and trade in foreign currency options, alleging that merchant was vicariously liable for corporation's violations of the CEA. After a bench trial, the district court granted judgment in favor of merchant. Affirming, this court held, inter alia, that under the CEA, the test for vicarious liability was common-law agency, and that corporation was not acting as merchant's agent when it violated the CEA, because merchant did not consent to an agency relationship with corporation or control corporation. *Commodity Futures Trading Com'n v. Gibraltar Monetary Corp., Inc.*, 575 F.3d 1180, 1189.

**C.A.11, 2000.** Subsec. (1) quot. in sup. Plaintiff, who on three occasions had been removed by police officers from the entrance to a reproductive-health facility and had been charged with violating a state-court injunction prohibiting antiabortion protesters from entering a buffer zone in front of the facility, sued the facility and others, alleging that the police officers, as defendants' agents, violated his rights under the Freedom of Access to Clinic Entrances Act by preventing him from counseling individuals as they entered and left the facility. Affirming the district court's grant of summary judgment for defendants, this court held, inter alia, that plaintiff failed to prove that the police acted as defendants' agents, since there was no evidence that the police were subject to defendants' control. *Raney v. Aware Woman Center for Choice, Inc.*, 224 F.3d 1266, 1268, cert. denied 532 U.S. 971, 121 S.Ct. 1602, 149 L.Ed.2d 468 (2001).

**C.A.11, 1997.** Cit. in ftn. Mother, on behalf of her daughter, sued board of education and two public school officials for, inter alia, violations of Title IX, alleging that defendants were liable for a fellow student's sexual harassment of daughter. The district court dismissed the complaint. Affirming, this court held, in part, that Title IX did not create a cause of action against public schools and school officials that failed to remedy or prevent student-on-student sexual harassment because Congress gave no clear notice that liability for such conduct could be imposed on those schools that chose to accept federal funds under Title IX. The court refused to use Title VII standards of liability to resolve the case, explaining that liability under Title VII rested on agency principles, and students were not school boards' agents. *Davis v. Monroe County Bd. of Educ.*, 120 F.3d 1390, 1400, reversed 526 U.S. 629, 119 S.Ct. 1661, 143 L.Ed.2d 839 (1999).

**C.A.11, 1993.** Cit. in disc. A city employee sued the city and its mayor, alleging that a lateral transfer was retaliation for her threat to file a discrimination suit. This court, reversing the district court's judgment on a jury verdict for the employee and remanding for further proceedings, held, inter alia, that the city could be held liable under the employee's Title VII claim, as the mayor was acting within the scope of his employment when he decided to transfer the employee, and he had used his agency relationship with the city to assist him in his unlawful retaliation. *Goldsmith v. City of Atmore*, 996 F.2d 1155, 1162.

**C.A.11, 1992.** Quot. in sup. Group health insurer sued its former insured, an operator of a chain of convenience stores, for compensatory damages for an alleged breach of contract, arguing that defendant was liable for benefits overpayments made by an insurance agent working on defendant's behalf. Affirming the district court's entry of judgment for defendant, this court held, inter alia, that the district court did not err in finding that the insurance agent acted as plaintiff's, rather than as defendant's, agent in processing claims, since the evidence showed that, pursuant to an agreement between plaintiff and the insurance agent, the agent received a 6% commission from plaintiff for his work, plaintiff authorized the agent to sign checks on plaintiff's account to
make benefits payments, and, if the agent had not processed the claims, plaintiff would have performed that task itself. First Nat. Life Ins. v. Sunshine-Jr. Food Stores, 960 F.2d 1546, 1552, cert. denied 506 U.S. 1079, 113 S.Ct. 1045, 122 L.Ed.2d 354 (1993).

C.A.11, 1991. Subsecs. (1)-(3) quot. in disc. A former Air Force reserve officer who accepted a position with a private contractor was convicted of violating government employee conflict-of-interest rules. Reversing and vacating in part, this court held that there was insufficient evidence to sustain the government's burden of proving that the defendant, in his new capacity as employee for the contractor, acted as the contractor's agent at a meeting concerning a project on which the defendant had participated while employed by the government. The court said that the government produced no evidence that the contractor had given the defendant authority to make any binding decisions on its behalf at the meeting, and the government, in fact, had stipulated that the contractor's spokesperson at the meeting was another employee, whom the defendant merely had accompanied. U.S. v. Schaltenbrand, 930 F.2d 1554, 1560, rehearing denied 942 F.2d 798 (11th Cir.1991).

C.A.11, 1987. Cit. in disc. The defendant corporation obtained a loan, secured by 870,000 shares of stock in a Florida bank, from the plaintiff bank. When the Florida bank fell into financial difficulty, plaintiff and defendant entered into an agreement whereby plaintiff, using its right to vote the pledged stock, elected new directors to the Florida bank's board. Plaintiff later brought this foreclosure action due to defendant's continued default; defendant counterclaimed and added certain board members as third-party defendants, alleging that the Florida bank's stock declined dramatically in value because of the new board's mismanagement. The district court granted summary judgment for plaintiff on all claims and counterclaims. This court reversed and remanded, holding, inter alia, that whether an agency relationship existed between plaintiff and the board members so that plaintiff would be vicariously liable for the board members' actions was an issue of fact, precluding summary judgment. Citibank, N.A. v. Data Lease Financial Corp., 828 F.2d 686, 691, rehearing denied 833 F.2d 1021 (1987).

C.A.11, 1982. Quot. in part in sup. A secured creditor repossessed a debtor's automobile without legal process, as permitted by state law. Shortly thereafter, the debtor filed for Chapter 13 bankruptcy. The trustee in bankruptcy filed a complaint for possession of the automobile, asserting that the creditor was a “custodian” as defined by the Bankruptcy Act and was therefore required to return the car under the Act's turnover provisions. The trustee argued that the creditor was an agent of the debtor and a “custodian” under the Bankruptcy Act because of fiduciary obligations, imposed by state law, governing the sale of collateral by a creditor. The bankruptcy court held that the creditor was not a custodian, and the district court agreed with that conclusion. This court stated that an agency relationship required that one person act on behalf of and subject to the control of another. Because the creditor acted in its own interest in repossessing the auto, the court determined that the creditor was not an agent of the debtor as that term was used in cases construing the Bankruptcy Act. The court affirmed the lower courts' conclusion that a secured creditor who repossessed property by self-help was not a “custodian” within the meaning of the Act. Flourney v. City Finance of Columbus, Inc., 679 F.2d 821, 823.

C.A.D.C.

C.A.D.C.2004. Com. (a) quot. in case cit. in disc. Iranian organization petitioned for review of the Secretary of State's orders declaring it to be an alias of another Iranian group (MEK) that had previously been declared to be a foreign terrorist organization (FTO), and accordingly designating it an FTO. Rejecting petitioner's challenge to its designation as FTO, this court held, inter alia, that the Secretary had voluminous support for its conclusion that petitioner was dominated and controlled by, and thus was an alias of, MEK; therefore, designation as an FTO was proper. National Council of Resistance of Iran v. Department of State, 373 F.3d 152, 158.

C.A.D.C.2003. Cit. in case quot. in sup., com. (a) cit. in case quot. in sup. Employer sought review of the decision and order of the National Labor Relations Board (NLRB) finding that employer committed unfair labor practices by refusing to hire two union organizers and failing to assign work to a third. Denying the petition for review, and granting the NLRB's application for
enforcement, the court held, inter alia, that the NLRB properly rejected employer's affirmative defense that the union organizers were properly denied work because of their disabling conflicts, stating that a worker could be an “employee,” within the terms of the National Labor Relations Act, even if, at the same time, a union paid that worker to help the union organize the company. Casino Ready Mix, Inc. v. N.L.R.B., 321 F.3d 1190, 1196.

C.A.D.C.2000. Quot. in disc. Organizations that leased marine equipment to shipping company owned by Venezuelan government sued government, alleging, among other things, that it was derivatively liable for company's breaches of contract. The district court denied government's motion to dismiss. Dismissing this count of the complaint, this court held that, despite its ownership interest, government did not exercise sufficient control over company, nor did it invest company with either actual or apparent authority to act on its behalf, such that the agency exception to the general rule of sovereign immunity applied. Transamerica Leasing v. La Republica de Venezuela, 200 F.3d 843, 849, on remand 2000 WL 1529801 (D.D.C.2000).

C.A.D.C.2000. Subsec. (1) and com. (a) cit. in ftn. Employee of Environmental Protection Agency sought declaration that 18 U.S.C. § 205, which prohibited federal employees from acting as the agent or attorney of private groups in certain matters in which the United States had an interest, did not prevent him from remaining active in various volunteer groups dedicated to environmental preservation. The district court entered summary judgment against employee. Reversing and remanding, this court held that, under the circumstances, the conflict-of-interest restrictions of § 205 were inapplicable to employee and the volunteer activities in which he participated. Van Ee v. E.P.A., 202 F.3d 296, 310.

C.A.D.C.1996. Cit. in disc. Private corporation that sought to become the administrator of an electronic benefits transfer (EBT) program established by the Department of Treasury challenged Treasury's decision to solicit interested parties by invitation for expressions of interest (IEI), rather than by bid. Corporation alleged that, because IEI required Treasury to appoint a federal financial agent, it was foreclosed from consideration, while Treasury maintained that only a federal financial agent could legally administer the EBT system. The district court granted Treasury's motion for summary judgment. Reversing and remanding, this court held that it was not necessary to appoint a federal financial agent, because Treasury was authorized to designate an agent to do the acts it could do, and because, contrary to Treasury's belief, the selected EBT administrator became the agent of the recipient of the transferred funds, not an agent of Treasury. Transactive Corp. v. U.S., 91 F.3d 232, 240.

C.A.D.C.1988. Quot. in case quot. in disc. Black construction workers sued a local union and the international union, charging that various requirements for admission discriminatorily denied black roddmen the benefits of union membership. The trial court found for the plaintiffs. Affirming in part and reversing in part, this court held, inter alia, that the international was vicariously liable for the discriminatory conduct of its local on the basis of an agency relationship under which the local acted on behalf of the international and was subject to its control. Berger v. Iron Workers Reinforced Rodmen Local 201, 843 F.2d 1395, 1429.

C.A.D.C.1986. Cit. generally in disc. The Attorney General brought an enforcement action against a small weekly ethnic newspaper, seeking an injunction to compel the publisher to register as an agent of a foreign principal pursuant to the Foreign Agents Registration Act (FARA). The trial court granted summary judgment for the plaintiff, rejecting the defendant's selective prosecution affirmative defense. This court affirmed the disposition of the defense, but reversed and remanded the summary judgment, holding that there were disputed issues as to whether the publisher was an agent under FARA. The court reasoned that the fact that a registered political group provided financial support and shared office space with the defendant failed to establish that the newspaper acted at the political group's order or request, or that the group was acting as an intermediary between the newspaper and the Irish Republican Army. Attorney Gen. of United States v. Irish People, 796 F.2d 520, 525.

C.A.D.C.1983. Cit. in sup. Some subcontractor employees filed third-party negligence actions following receipt of their workmen's compensation awards. The actions were filed against either the safety engineer or the contractor. Several issues were addressed by the district court in which the actions were brought, and the appeals were consolidated. This court affirmed the lower court's grants of summary judgment to the safety engineer, in which the engineer was held immune from negligence
actions because it was an agent of the contractor. In light of the unqualified use of the word “agent” in the contract between the contractor and the safety engineer, this court found no reason to distinguish between servant and independent contractor agents in this case. Moreover, this court found both the consent and control necessary to sustain an agency relationship. Johnson v. Bechtel Associates Professional Corp., 717 F.2d 574, 579, judgment reversed 467 U.S. 925, 104 S.Ct. 2827, 81 L.Ed.2d 768 (1984), rehearing denied 468 U.S. 1226, 105 S.Ct. 26, 82 L.Ed.2d 919 (1984).

C.A.D.C.1982. Cit. in disc. A Liechtenstein corporation sought an order confirming an arbitration award made on a contract with the Republic of Guinea. The district court granted the order. The court of appeals reversed, holding that the court lacked subject matter jurisdiction to confirm the award because Guinea was immune under the Foreign Sovereign Immunities Act. Guinea did not waive its immunity by agreeing to submit future disputes under the contract to an international arbitration panel located in Washington, D.C., since the contract expressly stated that the law of Guinea would be used to interpret the contract. Guinea did not waive its immunity by engaging in a commercial activity in the United States when it requested that an American shipping company prepare a feasibility report for transporting bauxite pursuant to the contract. No agency agreement was created between them because there was no indication that Guinea authorized the company to perform any actions on Guinea's behalf in the United States. Guinea did not waive its immunity by causing a direct effect on an American company, because the company's involvement was not contemplated by the terms of the contract; therefore the company could not claim loss of anticipated profits. General expectation of profit from a contract involving a foreign country was not sufficient to establish jurisdiction over a foreign country. Maritime Intern. Nominees v. Republic of Guinea, 693 F.2d 1094, 1107.

C.A.Fed.

C.A.Fed.2010. Cit. in case quot. in sup. Patent holder sued competitor, alleging infringement of its patents regarding content delivery over the Internet. The district court entered a judgment as a matter of law for defendant, overturning a jury verdict for plaintiff. Affirming, this court held that plaintiff failed to prove infringement based on the actions of defendant and its customers as joint parties, because there was nothing to indicate that defendant's customers were performing any of the steps of the claimed method as agents for defendant; an essential element of agency was the principal's right to control the agent's actions, and, here, defendant's customers decided what content, if any, they would like delivered by defendant's service and then performed the step of “tagging” that content. Akamai Technologies, Inc. v. Limelight Networks, Inc., 629 F.3d 1311, 1319.

C.A.Fed.2002. Subsec. (1) cit. in case quot. in sup. Owners and operators of tobacco vending machines in three separate actions sued the United States, alleging that tobacco vending machine regulations promulgated by the Food and Drug Administration (FDA) effected a temporary regulatory taking of their property. In one of the cases, the district court granted the government summary judgment on the ground that the regulations were never enforced by the FDA, and therefore no temporary taking could have resulted. On consolidation of the three cases, this court affirmed, rejecting plaintiffs' argument that the states, acting as agents for the federal government, enforced the regulations in contravention of the judicial stay against the FDA; no agency relationship could be present because the federal government evinced no intent to create one. Brubaker Amusement Co., Inc. v. U.S., 304 F.3d 1349, 1360, cert. denied 538 U.S. 921, 123 S.Ct. 1570, 155 L.Ed.2d 311 (2003).

C.A.Fed.2000. Subsec. (1) quot. but dist. Distributor of cigarette-vending machines brought action against federal government, alleging that legislation conditioning state funding on states' promise not to sell cigarettes to minors interfered with distributor's contracts with the state of California and constituted a taking of its property. The Court of Federal Claims entered summary judgment for government. Affirming, this court held that California, a sovereign entity, was not acting as an agent of the federal government when it decided to restrict the placement of vending machines in order to receive funding, and that government's enactment of the legislation did not amount to a taking. B & G Enterprises, Ltd. v. U.S., 220 F.3d 1318, 1323, certiorari denied 531 U.S. 1144, 121 S.Ct. 1079, 148 L.Ed.2d 956 (2001).
§ 1 Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

C.A.Fed. 2000. Quot. in disc. Employee challenged her dismissal from the Department of Housing and Urban Development (HUD) for acting before HUD as the agent of a private party. The Merit Systems Protection Board upheld the termination. Affirming, this court held that, while the dismissal was supported on other grounds, employee, who had no authority, actual or apparent, to act on behalf of the third party whose position she allegedly advocated before HUD, was not party's agent within the meaning of the applicable statute. O'Neill v. Department of HUD, 220 F.3d 1354, 1360, certiorari denied 531 U.S. 1197, 121 S.Ct. 1202, 149 L.Ed.2d 116 (2001).

C.A.Fed. 1995. Quot. in disc. Pharmaceutical corporation sought injunction against competitor for patent infringement. Defendant, arguing that the patent was invalid for failure to disclose the best mode of practicing the invention, alleged that plaintiff's executives knew of a better method than that discovered by the inventor. Affirming the district court's judgment for plaintiff, this court held that the statutory requirement that the patent applicant disclose the best mode contemplated by the inventor meant that the inventor himself had to possess actual knowledge of the best mode and another party's awareness of a better method could not be imputed to him because no agency relationship existed for purposes of filing a patent application. The dissent believed that plaintiff, in order to maintain a competitive edge, deliberately withheld the best mode from the inventor, rendering imputing necessary to protect public interests. Glaxo Inc. v. Novopharm Ltd., 52 F.3d 1043, 1052.

C.A.Fed. 1986. Subsec. (1), com. (b) cit. in disc. A priest who taught at a nonsecular university sued the United States to recover income taxes assessed against and paid by him. The trial court found for the United States, and the priest appealed. Affirming, this court held that the priest's membership in the religious order did not make him ipso facto an agent of the order even though all his wages were given to the order. There was enough evidence, said the court, to support the trial court's finding that the priest was not working as an agent of his order but as an individual subject to having his income taxed. Fogarty v. United States, 780 F.2d 1005, 1012.

Ct.Int'l Trade

Ct.Int'l Trade, 2005. Subsec. (1) quot. in sup. United States Customs Service brought an action against importers of track suits manufactured in the People's Republic of China, seeking to recover unpaid duties and a civil penalty. Granting in part plaintiff's motion for partial summary judgment, this court held, inter alia, that because defendants' freight forwarder committed customs violations in the performance of his duties as defendants' agent, defendants were liable as principals for duties unpaid as a result of the freight forwarder's fraud. The court found that the uncontroverted facts firmly established that defendants engaged forwarder as their agent. U.S. v. Pan Pacific Textile Group, Inc., 395 F.Supp.2d 1244, 1251.

Ct. Int'l Trade

Ct. Int'l Trade, 1986. Com. (b) cit. in case cit. in disc. An importer challenged U.S. Customs' appraisal of merchandise because it included a buying commission paid to an agent as an element of dutiable value. Affirming the government's valuation of the imported merchandise, this court held that the importer failed to introduce sufficiently persuasive evidence to prove that a bona fide principal-agent relationship existed, and therefore failed to overcome the presumption of correctness that attached to the government's determinations of dutiable value. New Trends, Inc. v. United States, 645 F.Supp. 957, 960.

U.S.Cl.Ct.

U.S.Cl.Ct. 1992. Subsec. (1) quot. in disc. Plaintiff, who was certified as a Saudi Arabian interpreter by the United States Department of State, provided translation services to the Customs Service pursuant to an interagency agreement. When the Customs Service terminated his services, plaintiff sued the United States for breach of contract, arguing that he had an
employment contract with the Customs Service that superseded his employment arrangement with the State Department and that the State Department acted only as the Customs Service's agent. Granting defendant's motion for summary judgment, the court held, inter alia, that there was no principal-agent relationship between the Customs Service and the State Department giving rise to direct liability on the part of the Customs Service to plaintiff, since there was no evidence that the State Department ever consented to act under the control of the Customs Service or as its fiduciary in dealing with plaintiff. The court concluded that although plaintiff established the existence of a valid express contract with the Customs Service, he failed to prove any breach of the contract. Zoubi v. U.S., 25 Cl.Ct. 581, 586.

U.S.Cl.Ct. 1990. Subsec. (1) cit. in disc. Farmers who borrowed money from a government credit corporation using their corn as collateral exercised their option to sell the secured corn to repay the loan. By the time the government tried to process the check submitted to it by the buyer of the corn, the buyer was insolvent. The government received full payment of the loan by deducting the amount of the check from money it owed to the farmers. The farmers sued the government for breach of fiduciary duty because it failed to process the draft promptly. The court granted the government's motion for summary judgment, holding, inter alia, that the transaction between the parties in this case did not establish a principal-agent relationship, since the government was not subject, pursuant to the security agreement, to the control of the plaintiffs. Hubbs v. U.S., 20 Cl.Ct. 423, 428, decision affirmed 925 F.2d 1480 (Fed.Cir.1991).

U.S.Cl.Ct. 1987. Cit. but dist. Plaintiff was employed by an Indian tribe as chief judge. The tribe later entered into an agreement with the United States Bureau of Indian Affairs whereby the government would provide funding for the criminal justice program on the reservation. Eight months after entering into this agreement, the tribe placed the judge on indefinite furlough due to lack of funds. The judge sued the United States for his salary and benefits under the employment agreement, alleging that he was in privity of contract with the United States because the tribe was acting as the government's agent in entering into the employment agreement. This court granted the defendant's motion to dismiss, holding, inter alia, that no agency relationship existed because neither the employment contract nor the funding agreement indicated that the tribe was authorized to act on the government's behalf. Erikson v. United States, 12 Cl.Ct. 754, 756.

Ct.Fed.Cl.

Ct.Fed.Cl. 2006. Subsec. (1) quot. in ftn. Pro se plaintiff brought suit alleging that a Vermont hospital and a national data bank, as purported agents for United States, violated, inter alia, the Takings Clause of the Fifth Amendment by creating and circulating a document containing allegedly false information about plaintiff that ultimately led to the loss of his medical licenses in two states. Granting United States' motion to dismiss, this court held, inter alia, that plaintiff did not allege any facts supporting the allegation that United States induced the states to revoke his medical licenses. The court noted more specifically that there was no showing of any fiduciary relationship resulting from any consent by either hospital or data bank to act on behalf of the United States as its agent. Agee v. U.S., 72 Fed.Cl. 284, 288.

Ct.Fed.Cl. 2006. Quot. in case quot. in disc., com. (b) cit. in disc. Thrift holding company sued United States, alleging that its passage of the Federal Institutions Reform, Recovery and Enforcement Act breached the supervisory merger contract between the parties. Upon defendant's claim that plaintiff committed a prior material breach of the contract, this court granted plaintiff's motion to strike, as hearsay, statements made by one of its original investors to other potential investors. The court held that investor was not an agent or subagent of plaintiff for purposes of raising capital for conversion to a stock savings bank and communicating with potential investors, and thus his statements were not admissible as admissions by a party opponent. The court reasoned that, while the testimony given indicated that investor was asked to provide referrals to plaintiff, there was no indication that plaintiff controlled or even authorized the content of investor's statements. First Annapolis Bancorp, Inc. v. U.S., 72 Fed.Cl. 369, 376, 377.
Ct.Fed.Cl. 2006. Subsec. (1) quot. in case quot. in disc. Lineal descendants of members of the Mdewakanton band of Sioux Indians who assisted settlers in Minnesota during an 1862 outbreak of hostilities sued the United States as trustee for breach of a trust provided for the benefit of the so-called loyal Mdewakanton. This court granted the motion of the Lower Sioux Indian Community, one of the Indian communities charged by the federal government with administering trust property, to intervene as a party aligned as a plaintiff, holding, inter alia, that the community possessed standing to intervene, and was entitled to intervene as of right pursuant to the rules of this court. The court observed that the community, in accepting the government's delegation to it of trusteeship responsibilities as custodian of the trust corpus, assumed a fiduciary role as agent of the United States. Wolfchild v. U.S., 72 Fed.Cl. 511, 529.

U.S.Cust.Ct.

U.S.Cust.Ct. 1971. Cit. in sup. This was an appeal by a United States importer for a reappraisement in relation to tools imported from Japan. The plaintiff claimed that a certain Mr. Chatani, a Japanese national, was acting as its agent in Japan. The court held that the preponderance of evidence established that there was no agency relationship between the plaintiff and Chatani as to the merchandise at issue, but rather, the record established that Chatani was acting as a seller pursuant to its agreement with the plaintiff to deliver the goods at a fixed f.o.b. point of shipment price. The court held that the plaintiff had not overcome the presumption of correctness attaching to the appraiser's finding that Chatani was not a bona fide agent. Globemaster Midwest Inc. v. United States, 337 F.Supp. 465, 469, 470.

M.D.Ala.

M.D.Ala. 2004. Quot. in case quot. in disc. Pig seller brought suit against, among others, owner of corporate buyer, alleging, in part, that defendant was liable for the fraudulent and negligent misrepresentations of buyer's officer, as his agent. Granting defendant's motion to dismiss, the court held, inter alia, that plaintiff failed to make out a prima facie case of personal jurisdiction over defendant on the basis of officer's agency, since there was no evidence that defendant manifested consent for officer to act on his behalf and subject to his control, that officer's actions were meant to benefit defendant, that defendant had the power to control officer's actions, or that officer consented to act as defendant's agent. South Alabama Pigs, LLC v. Farmer Feeders, Inc., 305 F.Supp.2d 1252, 1261.

M.D.Ala. 1999. Quot. in sup., com. (b) quot. in sup. Former employee of spa/resort sued employer and management company that operated facility for, inter alia, discriminatory discharge and retaliation in violation of 42 U.S.C. § 1981. Granting in part and denying in part defendants’ motions for summary judgment, the court held, among other things, that plaintiff had established a prima facie case for racially discriminatory discharge and retaliation, and that employer's control over management company's operation of the resort was sufficient to suggest the existence of an agency relationship between the defendants, despite language in the management agreement indicating an intent to disclaim any such affiliation. Carr v. Stillwaters Development Co., L.P., 83 F.Supp.2d 1269, 1279.

M.D.Ala. 1999. Quot. in disc. Mother sued two hospitals, alleging that her infant daughter was denied a medical screening examination in violation of the Emergency Medical Treatment and Active Labor Act. This court granted second hospital summary judgment, holding, inter alia, that the first hospital's employees were not subagents of the second hospital. By agreeing to take on the responsibility of hiring, firing, and otherwise managing the first hospital's employees, the second hospital did not agree to assume primary responsibility for them. Zeigler v. Elmore County Health Care Authority, 56 F.Supp.2d 1334, 1337.

S.D.Ala.
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

S.D.Ala. 1987. Cit. in disc. In an action arising out of the carriage of certain cargo, an issue was raised as to whether an agent improperly purported to act as agent for two companies in a potential conflict of interest situation and then abandoned one company when the conflict arose. The court found, inter alia, that the agent did purport to act as agent for two companies and, when it received conflicting instructions, it intentionally ignored instructions from one company while contemporaneously following instructions of the other, thereby acting at its own peril and rendering itself liable to losses occasioned by its failure to adhere to instructions. The court explained that agency was a fiduciary relationship that resulted from one person's consent to another that the other shall act on his behalf and subject to his control and consent by the other so to act. The court concluded that, in the absence of full disclosure to and consent by each principal, it was improper for an agent to attempt to serve two principals with differing interests. Naviera Despina, Inc. v. Cooper Shipping Co., Inc., 676 F.Supp. 1134, 1141.

D.Ariz. 1995. Com. (e) cit. in case cit. in sup. A securities firm and an employee of the firm brought an action for defamation, tortious interference, and commercial disparagement against the law firm and attorneys that had served as class counsel in litigation against the securities firm. Defendants counterclaimed for breach of contract, unjust enrichment, promissory estoppel, and fraud, arising out of the resolution of the securities litigation. The court granted plaintiffs' motion to dismiss the counterclaims, stating that defendants lacked standing to pursue the counterclaims; since defendants as class counsel were agents of the class and thus were not parties to the resolution, whatever harm resulted from the resolution was sustained by the class, not by class counsel. In re American Continental/Lincoln Sav. & Loan, 884 F.Supp. 1388, 1397.

D.Ariz. 1993. Cit. in sup. Class of Medicaid beneficiaries challenged sufficiency of behavioral health services provided to eligible children. Granting in part plaintiffs' motion for partial summary judgment, the court held, inter alia, that allegedly impermissible reductions of Medicaid services, made by regional behavioral health authorities, were taken on behalf of the state and, thus, amounted to state action even if the authorities were considered independent contractors. J.K. By and Through R.K. v. Dillenberg, 836 F.Supp. 694, 699.

W.D.Ark. 1999. Com. (b) quot. in case quot. in sup. After being injured in a car accident due to the other driver's faulty breaks, accident victims sued the muffler shop franchisee and its franchisor for negligently failing to properly repair or replace the brakes. This court granted the franchisor summary judgment, holding, inter alia, that there was no fact issue as to whether an agency relationship existed between franchisor and franchisee. There was no evidence that franchisor exercised actual control over franchisee's shop, as franchisor did not control the manner in which franchisee hired and fired employees, trained and supervised employees, or performed services. Jones v. Filler, Inc., 43 F.Supp.2d 1052, 1056.

C.D.Cal. 2007. Com. (e) quot. in sup. Consumers brought a putative class action against retailer under the Fair Credit Reporting Act, alleging that retailer violated the statute's Fair and Accurate Credit Transactions Act (FACTA) by printing more than the last five digits of consumers' credit-card numbers on customer receipts. Denying defendant's motion for summary judgment, this court held that triable issues of fact existed as to the willfulness of defendant's FACTA violation, including the issue of defendant's vicarious liability for the actions of its independent contractor who developed and implemented the software modification that caused the violation. The court noted that a reasonable jury could find that the independent contractor was defendant's agent for vicarious-liability purposes, or that defendant vested contractor with actual or apparent authority to make the software revision. Edwards v. Toys “R” Us, 527 F.Supp.2d 1197, 1213.
§ 1 Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

C.D.Cal.2006. Cit. in sup., cit. in cases cit. in sup., cit. in ftn. (general cite). Purported debtors sued debt collector and its law firm that sought to collect a debt on a credit card that plaintiffs allegedly never possessed, asserting, among other things, violations of the Fair Debt Collection Practices Act (FDCPA). Denying in part debt collector's motion to dismiss, this court held, inter alia, that debt collector could be held vicariously liable under the FDCPA for law firm's debt-collection efforts on its behalf. The court rejected debt collector's argument that it was not liable for law firm's actions because law firm was its independent contractor, noting that attorneys were, as a matter of law, both independent contractors and agents of their clients, and that courts routinely held debt collectors vicariously liable under the FDCPA for the conduct of their attorneys collecting debts on their behalf. Oei v. N. Star Capital Acquisitions, LLC, 486 F.Supp.2d 1089, 1095.

C.D.Cal.2001. Quot. in disc., cit. in case cit. in disc., com. (b) cit. in case cit. in disc. Equal-opportunity-housing association and African-American building manager sued city and director of landlord association that practiced tenant screening, alleging, in part, that defendants engaged in unfair housing practices in violation of federal and state laws. Denying in part city's motion for summary judgment, the court held, inter alia, that a genuine issue of material fact existed as to whether an agency relationship existed between city and director of landlord association. Inland Mediation Bd. v. City of Pomona, 158 F.Supp.2d 1120, 1139.

C.D.Cal.1997. Subsec. (1) quot. in disc. and cit. in headnote. Cargo insurer sued ocean and rail carriers for nondelivery of cargo, negligence, and breach of contract, among other claims, arising from freeze damage to foodstuffs shipped from Japan. One defendant argued that it entered into a direct contractual relationship with another defendant because it contracted with the other defendant's agent. This court held, inter alia, that the purported agent was acting as the other defendant's agent when it hired defendant, and that the other defendant was therefore a party to the contract. Tokio Marine & Fire Ins. Co., Ltd. v. Kaisha, 25 F.Supp.2d 1071, 1072, 1079.

C.D.Cal.1994. Cit. in disc. Patent holder brought a patent infringement suit against, among others, licensor of trademark used by manufacturer/distributor on shoes that allegedly improperly incorporated flashing-light device covered by plaintiff's patent. Granting defendant's motion for summary judgment, the court held, inter alia, that there was no material issue of fact as to whether an agency relationship existed between defendant and manufacturer/distributor pursuant to which defendant could be held vicariously liable for manufacturer/distributor's infringing acts on the ground that defendant, through the licensing agreement, exercised sufficient control over manufacturer/distributor. The court said that plaintiff offered no affirmative evidence to support its theory, inasmuch as trademark license agreements did not in and of themselves create an agency relationship and the license agreement at issue indicated that defendant exercised only minimal control over manufacturer/distributor's activities. L.A. Gear, Inc. v. E.S. Originals, Inc., 859 F.Supp. 1294, 1299.

E.D.Cal.

E.D.Cal.2013. Cit. in case quot. in sup. Borrower's brother brought an action for, inter alia, violations of the Fair Debt Collection Practices Act (FDCPA) against bank and bank's law firm, which incorrectly named him as a defendant in bank's collection action against borrower, alleging that his credit rating was negatively affected by the default judgment that was entered against him and the judgment lien that attached to his property before he became aware of the action, and that he incurred attorney's fees in moving to vacate the default judgment. Denying in part defendants' motion to dismiss, this court held, inter alia, that, even though bank was not a "debt collector" within the meaning of the FDCPA, it could be held vicariously liable for law firm's FDCPA violations. The court reasoned that holding non-"debt collector" creditors vicariously liable for their attorneys' actions created needed incentives for creditors to monitor their attorneys' compliance with fair-debt-collection laws. Huy Thanh Vo v. Nelson & Kennard, 931 F.Supp.2d 1080, 1089.
E.D.Cal. 1995. Cit. in disc. Individuals who wrote bad checks for retail purchases sued a debt collection agency, the collection agency's in-house attorney, and an outside law firm hired by the agency, alleging that defendants' debt collection practices of demanding more than the face value of the checks and threatening litigation where none was actually anticipated violated the Fair Debt Collection Practices Act and California law. Defendants argued that the law firm defendants, while under contract with the collection agency, were independent contractors and not agents for the purpose of the agency's vicarious liability. This court, among other dispositions, granted plaintiffs' motion for summary judgment concerning collection agency's vicarious liability for the acts of the other defendants. It determined that the agency, by allowing the outside attorneys to identify themselves to third parties as the agency's representatives, had made itself responsible for the acts of the attorneys performed in the course of that representation. Newman v. Checkrite California, Inc., 912 F.Supp. 1354, 1370.

N.D.Cal.

N.D.Cal. 2001. Quot. in disc. After manufacturer of network switchers brought suit for breach of contract and breach of express warranty against supplier for providing circuits that failed to meet specifications, defendant removed the action to federal court, asserting that plaintiff's claims were governed by the United Nations Convention on Contracts for the International Sale of Goods (CISG). Denying plaintiff's motion to remand to state court, this court rejected plaintiff's argument that a nonexclusive distributor of defendant's products was defendant's agent for purposes of establishing defendant's place of business in the United States. The court found that defendant's place of business that had the closest relationship to the contract and its performance was Canada, and that the contract thus implicated the CISG. Asante Technologies, Inc. v. PMC-Sierra, Inc., 164 F.Supp.2d 1142, 1148.


N.D.Cal.Bkrtcy.Ct. 2002. Cit. in ftn. In adversary proceeding involving dispute over licensee's right to use debtor's trademarks, licensee moved for partial summary judgment that language of sublicensing agreement between licensee and debtor's United Kingdom subsidiary gave it the right to set off against its monthly license payments to debtor sums not paid to it by debtor's subsidiary. Denying the motion, the court held that a genuine issue of material fact existed as to whether an agency relationship existed between debtor and its subsidiary so as to bind debtor under the sublicensing agreement. Stating that English law governed the agency determination, the court noted that relevant English substantive law on creation of agency was similar to United States law, under which agency could be established by an express or implied agreement between principal and agent, or by apparent or ostensible agency. In re Centura Software Corp., 281 B.R. 660, 665.

S.D.Cal.

S.D.Cal. 2013. Cit. in sup. Homeowner who defaulted on her mortgage loan sued, among others, designated broker for corporation that had assisted her in applying for the loan, alleging, inter alia, that defendant was vicariously liable under California's Unfair Competition Law for the actions of corporation's employees in violating the Truth in Lending Act (TILA) by misstating her monthly income and forging her signature to ensure that she would qualify for the loan. Denying defendant's motion to dismiss, this court held that, while a designated broker was not personally liable under California law for the failure to supervise corporate employees, plaintiff pled sufficient facts to allege an agency relationship between defendant and corporation for purposes of holding defendant vicariously liable, because plaintiff alleged that an actual agreement existed between defendant and one of corporation's employees to ensure compliance with the TILA, in which defendant would review loan documents each week, and the employee would be responsible for the day-to-day supervision of corporation's other employees, including the employees who solicited, prepared, and executed plaintiff's loan. Rose v. Seamless Financial Corp. Inc., 916 F.Supp.2d 1160, 1168.
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

D.Colo.

D.Colo. 2007. Subsec. (1) quot. in case quot. in ftn. Lender sued borrowers for defaulting on a promissory note without justification; borrowers counterclaimed, alleging that the default was excused on grounds of negligent misrepresentation and fraudulent nondisclosure. Granting lender summary judgment on the counterclaims, this court held, inter alia, that borrowers alleged insufficient facts to support a finding that lender owed a fiduciary or confidential duty to borrowers beyond any established by the parties' loan agreement and, to the extent the agreement created an agency relationship between the parties by establishing lender as “attorney in fact” for borrowers for purposes of making disbursements to third parties, the economic-loss rule barred borrowers from pursuing tort claims based on a breach of that relationship. Alpine Bank v. Hubbell, 506 F.Supp.2d 388, 408.

D.Colo. 1996. Cit. in headnote, quot. in sup. Military officer sued for violation of the Right to Financial Privacy Act (RFPA), seeking a preliminary injunction to enjoin the Air Force from using, photocopying, or disseminating his financial records obtained from financial institutions that issued him government charge cards. Denying plaintiff's motion, the court held, inter alia, that, pursuant to the language and legislative history of the RFPA, settled agency principles, and the underlying contracts, the Air Force was, as a matter of law, plaintiff's “authorized representative” and, in that capacity, was a “customer,” entitled to plaintiff's financial records obtained from the financial institutions. The court concluded that there was no substantial likelihood that plaintiff would prevail on his RFPA claim so as to be entitled to a preliminary injunction. Russell v. Dept. of Air Force, 915 F.Supp. 1108, 1111, 1120.

D.Colo. 1993. Cit. in disc. The subcontractor of carriers that had contracted with the government to transport the personal belongings of military personnel brought a Federal Tort Claims Act action against the government when the carriers failed to pay the subcontractor because they were insolvent. In granting judgment for the government, the court held that the government was not liable under s 213 of the Restatement (Second) of Agency for alleged negligence in employing insolvent carriers because the contracts between the government and the carriers established no principal-agent relationship. The government was not liable under § 212 because there was no allegation that the government either directed or intended the allegedly tortious conduct of the carriers. Acme Delivery Service, Inc. v. U.S., 817 F.Supp. 889, 892.

D.Conn.

D.Conn. 2006. Cit. and quot. in sup. Town employee sued town and town officials, alleging that defendants promoted her and then refused to honor that promotion or to compensate her for performing additional responsibilities. Granting in part defendants' motion to strike, this court held, inter alia, that the pertinent materials submitted by plaintiff included inadmissible double hearsay not subject to any hearsay exception. The court reasoned that defendant official's alleged initial statement to other town officials that plaintiff had an open case with the town and he did not want her in a supervisory role was nonhearsay because defendant official was an agent of a party, i.e., town, and his statement concerned a matter within the scope of his employment; however, there was no such hearsay exception for fire commissioner's second-level repetition of the statement to plaintiff, because commissioner was subject to defendant official's administrative supervision and was not town's agent. Lewis v. Town of Waterford, 239 F.R.D. 57, 61.

D.Conn. 2004. Quot. in disc. Sponsor/administrator of self-funded employee-benefit health plan brought suit against plan supervisor, alleging breach of contract, breaches of ERISA and common-law fiduciary duties, and negligence, after defendant failed to notify plaintiff that a beneficiary's medical treatment would not be covered. Denying in part defendant's motion to dismiss the fiduciary-duty claim, this court found, inter alia, that because the plan supervisor agreement provided that defendant was an “agent” of plaintiff, defendant owed plaintiff a common-law fiduciary duty that arose from its manifestation of consent
to act on behalf of plaintiff, while remaining under plaintiff's control. Mortgage Lenders Network USA, Inc. v. CoreSource, Inc., 335 F.Supp.2d 313, 323.

D.Conn. 2003. Quot. in sup., coms. (a) and (b) quot. in sup., com. (e) cit. in ftn. A man fell to his death down empty elevator shaft after repair company employee propped open elevator door with a screwdriver and left entranceway unattended and unbarricaded. Decedent's surviving spouse sued elevator trademark licensor, repair company, and company that installed elevator for negligence and recklessness on principal/agent theory. This court granted defendants summary judgment, holding, inter alia, that plaintiff did not establish agency relationship, since there was no manifestation by licensor that repair company and installation company acted on its behalf, and there was no acceptance by agents of undertaking. Even though licensor's employees routinely referred to repair company and installation company as licensor's agents, labels used by parties were not dispositive. Iragorri v. United Technologies Corp., 285 F.Supp.2d 230, 240, 241, 243.

D.Conn. 1999. Com. (b) quot. in case quot. in disc. Aviation insurer brought suit for, in part, a declaratory judgment that insured's aircraft insurance policy was void ab initio. Granting insurer's motion for summary judgment, the court held, inter alia, that insured's failure to disclose a prior conviction and license suspension on policy application was a material misrepresentation, rendering the policy void ab initio. Insured's disclosure of the information to his insurance agent was not imputed to insurer, since insurance agent was agent of insured and not of insurer. Ranger Ins. Co. v. Kovach, 63 F.Supp.2d 174, 184.

D.Conn. 1998. Cit. in headnote, cit. in case quot. in disc. After a psychiatric hospital resident sexually abused a patient, the patient sued the university that supervised the residency and a university faculty member who counseled the resident, alleging negligence, among other claims. This court granted in part and denied in part the university's motion for summary judgment, holding, inter alia, that the university was not liable under a respondeat superior theory, because the resident acted outside the scope of his employment. However, there was a fact issue as to whether the faculty member was the hospital's agent, as opposed to an independent contractor. Garamella For Estate of Almonte v. N.Y. Med. Coll., 23 F.Supp.2d 153, 154, 165.

D.Conn. 1998. Cit. in disc. Surplus lines insurer sought declaratory judgment as to its coverage obligations with respect to certain insureds. Dismissing the complaint, the court held that it lacked personal jurisdiction over plaintiff and its agents. General Star Indem. v. Anheuser-Busch Companies, 28 F.Supp.2d 71, 74.

D.Conn. 1995. Cit. in disc. Former altar boys who alleged they were sexually abused by their parish priest sued church and diocese, among others, for, inter alia, assault and battery. Plaintiffs maintained that defendants were liable for priest's acts under the doctrine of respondeat superior. Defendants moved for summary judgment. Granting the motion on all counts relating to respondeat superior, the court held that defendants were not liable for priest's tortious conduct because priest, who was not furthering defendants' business when he abused plaintiffs, was not acting within the scope of his employment at those times. Nutt v. Norwich Roman Catholic Diocese, 921 F.Supp. 66, 70.

D.Conn. 1993. Com. (b) cit. in sup. Corporation sued for temporary and permanent injunctions to restrain real estate developer from interfering with its leasehold interest after developer sold the land to another company in violation of its contract with corporation. The district court found, in part, that defendant breached its leasing contract with plaintiff and that company that purchased the land was also liable to plaintiff, since it had actual notice of the contract between plaintiff and defendant. It reasoned that purchaser's attorney knew of the parties' contract because he attended closing, procured a title insurance policy for defendant, and obtained a copy of parties' lease; hence, his knowledge could be imputed to purchaser. KMart Corp. v. First Hartford Realty Corp., 810 F.Supp. 1316, 1329.

D.Conn. 1991. Quot. in case quot. in disc. A patient who suffered permanent brain damage following a motorcycle accident sued a surgeon and anesthesiologist for negligence and sought to hold a hospital liable on the theory of respondeat superior. The court granted the hospital summary judgment, holding that because the physicians were independent contractors, not agents
of the hospital, the hospital was not liable for their negligence. The court said that there was no evidence that the hospital exercised any control over the manner in which the physicians practiced medicine. Menzie v. Windham Community Memorial Hosp., 774 F.Supp. 91, 94.

D.Conn. 1967. Cit. in ftn. in sup. The plaintiff insurer sought declaratory relief to declare it not liable on a renewal policy for auto liability insurance against the defendants: the insured, his son, and passengers in the auto, injured when the son drove the auto into a tree. The plaintiff's agent had earlier assured the defendant insured, after his request, that the policy would be renewed and that his son would be covered therein. However, shortly before the accident, the plaintiff had informed the agent it would not carry the son; but the insured was never informed of this. Having concluded that the agent was fully authorized by the plaintiff to accept offers and proposals for insurance contracts, that there was a manifestation of mutual assent by which the agent accepted the insured's offer for a renewal policy including his son, and that the insured's promise to pay premiums and his forbearance from seeking insurance elsewhere were sufficient consideration, the court found there to be a valid insurance contract and rendered judgment for the defendants. Westchester Fire Ins. Co. v. Tantalo, 273 F.Supp. 7, 17.

D.Del. 1985. Cit. in case cit. in sup. A corporation moved to disqualify a law firm from representing the plaintiff in an action against the corporation. The court granted the motion to disqualify the law firm, stating that the memorandum the law firm had prepared for an advisor, whom the court concluded to be an agent of the corporation, was sufficiently related to the current litigation to support the disqualification. The court stated that the law firm's contacts with the corporation and with the agent of the corporation created an attorney-client relationship between the law firm and the corporation, and that the benefits to the corporation in disqualifying the law firm would outweigh the prejudice to the plaintiff in negating its choice of counsel. Jack Eckerd Corp. v. Dart Group Corp., 621 F.Supp. 725, 732.

D.Del. 1978. Cit. in sup. Nigerian corporation sued a Kentucky corporation and two of its wholly owned subsidiaries both Delaware corporations, for breach of contract. The plaintiff alleged that Nigerian corporation, a subsidiary of the two Delaware corporations, acted as the agent of the three defendants at all times within the course and scope of its authority as such agent, and, since it was acting as the agent of the defendants in executing the contract with the plaintiff, the defendants, as principals, would be liable for damages for breach of contract, and the plaintiff was entitled to sue the principals without joining the agent. Defendants filed a motion to dismiss for failure to join the Nigerian subsidiary as an indispensable party, which the court granted. The court held that even though the Nigerian subsidiary and the Kentucky corporation conducted joint operations in a number of respects, where the Nigerian subsidiary, by virtue of Nigerian law and a production sharing contract, possessed different powers from the Kentucky corporation and conducted a separate business, had a substantial source of independent corporate assets, had accounts which were segregated within the Kentucky corporation's cash management program, and employed its own personnel, the Nigerian corporation possessed sufficient indicia of separate corporate existence that it could not be viewed as a mere agent or instrumentality of the Kentucky corporation: Since the contract had been entered into between the plaintiff and the Nigerian subsidiary, and since there was no agency relationship between the subsidiary and the named defendants, no judgment could be entered against the defendants. Japan Petroleum Co. (Nigeria) Ltd. v. Ashland Oil, Inc., 456 F.Supp. 831, 841.

D.D.C. 2010. Subsec. (1) quot. in sup. Three airmen brought suit under the state-sponsored-terrorism exception to the Foreign Sovereign Immunities Act against the Islamic Republic of Iran, its Ministry of Information and Security, and its Revolutionary Guard Corps, alleging that defendants provided material support and assistance to the terrorist organization responsible for the bombing of the Khobar Towers U.S. military housing complex, in which 19 servicemen were killed and hundreds injured, including plaintiffs. This court found that plaintiffs had established by sufficient evidence that defendants were responsible for
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the bombing, and accordingly awarded damages to plaintiffs. The court held, among other things, that terrorist organization was acting under the direction, and on behalf, of defendants, and thus was acting as their agent. Valencia v. Islamic Republic of Iran, 774 F.Supp.2d 1, 11.

D.D.C.2008. Cit. in case quot. in sup. Unionized pilot who was forced to retire from airline at age 60 sued local union and parent union for, among other things, allegedly breaching the collective bargaining agreement between local union and airline. Granting parent union's motion to dismiss, this court held, inter alia, that parent union was not a proper party to any breach-of-contract suit under the agreement. The court reasoned that the fact that local union maintained a link to parent union's website, shared common officers with parent union, and was closely affiliated with parent union on certain issues did not establish direct control by parent union over local union or show an agency relationship sufficient to hold parent union vicariously liable for local union's alleged acts. Carswell v. Air Line Pilots Ass'n Intern., 540 F.Supp.2d 107, 122.

D.D.C.2008. Subsec. (1) quot. in case quot. in sup. After employees of defense contractor were killed or injured in a terrorist truck bombing of a Saudi Arabian residential compound in which they were staying while training the Saudi Arabian National Guard (SANG), they and their family members sued the Kingdom of Saudi Arabia and SANG, alleging failure to provide adequate security for the compound. This court dismissed based on defendants' immunity under the Foreign Sovereign Immunities Act (FSIA), holding that the commercial-activity exception to the FSIA, under which a foreign state could surrender its immunity based upon the commercial acts of its agents within the United States, did not apply; here, there was no conceivable agency relationship between defendants and defense contractor, since defendants not only had no contractual relationship with contractor, but did not authorize contractor to recruit employees in the United States or have a right to control contractor's conduct in regard to such recruitment. Heroth v. Kingdom of Saudi Arabia, 565 F.Supp.2d 59, 66.

D.D.C.2007. Subsec. (1) quot. in case quot. in disc. Government contractor sued supplier, alleging, among other things, that defendant breached its fiduciary duty to plaintiff by failing to inform it that General Services Administration auditors had found defendant's prices defectively negotiated, thereby causing plaintiff to be investigated by federal agencies and to have its government contracting rights suspended. This court denied in part defendant's motion for summary judgment, holding, inter alia, that because a 1987 agreement creating a principal/agent relationship between plaintiff and defendant was in effect when defendant allegedly made its misrepresentations, defendant had a duty to provide plaintiff as its agent with information about risks of physical harm or pecuniary loss that it as principal knew, had reason to know, or should have known were present in plaintiff's work but unknown to plaintiff. C & E Services, Inc. v. Ashland, Inc., 498 F.Supp.2d 242, 264.

D.D.C.2007. Com. (a) quot. in case quot. in sup. Former officer of corporation brought qui tam action on behalf of United States under the False Claims Act against corporation's subsidiary, subsidiary's alleged joint venturer, and others, alleging that defendants conspired to rig the bidding for government construction contracts; joint venturer counterclaimed for breach of fiduciary duty, alleging that plaintiff concealed and delayed reporting the fraud. Granting plaintiff judgment on the pleadings as to the counterclaim, this court held, inter alia, that venture failed to identify a cognizable fiduciary duty owed to it by plaintiff. The court rejected venture's argument that plaintiff automatically became its, or joint venture's, agent or subagent by virtue of the parties entering the venture, noting that there were no allegations that any of the joint venturers agreed to such an arrangement. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., 505 F.Supp.2d 20, 31.

D.D.C.2005. Cit. in disc. Florida employee of Delaware corporation sued corporation and its Jordanian owner for sexual harassment, constructive discharge, and retaliation. This court granted plaintiff's motion for summary enforcement of parties' settlement agreement. The court held that because owner's business associate entered into settlement agreement with plaintiff while clothed in apparent authority created by owner's representations, owner was bound to agreement by operation of agency principles. The court stated that plaintiff failed to establish the elements of actual authority by a preponderance of the evidence. Samra v. Shaheen Business and Inv. Group, Inc., 355 F.Supp.2d 483, 503.
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D.D.C. 2004. Quot. in fn. Falun Gong practitioners, alleging a vast conspiracy against the practice of Falun Gong, brought action against, among others, an official of a Chinese-American association pursuant to conspiracy jurisdiction. Granting practitioners' request for jurisdictional discovery, this court held, inter alia, that although conspiracy jurisdiction was a form of long-arm jurisdiction, and the long-arm statute here provided for jurisdiction over persons acting directly, as well as their agents, personal jurisdiction, even if based on conspiracy, required purposeful availment; under agency-law analysis, there must have been consent by principal that other would act on principal's behalf and subject to principal's control, and consent by other to so act. Youming Jin v. Ministry of State Security, 335 F.Supp.2d 72, 80.

D.D.C. 2002. Quot. in sup. Foreign nation sued former ambassador and attorney, among others, alleging conversion of funds and breach of fiduciary duty in connection with change in government following civil war. Entering judgment for plaintiff, the district court held, inter alia, that attorney breached fiduciary duty to foreign nation by failing to perform lobbying tasks pursuant to contract and by failing to verify existence of conflict of interests between nation and ambassador. Gov't of Rwanda v. Rwanda Working Group, 227 F.Supp.2d 45, 63, appeal dismissed 2003 WL 1089896 (D.C.Cir.2003).

D.D.C. 1999. Cit. in case cit. in disc. Arrestee was repeatedly bitten by police dog belonging to officer of District of Columbia transit authority who was assisting district police officers in a search and arrest; he brought personal injury action against district. Defendant moved to dismiss on the ground that it was not liable for actions of officers of the transit authority, an independent law enforcement contractor. Denying the motion, the court held, in part, that defendant could be liable under principles of respondeat superior if plaintiff established that transit authority officer was acting as defendant's agent during the incident. Griggs v. Washington Metropolitan Area Transit Authority, 66 F.Supp.2d 23, 28.

D.D.C. 1996. Subsec. (1) quot. in case quot. in disc. Former employees brought a class action against employer, alleging employment discrimination on account of race and retaliation and intentional infliction of emotional distress. This court granted in part and denied in part defendant's motion to dismiss, holding, inter alia, that although the court may have general personal jurisdiction over defendant, plaintiffs had not yet made a prima facie showing that defendant's subsidiaries that employed plaintiffs in the District of Columbia had an agency relationship with the corporation. The court stated that the plaintiffs, with formal discovery on the jurisdictional issue, may be able to proffer sufficient evidence to show that the corporation and its subsidiaries had an agency relationship sufficient to afford the court personal jurisdiction over the corporation. Richard v. Bell Atlantic Corporation, 946 F.Supp. 54, 70.

D.D.C. 1996. Subsec. (1) quot. in disc. A United States citizen brought an action for breach of a distributorship agreement against, among others, a Japanese corporation that assumed contracts to produce and sell interactive software. Defendant moved to dismiss for lack of personal jurisdiction. Treating defendant's motion as one for summary judgment, the court denied the motion, holding, inter alia, that a genuine issue of material fact existed as to whether plaintiff was defendant's agent so as to subject defendant to personal jurisdiction in the District of Columbia under the “transacting business” provision of the District's long-arm statute. The court noted plaintiff's allegations of assisting defendant in negotiating and soliciting the assignment of the contracts and of performing several functions for defendant in the District, including making trips into the District on defendant's behalf. Schwartz v. CDI Japan, Ltd., 938 F.Supp. 1, 7.

D.D.C. 1990. Cit. in disc., coms. cit. generally in disc. A foreign clothing company had an agreement with an exclusive agent for the sale of its clothing in the United States. The foreign company sued the agent to collect outstanding sums for goods delivered to the agent, and for damages for breach of contract, misrepresentation, and interference with contract. After the foreign company won a default judgment, this court denied the defendant's motions to vacate default and to dismiss for failure to state a claim, holding, inter alia, that the foreign company did not have to duplicate the certification requirements to conduct business in the District of Columbia when its agent had already complied with the requirements; thus, the court rejected the defendant's claim that the foreign company's failure to fulfill this certification requirement barred it from maintaining this action. The court found an agency relationship between the company and the agent because the terms of the contract, the parties'
business communications, and the parties' actual dealings indicated that the company would retain control over most of the activities, leaving the agent responsible only for marketing and selling. Stock 'In S.A. v. Swissco, Inc., 748 F.Supp. 23, 27.

D.D.C.1987. Cit. in disc. Limited partners sued a general partner, the limited partnership's accountant, and the accountant's firm, asserting claims of negligence, willful misconduct, and aiding and abetting the fraudulent tax scheme of another general partner that caused the limited partners to incur financial losses. The court dismissed the complaint, holding in part that the negligence claim against the accounting firm was barred by the partnership agreement. The court stated that because the accountant and his firm were agents of the limited partnership and its general partners and the partnership agreement barred negligence claims against such agents, the plaintiffs were barred from asserting a negligence claim. Silverman v. Weil, 662 F.Supp. 1195, 1199, judgment affirmed 839 F.2d 824 (D.C.Cir.1988).

D.D.C.1986. Cit. in disc. A passenger, who was injured when the driver of the rented car in which she was riding fell asleep at the wheel and crashed into a guardrail, sued the car rental company for negligent entrustment of a vehicle and for liability due to the negligence of its agents, alleging that the driver and the person to whom the car had been rented were the company's agents. This court granted summary judgment to the rental company on both counts, holding that the relationship created by the rental of the car was a bailment, and did not entail sufficient control by the purported principal company over the purported agent driver to establish an agency relationship upon which liability could be based. Drummond v. Walker, 643 F.Supp. 190, 192, judgment affirmed 861 F.2d 303 (D.C.Cir.1988).

D.D.C.1984. Cit. generally in disc., cit. in ftn. The federal government brought this action to require a corporation that published a weekly newspaper to register as the agent of a foreign principal under the Foreign Agents Registration Act. On cross-motions for summary judgment, the publisher argued that the government must show that the foreign principal directed and controlled the actions of the publisher. This court, in granting summary judgment to the government on this issue, held that under the Act the government need only show that the publisher acted at the request of a foreign principal. Attorney General of the United States v. Irish People, 595 F.Supp. 114, 117, judgment affirmed in part, reversed in part 796 F.2d 520 (D.C.Cir. 1986.). See above case.

D.D.C.1984. Subsec. (1) cit. in disc. Agents of a van line brought antitrust action challenging the van line's new policy of requiring carrier agents to transfer independent operations to separate and distinct companies. The court granted summary judgment for defendant, holding that defendant's policy did not violate the Sherman Act. The court observed, inter alia, that although defendant had allowed agents to use its infrastructure to carry independent shipments in competition with defendant itself, agency law gave a principal the right to withdraw such permission if convenient to protect the principal's interests. Rothery Storage & Van Co. v. Atlas Van Lines, 597 F.Supp. 217, 232, judgment affirmed 792 F.2d 210 (D.C.Cir.1986), cert. denied 479 U.S. 1033, 107 S.Ct. 880, 93 L.Ed.2d 834 (1987).

D.D.C.1982. Cit. in sup. The plaintiff brought a tort action against a contractor that had contracted with the Washington Metropolitan Transit Authority (WMTA) to oversee the safety of its subway project and to administer various construction contracts in the field. The plaintiff, a worker on the project, alleged that he had contracted silicosis from exposure to unreasonably high levels of contaminants due to the defendant's negligence in the performance of its duties as safety overseer. The defendant moved for summary judgment on the ground that a section of the compact which created the WMTA provided that the WMTA was liable for the torts of its agents, and that the exclusive remedy for torts for which the WMTA was liable was suit against the WMTA. In granting the defendant's motion, the court held that the defendant was an agent for the WMTA because an independent contractor could have agent status, and the contract between the defendant and the WMTA showed a clear intent to establish an agency relationship. Thus, the plaintiff's suit against the defendant was barred by the compact, which directed that suit be brought against the WMTA for the torts of its agents. Johnson v. Bechtel Associates Professional Corp., 545 F.Supp. 783, 785.
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D.D.C.1982. Cit. in sup. An injured subway construction worker brought a negligence action against a company hired by the transit authority to supervise safety measures and ensure job safety at construction sites. The court granted the defendant's motion for summary judgment. The statute establishing the transit authority made the authority liable for torts committed by its agents. The court determined that the defendant was an agent of the transit authority, as well as an independent contractor, based on the degree of control retained by the authority over the defendant's operations, activities and personnel. As an agent of the transit authority, the defendant was immune from suit, and the injured plaintiff was permitted to amend his complaint to name the authority as defendant. Ludolph v. Bechtel Associates Prof. Corp., D.C., 542 F.Supp. 630, 633.

D.D.C.1981. Subsec. (1) quot. in part in sup. Plaintiff, a District of Columbia resident, was a former employee of defendant country club located in Maryland. The club's office manager had notified the Maryland police that a certain amount of money had been stolen from the club's cash drawer and that the plaintiff was seen leaving the club around the time the money was taken. After an investigation, the Maryland police obtained a warrant for the plaintiff's arrest. The warrant was forwarded to the District of Columbia Metropolitan Police Department for service, and the plaintiff was arrested and incarcerated. After extradition to Maryland, the plaintiff was incarcerated for ten days and released on bail. The state's attorney subsequently entered a nolle prosequi to the theft charges filed against the plaintiff. Plaintiff then brought this diversity action for false arrest, false imprisonment, malicious prosecution, and intentional infliction of emotional distress. The plaintiff asserted that personal jurisdiction over the club existed pursuant to a District of Columbia long-arm statute which authorizes personal jurisdiction over a person, who acts directly or through an agent, as to a claim for relief arising from the person's causing tortious injury in the District of Columbia by an act of omission in the District. The plaintiff alleged that the club acted through an agent in the District of Columbia since the club designated the Maryland police as its agent and that both the referral of the warrant to the District of Columbia police and the plaintiff's arrest and detention in the District of Columbia therefore may be attributed to the club. The court found that the Maryland police and the District of Columbia police did not act as agents of the club; rather, they were agents for the law enforcement administrations of their respective jurisdictions. The court noted that "agency" is the fiduciary relationship 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. The court found that the club exercised no "control" over the police officers and the fact that the club may have foreseen that the plaintiff would be arrested in the District of Columbia would not be enough to constitute an agency relationship. The court concluded that the club did not designate either the Maryland police or the District of Columbia police as its agents and that the club's only act, placing a call to report a theft, occurred outside the District of Columbia. Accordingly, the court held that personal jurisdiction over the club could not be based on the District of Columbia long-arm statute, and the club's motion to dismiss for lack of personal jurisdiction was granted. Lott v. Burning Tree Club, Inc., 516 F.Supp. 913, 917.

M.D.Fla.2012. Cit. in sup. Mortgage-loan buyer sued seller, asserting, among other things, a claim for breach of a loan-participation agreement. Granting summary judgment for defendant, this court held, inter alia, that plaintiff's breach-of-contract claim failed because plaintiff did not demonstrate defendant's willful misconduct or gross negligence, as required for liability under the agreement; plaintiff did not provide sufficient evidence to establish that an agency relationship existed between defendant and a limited-liability company that provided business loan support to plaintiff such that company's allegedly negligent actions could be imputed to defendant, where plaintiff asserted only that, after defendant's business loan department expanded and transformed into company, it effectively remained defendant's agent, and that defendant's attorney addressed his correspondence regarding the loan to defendant but sent it to the attention of company's closing supervisor. Sperry Associates Federal Credit Union v. Space Coast Credit Union, 877 F.Supp.2d 1227, 1238.

M.D.Fla.2010. Subsec. (1) quot. in case quot. in sup. Wheelchair-using resident of recreational vehicle resort sued resort's owner under federal statutes, claiming that defendant discriminated against her based on her sex and her handicap, after an unincorporated neighborhood association formed by the resort's residents allegedly refused to let her participate in a men's
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billiards tournament and required her to sit at a separate table at bingo night. Granting in part defendant's motion for summary judgment, this court held that association was not defendant's agent, because neither association nor defendant manifested assent to an agency relationship, and, although defendant advertised association's events, defendant did not schedule, organize, or otherwise control the events. The court noted that the mere fact that the events benefited defendant's property failed to create an agency relationship, as mutual benefit alone was insufficient. Haynes v. Wilder Corp. of Delaware, 721 F.Supp.2d 1218, 1225.

M.D.Fla. 1999. Cit. in disc. Florida clients sued Georgia attorneys for professional malpractice, alleging that defendants failed to pursue plaintiffs' Georgia Tort Claims Act lawsuit against that state. Defendants moved to dismiss for lack of personal jurisdiction. Denying the motion, the court held, in part, that jurisdiction was proper under the Florida long-arm statute, that defendants satisfied the requirement of minimum contacts with Florida by virtue of their having secured a co-counsel relationship with an attorney there, and that jurisdiction in Florida comported with the due process requirement of fair play and substantial justice. Kim v. Keenan, 71 F.Supp.2d 1228, 1235.

M.D.Fla. 1994. Cit. in headnote, cit. in disc., com. (b) cit. and quot. in disc. (cit. as com. on subsec. (1)). Defendant mortgage solicitor who was found guilty of corruptly demanding payment in connection with the business of a financial institution moved for a judgment of acquittal. Granting defendant's motion, the court held that defendant was not an “agent” of a “financial institution,” as required by statute to support his conviction, since the government did not present any evidence from which it could be inferred that the bank “financial institution” that owned the mortgage company for which defendant worked had agreed that defendant would act on its behalf or under its control. U.S. v. Tianello, 860 F.Supp. 1521, 1524.

S.D.Fla. 2011. Cit. in case cit. in disc. Ship owner sued marine mechanic for, inter alia, breach of a ship-repair contract, alleging that mechanic's improper crankshaft repair caused engine damage. This court granted plaintiff's motion for partial summary judgment, rejecting defendant's argument that plaintiff lacked standing to sue because it was not in an agency relationship with representative who signed the contract. The court held that evidence of actions taken by representative on behalf of plaintiff, including representative's contractual acceptance of management responsibility for plaintiff's ship, and representative's insistence that defendant list plaintiff as the actual client on service invoices, showed acknowledgment, acceptance, and control sufficient to establish agency. Kaloe Shipping Co. Ltd. v. Goltens Service Co., Inc., 778 F.Supp.2d 1346, 1351.

S.D.Fla. 2009. Cit. in case quot. in sup. Mother sued the Communist party of Cuba, among others, in connection with the arrest, prolonged detention, and torture of her son in Cuba. Entering a default judgment against defendant on plaintiff's claim for intentional infliction of emotional distress, and awarding compensatory and punitive damages to plaintiff, this court held that defendant met the definition of an agency or instrumentality of a foreign state as set forth in the FSIA, and, therefore, was liable for punitive damages. The court noted its disagreement with a categorical approach for determining if an entity should be considered the foreign state itself. Saludes v. Republica De Cuba, 655 F.Supp.2d 1290, 1297.

S.D.Fla. 2007. Cit. in case quot. in ftn. Title insurer, as assignee of property owners' claims arising out of an alleged fraudulent transaction in which impostors sold owners' real property, brought a claim for statutory conversion of a negotiable instrument against bank that allegedly paid the loan check on the impostors' forged endorsements. Granting bank's motion to dismiss, this court held, as a matter of first impression, that Florida law precluded a payee from bringing a claim for conversion of a negotiable instrument absent delivery (actual or constructive) of the instrument to either the payee, a copayee, or the payee's agent; in this case, plaintiff did not allege or establish actual or constructive delivery to the payees (property owners), nor did it allege or establish an agency relationship between owners and the individuals (ostensibly, the impostors) who received delivery of the check. Attorney's Title Ins. Fund, Inc. v. Regions Bank, 491 F.Supp.2d 1087, 1095.
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S.D.Fla.1997. Cit. in headnote, cit. in ftnt. Personal representatives of the estates of United States citizens who were killed during a routine humanitarian mission when their civilian, unarmed planes were shot down by the Cuban Air Force in international airspace sued the Republic of Cuba and the Cuban Air Force to recover monetary damages for the killings. Entering judgment against defendants, the court held, inter alia, that both defendants were liable for the murders of decedents. The court said that the Cuban Air Force was acting as an agent of Cuba when it committed the killings; the Cuban Air Force was clearly an agent of the Cuban state, since it acted on Cuba's behalf and subject to Cuba's control. Alejandre v. Republic of Cuba, 996 F.Supp. 1239, 1248.

N.D.Ga.

N.D.Ga.2003. Quot. in sup. United States brought action against corporate owner of apartment complex, property-management company, and property manager for racial discrimination in violation of the Fair Housing Act. Denying defendants' motions for summary judgment, this court held, inter alia, that because there was an agency, rather than a contractual, relationship between the defendants, owner could be held liable for the conduct of property manager. U.S. v. Habersham Properties, Inc., 319 F.Supp.2d 1366, 1375.

N.D.Ga.1996. Coms. (a) and (b) cit. in ftnt. Consignee and insurer of photocopiers that were damaged when they fell off of a truck bed en route to consignee's warehouse brought negligence action against railroads that transported the copiers to the truck depot, and against terminal operator that loaded the copiers onto the truck. All parties moved for summary judgment. Granting in part and denying in part the motions, the court held, inter alia, that the Carriage of Goods by Sea Act, which limited a carrier's liability to $500, applied to railroads, but did not apply to terminal operator. The court refused to consider whether terminal operator could avoid liability to plaintiffs on the ground that it was railroads' agent, explaining that the insufficient factual information provided precluded such a determination. Canon USA, Inc. v. Norfolk Southern Ry. Co., 936 F.Supp. 968, 973.

N.D.Ga.1992. Quot. in sup. Bank sued for conversion, fraudulent and negligent misrepresentation, and breach of warranty law firm and its partner who had represented a borrower, drafted release from liability to bank for borrower and its agents, and issued opinion letters to bank. The court granted in part and denied in part defendants' motion for summary judgment, holding that, since release covered borrower's agents, it also covered firm insofar as firm acted on behalf, and was subject to control and consent, of borrower. The court also held that firm was not a third party to the release; therefore, the intent of parties to the release could not be proven by parol evidence. It held, however, that because firm gave opinion letters for bank's benefit, it assumed a duty to bank independent of its relationship with borrower and could be held liable for its failure to exercise due care in communications contained in the letters. Horizon Financial, F.A. v. Hansen, 791 F.Supp. 1561, 1571.


S.D.Ga.Bkrtcy.Ct.1998. Quot. in case quot. in sup. Chapter 13 debtor-mortgagor brought an adversary proceeding against mortgagee for, in part, breach of fiduciary duty, after mortgagee force-placed insurance for the mortgaged property with an insurance company that paid a commission to mortgagee. Granting mortgagee's motion for summary judgment, the court held, inter alia, that debtor's payment into an escrow account of an amount sufficient to pay insurance, taxes, and other costs did not create an agency relationship that would give rise to a fiduciary duty on the part of mortgagee as agent. The court said that debtor retained no control over mortgagee's use of the escrow funds, and that the security deed provided that the money was to be placed in escrow for mortgagee's, not debtor's, benefit; only a debtor-creditor relationship was created. In re Telfair, 224 B.R. 243, 251.
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D.Hawaii

D.Hawaii, 2001. Subsec. (1) quot. in sup. Seamen sued vessel owner under maritime contract law to recover unpaid wages. Holding defendant liable for the unpaid wage claims, the court held, inter alia, that vessel-management company's employees, who had agreed to pay plaintiffs, were defendant's agents, and had the authority to hire and fire crew for the vessel, enter into contracts with others for the vessel's business, and bind defendant on those contracts. Madeja v. Olympic Packer, LLC, 155 F.Supp.2d 1183, 1210, affirmed 310 F.3d 628 (9th Cir.2002).

D.Hawaii, 1999. Quot. in disc. Owner of racing yacht brought suit for fraud and conversion against woman who assisted in transporting the yacht to Japan, alleging that because of defendant's refusal to surrender the bill of lading due to a dispute over her compensation, plaintiff had to post a bond in the amount of the value of the yacht to receive delivery of the yacht from the ocean carrier. Defendant counterclaimed for breach of contract, unjust enrichment, and punitive damages. This court granted in part and denied in part plaintiff's motion for partial summary judgment, holding, inter alia, that while defendant had a duty as plaintiff's agent to disclose any interests adverse to plaintiff's, there was a fact issue as to whether defendant committed fraud by failing to disclose her adverse intentions to plaintiff where defendant asserted that at the time she took possession of the bill of lading, she had no intention to withhold it from plaintiff. Matsuda v. Wada, 101 F.Supp.2d 1315, 1324.

D.Hawaii, 1998. Subsec. (1) quot. in disc. In personal injury action brought by scuba diver whose leg became entangled in vessel's starboard propeller, diving guide moved for summary judgment based on release-of-liability forms signed by diver and her partner. Denying the motion, the court held, in part, that admiralty law applied to diver's claims, and that material factual issues existed as to whether guide was an agent of the operator of the diving excursion for purposes of 46 U.S.C. § 183(c), which prohibited releases purporting to relieve owners, masters, or agents of vessels of liability for passengers' loss of life or bodily injury. Matter of Pacific Adventures, Inc., 5 F.Supp.2d 874, 880.

D.Hawaii, 1992. Subsec. (1) quot. in disc. The master of a government-owned research vessel chartered by a state university sued the university under the Jones Act and general maritime law to recover for psychological injuries allegedly arising from ethics charges, discharge from employment, and negligent failure of the university to maintain a seaworthy vessel. This court found that 25% of plaintiff's depression was attributable to the university's negligence and ordered entry of judgment for plaintiff, holding, inter alia, that the Suits in Admiralty Act was not a bar to the action, as the university was not the agent of the United States, the parties' agreement required the university to maintain the vessel and hold the United States harmless from third-party claims, and the vessel was not operated for the government and was not subject to its control. Nelsen v. Research Corp. of Univ. of Hawaii, 805 F.Supp. 837, 847.

C.D.Ill.

C.D.Ill, 1981. Cit. in disc. Migrant farm workers brought an action against farm labor contractors and their employees seeking damages and equitable relief alleging that the defendants had violated provisions of three federal statutes. The court held, inter alia, that the farm labor contractor was vicariously liable for violations by crew leaders, of the Farm Labor Contractor Registration Act, during the period of the agency which extended from recruitment in Texas until the workers' return to Texas at the close of the season. The court found that the crew leaders had been the contractor's agents because they were subject to the contractor's control and direction in the discharge of their responsibilities and operations. The court found that the crew leaders and the farm labor contractor had acted intentionally in violation of the Farm Labor Contractor Registration Act and that their activities were conscious and deliberate although they may not have had a specific intention to violate the law and avoid its provisions. De La Fuente v. Stokely-Van Camp, Inc., 514 F.Supp. 68, 79.
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N.D.III. 2003. Quot. but dist. Businessman-confidante of high-ranking government official was indicted under federal law for his involvement in state government bribery scheme. This court granted in part businessman's motion to dismiss, holding, inter alia, that businessman, as private citizen, did not defraud public of his honest services, as required to maintain mail-fraud charges; as private citizen, businessman had no fiduciary duty to public. U.S. v. Warner, 292 F.Supp.2d 1051, 1061.

N.D.III. 1999. Quot. in disc. African-American gasoline-station customers sued stations and individual operators for violations of 42 U.S.C. §§ 1981, 1982, and 2000a, alleging that a prepay policy, which was applied to them but not to white customers, was racially discriminatory. Granting in part and denying in part defendants' motions to dismiss, the court held, among other things, that plaintiffs had stated a claim for actionable discriminatory conduct, and that, if it could be shown that operators were stations' agents and had stations' actual or apparent authority to act on their behalf, stations could be found vicariously liable for operators' actions. Hill v. Shell Oil Co., 78 F.Supp.2d 764, 778.

N.D.III. 1998. Subsec. (1) cit. in case cit. in disc. A job applicant to a company brought an EEOC complaint, alleging that the company failed to hire him and other African American applicants because of their race, in violation of Title VII. After a state agency that referred job applicants to the company refused to comply with two EEOC subpoenas, the EEOC requested the court to compel the agency to comply with the subpoenas. The company then filed a motion to intervene. This court denied the motion to intervene, holding that the company made no showing that an agency relationship between the agency and the company existed. The company failed to show that the acts, omissions, or statements of the state agency employees could be imputed to the company at a later date if the EEOC did bring an action against the company. U.S. E.E.O.C. v. Illinois Dept. of Employment Sec., 6 F.Supp.2d 784, 788.

N.D.III. 1997. Subsec. (1) cit. in ftn. Deputy city clerk who was sexually harassed by one of the city's eight aldermen and subjected to a hostile work environment because of alderman's actions sued city for violations of 42 U.S.C. § 1983 and for violations of Title VII. Clerk also asserted a claim for retaliation. City moved to dismiss. Granting the motion as to the retaliation and s 1983 claims but otherwise denying it, the court held, inter alia, that, even though alderman was an elected official and not an agent or employee of city, city could still be liable for his actions under Title VII if it were shown that the harassment occurred on city's premises or with instrumentalities under city's control, and that city negligently or recklessly failed to prevent the misconduct. Jarman v. City of Northlake, 950 F.Supp. 1375, 1378.

N.D.III. 1997. Subsec. (1) cit. in ftn. Deputy city clerk who was sexually harassed by one of the city's eight aldermen and subjected to a hostile work environment because of alderman's actions sued city for violations of 42 U.S.C. § 1983 and for violations of Title VII. Clerk also asserted a claim for retaliation. City moved to dismiss. Granting the motion as to the retaliation and s 1983 claims but otherwise denying it, the court held, inter alia, that, even though alderman was an elected official and not an agent or employee of city, city could still be liable for his actions under Title VII if it were shown that the harassment occurred on city's premises or with instrumentalities under city's control, and that city negligently or recklessly failed to prevent the misconduct. Jarman v. City of Northlake, 950 F.Supp. 1375, 1378.

N.D.III. 1991. Subsec. (1) and com. (b) cit. in disc. After the trustees of a group insurance trust discovered that the trust account did not contain enough money to cover premium payments for July 1988, they sued the trust administrator for breach of fiduciary duty, inter alia. Denying in part the plaintiffs' motion for summary judgment and dismissing this count, the court held that there was no fiduciary relationship between the parties; they simply had an arm's-length business relationship. The court also rejected
the plaintiffs' argument that the defendant was a fiduciary in its capacity as an agent. The court said that, although an agent's dealings with third parties might create fiduciary obligations as between the principal and agent, the simple administrative duties the defendant performed here were not fiduciary in nature. *Wapensky v. John Hancock Mut. Life Ins. Co.*, 774 F.Supp. 1119, 1130.

**N.D.Ill.1981.** Cit. in ftm. The defendant, a small corporation, secured the services of an advertising agency to purchase commercial air time on the plaintiff's television station. The advertising agency then contracted with the station for the running of defendant's commercials. The defendant understood that it was to make all payments to the advertising agency, which would then pay the station. The defendant made its payments in full, but the advertising agency was in financial difficulty and failed to complete its payments to the plaintiff station. The plaintiff then sued the corporation, alleging that the advertising agency was an agent for the defendant corporation, and that the defendant was bound by any contracts made by its agent. Both parties moved for summary judgment. The court denied both motions, asserting that an implied agency relationship must be inferred from the actions of the principal, and the facts were not clear enough to determine whether such a relationship existed between the defendant and the advertising agency. *American Broadcasting Companies v. Climate Control*, 524 F.Supp. 1014, 1016.

**N.D.Ill.1978.** Cit. and coms. (b) and (e) cit. in disc. In an antitrust suit alleging a price-fixing conspiracy by uranium producer defendants, motions were filed to disqualify plaintiff's counsel on grounds of a conflict of interest. The law firm which represented plaintiff had two branches, and defendants alleged that while the Chicago office was filing complaint against them for anti-competitive practices in sale and pricing of uranium, the Washington office was presenting an extensive legislative report, which developed the completely opposite thesis, to the American Petroleum Institute (API). The defendants contended that, while the Washington office was hired by the API, an attorney-client relationship arose between the firm and defendants and that the Chicago branch's representation of antitrust action against them violated canons of the Code of Professional Responsibility which prohibit the actual or potential disclosure of client confidences and ban the representation of adverse interests in substantially related litigation. The court examined the characteristics of an agency relationship and determined that the motion by defendants to disqualify plaintiff's counsel should be denied, since the evidence failed to show the existence of an attorney-client relationship between the firm and defendants. *Westinghouse Electric Corp. v. Rio Algom Ltd.*, 448 F.Supp. 1284, 1300, 1301, 1303, judgment affirmed in part and reversed 580 F.2d 1311 (1978), certiorari denied 439 U.S. 955, 99 S.Ct. 353, 58 L.Ed.2d 346 (1975), judgment reversed 588 F.2d 221 (1979).

**N.D.Ill.Bkrtcy.Ct.**

**N.D.Ill.Bkrtcy.Ct.2014.** Cit. in ftm., cit. in case cit. in ftm. Creditor that made a second mortgage loan to debtors brought an adversary proceeding to determine the dischargeability of the debt, alleging that debtors, through their agent, made false representations in procuring the loan from him. This court held that the debt was nondischargeable and that debtors' mortgage loan originator was their authorized agent for purposes of procuring financing from creditor. The court reasoned that debtors consented to originator's exercise of authority, creditor had knowledge of the facts and a good-faith belief that originator had authority to negotiate the loan transaction on debtors' behalf, and creditor relied on originator's representations to his detriment. The court noted that both Illinois and federal common law followed Restatement Second of Agency § 1. *In re Aguilar*, 511 B.R. 507, 513.

**N.D.Ill.Bkrtcy.Ct.2002.** Quot. in sup., com. (b) quot. in sup. Chapter 7 debtor moved to recover damages after judgment creditor violated automatic stay from collection activity, and creditor moved for retroactive relief from stay. Denying creditor's motion, the bankruptcy court held, inter alia, that creditor was not acting as agent of state in initiating state-court contempt proceedings against debtor; therefore “police or regulatory power” exception to automatic stay did not apply. *In re Benalcazar*, 283 B.R. 514, 532.
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N.D.Ill.Bkrtcy.Ct.1989. Cit. in disc. Attorneys for a bankruptcy debtor sought reimbursement from the bankruptcy estate for ordinary and extraordinary expenses they incurred in hiring a law firm to represent them in a suit against them initiated by the bankruptcy trustee. The court denied the trustee's objection to the debtor's attorneys' application for reimbursement, concluding that the applicants were acting as the debtor's agents within the scope of their authority and could therefore defend against the trustee's claim and recover the expenses incurred. The court stated that fundamental fairness entitled the applicants to reimbursement from the estate, notwithstanding a lack of benefit to the estate, since it was the trustee's conduct that caused them to incur their legal expenses. In re Met-L-Wood Corp., 103 B.R. 972, 975, order affirmed 115 B.R. 133 (1990).

N.D.Ind.

N.D.Ind.1969. Quot. in sup. Action for refund of federal income tax on the ground that stock sold by a taxpayer at a profit had been held for more than six months. Held: the taxpayer's holding period began when he signed a stock purchase agreement which will not be construed as a truly alternative contract, although it provided for liquidated damages in case of a breach. The taxpayer's gain from the sale of the stock is a long term capital gain. Further, taxpayer, in executing the purchase agreement had been acting on his own behalf and was not acting as agent for another. Fletcher v. United States, 303 F.Supp. 583, 593, aff'd 436 F.2d 413 (7th Cir.1971).

N.D.Iowa

N.D.Iowa, 1995. Cit. in headnotes, cit. in case cit. in disc., cit. generally in disc., quot. and cit. in sup. Dismissed bank employee sued bank and former supervisor for, inter alia, violations of the Age Discrimination in Employment Act (ADEA). Supervisor moved for summary judgment on the ground that as a coemployee, he could not be held liable under the ADEA. The court denied his motion, holding that supervisory employees who were agents of an employer covered by the ADEA could be held individually liable for their tortious acts, negligent or otherwise, even when those acts were committed at the command of the employer. With the bank's consent, supervisor controlled its day-to-day operations and made decisions, factors that led the court to consider him an agent who could be held personally liable and equally responsible for violations of the ADEA and against whom separate judgment could be entered. Schallehn v. Central Trust and Sav. Bank, 877 F.Supp. 1315, 1318, 1335-1338.

N.D.Iowa, 1961. Com. (f) quot. in part in sup. Where operator of insurance business contributed nothing to business of savings and loan association and made loan application for his customers to various lending institutions including plaintiff, and who received a commission of 1%, he was not an agent for plaintiff and plaintiff was not entitled to recover on forged check against defendant. Home Federal Sav. & L. Ass'n v. Peerless Ins. Co., 197 F.Supp. 428, 439, citing Agency 2d sec. 2 com. e, but intending to cite Agency 2d sec. 1, com. f.

D.Kan.

D.Kan.1998. Com. (a) quot. in case quot. in disc. Shareholders brought securities fraud action against corporation and others. Entering judgment on a jury verdict for defendants, the court held, in part, that the jury was adequately instructed as to the elements of a claim for breach of fiduciary duty, and that defendants' expert witness was not their “speaking agent,” such that his statements were admissible as admissions by a party opponent under s 801(d)(2)(C) of the Federal Rules of Evidence. Koch v. Koch Industries, Inc., 37 F.Supp.2d 1231, 1245.

W.D.Ky.
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W.D.Ky. 2003. Com. (b) quot. in sup. Manufacturer of paper boxes sued distributor of packaging goods and retailer, alleging breach of contract and tortious interference with contract after distributor cancelled contract to purchase boxes. Distributor filed counterclaim for, among other things, breach of contract, and filed cross-claim against retailer for indemnification. Granting retailer's motion for summary judgment on contract claim, this court held, inter alia, that distributor was not acting as retailer's agent where retailer did not lead distributor or manufacturer to believe distributor was retailer's agent, retailer did not exercise day-to-day control over distributor's business, and distributor bore risks of mistakes in product estimates. Paul T. Freund Corp. v. Commonwealth Packing Co., 288 F.Supp.2d 357, 373.

E.D.La.

E.D.La. 2010. Com. (a) quot. in sup. After employee of subcontractor that was hired by contractor that was in turn hired by vessel charterer sued subcontractor for damages in connection with an injury he sustained while working on the vessel, subcontractor filed a third-party complaint for indemnification against vessel owner, and owner in turn filed a third-party complaint for indemnification against charterer. Granting summary judgment for charterer, this court held that owner failed to raise an issue of fact that subcontractor was a “representative” of charterer under the indemnification agreement between owner and charterer. The court reasoned that there was no evidence that charterer had the right to control the means and details of subcontractor's work, and the agreement between charterer and contractor suggested otherwise; further, charterer's general right of inspection and supervision under its agreement with contractor did not give rise to an agency relationship. Butcher v. Superior Offshore Intern., LLC, 754 F.Supp.2d 829, 835.

E.D.La. 2002. Com. (a) cit. in disc. Cargo owner sued vessel, vessel manager, and time charterer for damage to the cargo. Granting in part and denying in part cross-motions for partial summary judgment, the court held, inter alia, that the $500 per package limitation that the Carriage of Goods by Sea Act (COGSA) provided to carriers applied to the claims against vessel and time charterer, but not vessel manager. The court said that the contract for the carriage of the cargo was the voyage charter between time charterer and plaintiff's agent/parent company, and that plaintiff could be imputed with the knowledge of the charter's “Clause Paramount” incorporating the terms of COGSA. Steel Coils, Inc. v. Captain Nicholas I M/V, 197 F.Supp.2d 560, 567.


M.D.La.Bkrcty.Ct. 1999. Cit. generally in sup., quot. in sup., com. (b) quot. in sup. Company sued debtor co-owner of generating units, seeking a declaratory judgment that the debtor was the sole principal on contracts with various entities for the acquisition and transportation of coal to Louisiana. This court concluded that the fuel chain entities failed to show that debtor was acting as co-owner's agent in entering into the contracts, because co-owner lacked control over debtor. In re Cajun Electric Power Cooperative, Inc., 230 B.R. 683, 689.


W.D.La.Bkrcty.Ct. 2009. Quot. in case quot. in sup. Debtors brought an adversary proceeding against trust, alleging that trust was liable for the bid-rigging conduct of the winning bidder's sole shareholder in the sale of debtors' Utah real property and standing timber. Granting summary judgment for trust, this court held that debtors failed to prove, for purposes of establishing an agency relationship, trust's acknowledgment that shareholder, who was trust's former trustee, was to act as its agent in connection with the sale; while shareholder might have acted as trust's agent when he served as its trustee, this agency relationship, according to trust, was terminated when shareholder was removed as trustee and explicitly barred from taking any actions with respect to trust's property. In re Sunnyside Timber, LLC, 413 B.R. 352, 368.
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D.Me.

D.Me.2009. Quot. in case quot. in sup. Homeowners sued mortgage broker for, among other things, allegedly inducing them to take out a loan that was contrary to their interests and needs. Denying summary judgment for broker on homeowners' claim for breach of fiduciary duty, this court held that, while homeowners admittedly did not have an agency relationship with broker, questions of fact remained as to whether there was a fiduciary relationship between the parties; while an agency resulted from the manifestation of consent by one person to another that the other should act on his behalf, and consent by the other to so act, a fiduciary relationship involved the placing of trust and confidence by one party in another and a great disparity of position and influence between the parties. Darling v. Western Thrift & Loan, 600 F.Supp.2d 189, 205.

D.Me.1995. Cit. in headnote. Once mortgagor became aware that her promissory note had been purchased, she sued the purchaser for, inter alia, breach of contract. Plaintiff alleged that defendant's purchase made it liable for the acts of the original holder which continued to service the note, although in wrongful ways that clearly violated defendant's established guidelines. The court held that because the original holder had blanket authority to service plaintiff's note, although not in the manner it did so, it was a general agent of defendant and this agency relationship rendered defendant, an undisclosed principal, liable for its agent's behavior. The court nevertheless dismissed the complaint, concluding that the agent could not bind defendant, a federal creation, beyond its actual authority. Dupuis v. Federal Home Loan Mortg. Corp., 879 F.Supp. 139, 139.

D.Me.1989. Com. (e) cit. in sup. A securities holder who was suing a brokerage firm for violations of the securities laws filed this claim to enforce his election to arbitrate before the American Arbitration Association (AAA), although his attorney previously had agreed with the defendant to arbitrate before the National Association of Securities Dealers (NASD). The court granted the defendant's motion to enforce the agreement to arbitrate before the NASD. The court held that it was plain that the attorney was the plaintiff's agent when he negotiated the forum in which arbitration would be conducted. Vallee v. Lachapelle, 725 F.Supp. 631, 633.

D.Md.

D.Md.2012. Quot. in case quot. in ftn. Customers sued freight forwarder and warehousing company, among others, seeking to recover damages allegedly sustained as a result of the misplacement of their cargo. Granting summary judgment for freight forwarder, this court rejected plaintiffs' argument that freight forwarder was vicariously liable for the alleged negligence of warehousing company because company was freight forwarder's agent. The court reasoned that the question of freight forwarder's liability hinged not on agency, but on whether company was forwarder's "servant" or, instead, an independent contractor, and concluded that company was forwarder's independent contractor, because the two parties appeared to be independent businesses, and forwarder did not exercise control over company's selection of drivers; as a result, forwarder was not liable for the negligence of company or company's employees. Danner v. International Freight Systems of Washington, LLC, 855 F.Supp.2d 433, 451.

D.Md.2008. Quot. in case quot. in disc. Distressed homeowners filed a class action against title-insurance companies, among others, alleging that defendants were vicariously liable as principals for the actions of settlement agents who participated in so-called “foreclosure rescue scams” that defrauded plaintiffs. Granting defendants’ motions to dismiss, this court held that plaintiffs' allegations were insufficient to state a claim that the settlement agents in question were, in fact, acting within the scope of their agency relationships with defendants involving the provision of title insurance when they performed the misdeeds attributed to them by plaintiffs with respect to settlement and closing services. Proctor v. Metropolitan Money Store Corp., 579 F.Supp.2d 724, 735.
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D.Md. 2007. Cit. in ftn. (general cite). Homeowners who alleged that that they were victims of a foreclosure-rescue scam involving a sale-leaseback of their home sued mortgage consultant, real-estate broker, and others involved in the transaction for, in part, violation of Maryland's Protection of Homeowners in Foreclosure Act. Denying defendants' motion to dismiss this claim, this court held, inter alia, that plaintiffs' allegation that mortgage consultant who solicited their business acted as real-estate broker's agent or in some material respect on broker's behalf stated a cause of action against broker under the Act. The court noted that it did not read the Act to require that a formal agency relationship had to be established between one who solicited and one who provided the mortgage-consulting service, in the sense of that defined in the Restatement of Agency. Johnson v. Wheeler, 492 F.Supp.2d 492, 506.


D.Md. 2001. Quot. in disc. Travel company sued operator of an infringing web site and two of web site's advertisers for trademark dilution under Lanham Act, among other claims. This court granted advertisers' motions to dismiss, holding, inter alia, that absent a principal-agent relationship between advertisers and the owner or operator of the infringing web site, the advertisers could not be vicariously liable for operator's tortious acts. Fare Deals Ltd. v. World Choice Travel.Com, Inc., 180 F.Supp.2d 678, 685.

D.Md. 2001. Cit. generally in case cit. in disc. Buyer of cellular phones lost or damaged during shipment sued, among others, company that coordinated shipment of phones, alleging negligent shipping, storing, and maintaining of phone shipment. This court granted in part coordinator's motion for summary judgment, holding, inter alia, that actual carrier of phones was not coordinator's agent, since a mere contract to ship goods did not establish agency relationship. The fact that "Driver Trip Sheet" included a heading with attention to coordinator's employee and had instructions for driver to report delays to coordinator was consistent with coordinator's role as broker and did not establish agency relationship. Professional Communications, Inc. v. Contract Freighters, Inc., 171 F.Supp.2d 546, 551.

D.Md. 1998. Subsec. (1) cit. in headnote and quot. in disc. Business that had entered into a distributorship agreement with a long-distance telephone service provider's alleged agent to solicit long-distance telephone customers brought an action for, in part, breach of contract against the provider, after the alleged agent terminated its agreement with plaintiff. Plaintiff argued that defendant was responsible for the alleged agent's obligations under the distributorship agreement. Granting defendant's motion for summary judgment, the court held, inter alia, that plaintiff's breach-of-contract claim against defendant failed as a matter of law because no agency relationship existed between defendant and the alleged agent. Because there was no evidence that the alleged agent was subject to defendant's control or had the authority to bind defendant, an agency relationship could not be established by inference on the facts of this case. Integrated Consulting Serv. v. LDDS Communications, 996 F.Supp. 470, 470, 474, affirmed 176 F.3d 475 (4th Cir.1999).

D.Md. 1992. Cit. in disc. An ERISA plan whose funds were embezzled by a plan administrator sued the brokerage firm with which the plan had an investment account and banks in which the administrator had deposited the funds, alleging negligence and conversion. This court, granting the defendants' motions to dismiss, held that since the administrator was the plan's agent, with actual authority to request issuance of checks on behalf of the plan, the firm breached no duty to the plan by issuing them, and since the banks in which the administrator deposited checks payable to the plan had accepted them over the administrator's endorsement for several years without objection from the plan's trustees, the administrator was authorized to endorse and deposit the checks in those accounts. Candlewood Obstetric-Gynecologic Ass'n, P.C. Retirement Trust v. Signet Bank/Maryland, 805 F.Supp. 328, 331.
D.Md. 1989. Subsec. (1) quot. in case quot. in sup. The plaintiffs, who hired the defendant as their agent to assist them in buying, maintaining, breeding, and selling thoroughbred horses, sued for breach of fiduciary duty, inter alia, after they learned that the defendant received a commission from the sellers on horses the plaintiffs had bought. The court granted in part and denied in part the plaintiff's motion for summary judgment, holding that by receiving substantial commissions on the sales and concealing them from the plaintiffs, the defendant violated the fundamental duties he owed to the plaintiffs as their agent. Gussin v. Shockey, 725 F.Supp. 271, 274, judgment affirmed 933 F.2d 1001 (4th Cir.1991).

D.Md. 1988. Subsec. (1) cit. in case quot. in disc. After a black woman who was interested in purchasing a leasehold interest in a cooperative housing project was discouraged from doing so because of her race, she sued the listing agent of the leasehold owner and the development for housing discrimination. The court ruled in favor of the plaintiff, allowing her to recover on a “futile gesture” theory, holding that the plaintiff reasonably relied on the listing agent's representations and that she should not be barred from recovery merely because she failed to complete the application for entry into the development. The court explained that the plaintiff could not recover based on an agency theory because the listing agent was not an actual agent of the development; there was no evidence that the development consented to have the listing agent act on its behalf or that the listing agent agreed to act for the development. Pinchback v. Armistead Homes Corp., 689 F.Supp. 541, 550, affirmed in part, vacated in part 907 F.2d 1447 (4th Cir.1990).

D.Md. 1987. Subsec. (1) cit. in disc. A resort management company that had agreed to oversee the construction of a resort on behalf of a lending bank approved a draw request to the bank that contained a sum for furniture and fixtures, and requested that the money be sent directly to an account it controlled. The management company subsequently appropriated the majority of this fund to pay debts allegedly owed to it by the borrower, resulting in insufficient funds to purchase furniture. The FSLIC, as receiver for the bank, foreclosed on the property when the borrower defaulted, and sued the management company to recover the funds. This court held that the defendant, as an agent of the bank, owed a fiduciary duty to act solely for the benefit of the bank and not to take advantage of its position; and that the agent was subject to liability for the loss caused to the principal by the agent's breach of this duty. The court concluded that the defendant was not intended to be a trustee of the loan proceeds and was therefore not liable for compound interest on the loss. Federal Sav. and Loan Ins. Corp. v. Quality Inns, 674 F.Supp. 522, 527, judgment affirmed in part, vacated in part 876 F.2d 353 (4th Cir.1989). See above case.

D.Md. 1971. Cit. in sup. The subrogated insurers of the owner of tobacco brought this action against the company which arranged for purchase and storage of tobacco and against the owners and operators of the warehouse where the tobacco was stored when it burned. A Maryland statute required a warehouseman to furnish insurance on tobacco in storage. The court found the defendant to be the agent of the plaintiff where the defendant was at all times subject to the control of the plaintiff and acted on behalf of the plaintiff as its commission agent and held that even an independent contractor can be an agent for purposes of binding a principal on a contract. The court found the owners of the warehouses to be subagents of the plaintiff because the defendant agent had the implied authority to appoint a subagent, lacking warehouses and packing facilities of its own. The plaintiff's substantial control over the defendant agent and subagent shows that they were not acting as mere suppliers. As a result of an agreement between the parties, insurance was provided by the plaintiff. The court found that the agent had thereby complied with the statute requiring that insurance be “furnished,” and hence the defendants were relieved of liability for failure to provide insurance. General Cigar Co. v. Lancaster Leaf Tobacco Co., 323 F.Supp. 931, 938.


D.Md. Bkrtcy.Ct. 1999. Quot. in ftn. Purchasers of custom-built home sought determination that builder's debt to them was nondischargeable as one arising from fraud or defalcation while acting in a fiduciary capacity. Dismissing the complaint, the court held, in part, that purchasers had failed to establish that builder made representations with the intention of deceiving
them, or that their reliance on builder's statements was justifiable. Furthermore, absent an express trust relationship between the parties, the court could not say that builder was purchasers' fiduciary. In re Heilman, 241 B.R. 137, 157.

D.Mass.

D.Mass. 2010. Quot. in sup., quot. in ftn. Mortgagor brought a breach-of-fiduciary-duty claim, inter alia, against mortgagee, among others, alleging that mortgage broker, as mortgagee's agent, violated his fiduciary duty to plaintiff. Granting summary judgment for defendant, this court held that plaintiff failed to prove that defendant and broker were in an actual, apparent, or implied agency relationship, and thus the relationship between plaintiff and defendant remained merely one of borrower and lender where no fiduciary duty was owed. The court noted that there was no evidence that defendant consented to an agency relationship with nor wielded any control over broker; to the contrary, an express agreement between defendant and broker explicitly stated that neither party would at any time hold itself out to any third party to be an agent or employee of another. Fernandes v. Havkin, 731 F.Supp.2d 103, 110, 111.

D.Mass. 2006. Cit. in disc. Investors brought a securities-fraud class action against the successor to the former chief commercial banker for the stock issuer, alleging, in part, that banker's subsidiary issued materially false and misleading analyst reports as part of banker's scheme to inflate the stock's value. Denying defendant's motion to dismiss, this court held, inter alia, that plaintiffs' complaint alleged facts raising the strong inference that the subsidiary was acting as banker's agent when it issued the positive analyst reports, and that the allegations were sufficient for plaintiffs to proceed on their claim of defendant's liability for misrepresentation. Quaak v. Dexia, S.A., 445 F.Supp.2d 130, 144.

D.Mass. 2004. Quot. in disc. Belgian venture-capital fund, the defendant in securities litigation brought by various plaintiffs who alleged that fund violated federal securities laws and aided and abetted common-law fraud, moved to dismiss for lack of personal jurisdiction. Denying defendant's motion, the court held, inter alia, that it could exercise jurisdiction over plaintiffs' federal-securities claims, as defendant had sufficient contact with the United States through its agent, a direct subsidiary of its statutory manager, which was set up to carry on defendant's business and employ binding authority on its behalf. In re Lernout & Hauspie Securities Litigation, 337 F.Supp.2d 298, 315.

D.Mass. 2004. Cit. in sup., com. (b) cit. in sup. Trust brought ERISA action against insurer, alleging wrongful denial of benefits owed to beneficiary under group long-term-disability policy that insurer managed for beneficiary's former employer. Upon cross-motions for summary judgment, court entered judgment for trust, holding, inter alia, that because former employer had no power to control insurer's actions in administering plan, insurer was not agent of former employer; therefore, beneficiary's release of former employer from future claims did not also release insurer from such claims. Radford Trust v. First Unum Life Ins. Co. of America, 321 F.Supp.2d 226, 243.

D.Mass. 2002. Cit. in disc. Investors in corporation that went bankrupt sued corporation's outside independent auditor based in Belgium, auditor's affiliates located in other countries, and the international association of which auditor and affiliates were members, alleging accounting fraud. This court dismissed the claim against international association, holding, inter alia, that the evidence did not support plaintiffs' assertion that auditor and affiliates had actual authority to act as association's agents. Although plaintiffs alleged that the auditor entities cooperated on different aspects of corporation's audits, they did not prove that such collaborations occurred at the behest of, on behalf of, under the direction of, or subject to the control of the association. In re Lernout & Hauspie Securities Litigation, 230 F.Supp.2d 152, 173.

D.Mass. 2001. Com. (b) quot. in case quot. in sup., cit. in sup. Rejected tenant sued landlord of six-person residence after existing cotenant rejected her application, alleging that landlord was liable for existing cotenant's discrimination under the Fair Housing Act, Civil Rights Act, and state law. Denying landlord's motion for summary judgment, this court held, inter alia, that
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Evidence existed from which a jury could infer that cotenant was landlord's agent, thereby making landlord liable for cotenant's discrimination, despite the absence of an express agency agreement. Marya v. Slakey, 190 F.Supp.2d 95, 100, 101, 103.

D.Mass.1999. Quot. in fn. Massachusetts prospective buyers of Rhode Island company brought suit in Massachusetts state court for, inter alia, breach of contract against Rhode Island prospective seller. Defendant removed the case to federal court, and moved to dismiss for lack of personal jurisdiction. Denying the motion on other grounds, this court held, in part, that plaintiffs could not premise personal jurisdiction over defendant on investment bank's solicitation of business with plaintiffs' leveraged-buyout firm in Massachusetts, since they failed to submit evidence beyond the verified complaint that bank was acting as defendant's agent. Bank's authority to conduct business on behalf of defendant was not a matter within plaintiffs' personal knowledge. JMTR Enterprises, L.L.C. v. Duchin, 42 F.Supp.2d 87, 95.

D.Mass.1997. Quot. in case quot. in disc. Suppliers sued, among others, the vice president of a corporation that owed them money and a company that was erroneously represented as the imminent purchaser of the corporation, alleging breach of contract and fraud. Plaintiffs alleged that the vice president and the purported purchasing company falsely represented that plaintiffs would be paid in full for all shipments of a product. Purported purchasing company alleged that any representations made by the vice president were not chargeable to it, since the vice president was not its agent. This court granted in part and denied in part the purported purchasing company's motion for summary judgment, holding, inter alia, that there was no evidence that the company ever conferred actual authority on the vice president to act as its agent. Furthermore, there was no apparent authority, because there was no evidence that the company communicated anything to plaintiffs that would have led a reasonable person to believe that it consented to have anything done on its behalf by the vice president. Commonwealth Aluminum Corp. v. Baldwin Corp., 980 F.Supp. 598, 611.

D.Mass.1996. Cit. in disc. Korean corporation hired American company to provide business consulting services in relation to an investment in an aluminum smelter in Venezuela. Consultant sued corporation to collect unpaid bills and to recover for damages incurred by reliance on corporation's promises to pay the bills. Corporation counterclaimed for fraud, negligent misrepresentation, negligence, breach of contract, and unfair and deceptive trade practices. This court granted in part and denied in part consultant's motion for summary judgment on the counterclaims. The court held, inter alia, that there was a fact issue as to whether consultant, by acting as corporation's sole representative and lobbyist in Venezuela, went beyond the typical business consultant-client relationship to become corporation's agent. As corporation's agent, consultant had duty to inform corporation of all facts that it knew would reasonably affect corporation's judgment in permitting consultant to represent both corporation and an arm of the Venezuelan government that was trying to attract investors to Venezuela. There was a fact issue as to whether information was fraudulently concealed in breach of a fiduciary duty, and whether corporation was prevented from discovering its fraud claim. Arthur D. Little Intern., Inc. v. Dooyang Corp., 928 F.Supp. 1189, 1207.

D.Mass.1992. Cit. but dist. Commercial insurer sought declaration of its liability for indemnification against three related commercial insureds covered by insurer's policy with regard to an underlying products liability suit against insureds. Plaintiff defended all three insureds pursuant to the policy with a reservation of its rights. The court denied insureds' motions to dismiss for lack of personal jurisdiction on ground that insureds were covered by long-arm statute, since they had contracted to insure a risk located within the commonwealth. The court rejected plaintiff's argument that sought to attribute all of one defendant's contacts with the forum to the other two on basis that the one defendant acted as agent of the other two. It said that, even though the court had personal jurisdiction over the alleged agent, plaintiff provided no evidence that any of defendants understood their relationship to be one of agency, or that they held themselves out to the public in this way. American Home Assur. Co. v. Sport Maska, Inc., 808 F.Supp. 67, 72.

D.Mass.1986. Quot. in fn. A lender sued debtors to recover full payment on an installment loan. The lender, a California corporation, was awarded a default judgment against the defendants, Massachusetts residents, who claimed that the judgment was void because it was entered by default in a court that had no personal jurisdiction over them. This court held that the
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defendants had sufficient minimum contacts with California to warrant the exercise of personal jurisdiction over them in the California district court. The court reasoned that the defendants had purposefully injected themselves into an out-of-state transaction through the solicitation of the loan by their agent and subagent. *Ganis Corp. of California v. Jackson*, 635 F.Supp. 311, 315.

**D.Mass.**1986. Quot. in disc. Two Massachusetts investors claimed that they had been fraudulently induced to invest in swampland in Florida through misrepresentations concerning the ownership and value of that land. The investors sued a government operative, various individuals and businesses based in Florida, an out-of-state attorney, the United States Department of Justice, and various federal officials on various counts, including fraud, negligence, and conspiracy. The court granted the Florida defendants' motion to dismiss the claims against them, holding that the alleged acts of the operative and the out-of-state attorney failed to establish jurisdiction in Massachusetts over the Florida defendants because neither the operative nor the attorney could be considered their agent. The court reasoned that there was no evidence that the operative or the attorney was acting on behalf of the Florida defendants, subject to their control or with their consent. *Salvador v. Meese*, 641 F.Supp. 1409, 1413.

**D.Mass.Bkrty.Ct.**

**D.Mass.Bkrty.Ct.**2003. Quot. in case quot. in disc. Debtor corporation's trustee in bankruptcy brought adversary proceeding to avoid and recover alleged preferential transfers to defendants of $186,000. This court ruled that the transfers did not constitute property of the debtor, and, therefore, trustee had not met his burden of proof under 11 U.S.C. § 547(b). Since both parties intended for, and signed agreements that called for, debtor to negotiate as agent discount and rebate arrangements on its behalf, the rebates earned under those arrangements were within agency's scope. The transfers represented rebates that defendants earned from a third party and that merely passed, through debtor, as an agent conduit to them. *In re UDI Corp.*, 301 B.R. 104, 112.

**E.D.Mich.**

**E.D.Mich.**2011. Quot. in sup., cit. in case quot. in sup. Job applicant brought, among other things, a claim asserting Title VII violations against regional medical center, alleging that defendant rescinded its offer of employment to her because she refused to answer, during a preemployment medical examination administered by defendant's contractor, questions about pregnancy, abortion, sexual activity, birth control, and similar subjects—all of which were posed only to female applicants—and because she complained about these questions to defendant. Denying defendant's motion for summary judgment as to this claim, this court held that a genuine issue of material fact existed as to whether defendant had the right to control the manner in which contractor administered the preemployment screening procedures, and thus whether contractor was defendant's agent for purposes of those procedures. *Garlitz v. Alpena Regional Medical Center*, 834 F.Supp.2d 668, 681.

**E.D.Mich.**2002. Quot. in part in sup. Retirees sued former employer's successor under the Employee Retirement Income Security Act (ERISA) and the Racketeer Influenced and Corrupt Organizations Act (RICO), challenging decision to require them to pay for a portion of the cost of their medical-insurance coverage. Granting defendant's motion for summary judgment, the court held, inter alia, that plaintiffs' RICO claims failed because plaintiffs did not prove that buyer of former employer's trailer division was acting as defendant's agent when it sent letters to retirees falsely inflating health-care costs. *Armbruster v. K-H Corp.*, 206 F.Supp.2d 870, 897.

**D.Minn.**
D.Minn. 2013. Com. (b) quot. in case quot. in ftn. Purchasers of a commercial building brought claims for breach of fiduciary duties and fraud against sellers and realtors that brokered the sale, alleging that sellers were liable for realtors' fraudulent misrepresentations concerning, among other things, the lack of other commercial buildings available for sale that better met plaintiffs' needs, the square footage of the building's office units, and the number of leads that they had for prospective tenants of the building. Denying in part sellers' motion for summary judgment, this court held, inter alia, that a reasonable factfinder could find that realtors were sellers' agents, and that sellers were potentially liable for realtors' representations. The court reasoned that the purchase agreement explicitly stated that realtors were agents for sellers; furthermore, under Minnesota law, when a real-estate agent made misrepresentations that induced a sale, and the seller retained the benefits of the sale, the seller was bound by the agent's misrepresentations. Damon v. Groteboer, 937 F.Supp.2d 1048, 1069.

D.Minn. 2006. Quot. in disc. Manufacturer of cardiac-rhythm-management devices and its subsidiary sued healthcare consulting firm for tortious interference with confidentiality agreements and other claims, alleging that firm gained access to manufacturer's confidential pricing information by entering into consulting contracts with hospitals and then used that information to advise other hospital clients what to pay for manufacturer's devices. This court granted plaintiffs' motion for partial summary judgment, holding, inter alia, that firm was not an agent of the hospitals as a matter of law. The court reasoned that, although the agreements that firm signed with its client hospitals identified firm as a designated agent, the agreements did not give firm the authority to bind these hospitals or act on their behalf. Cardiac Pacemakers, Inc. v. Aspen II Holding Co., Inc., 413 F.Supp.2d 1016, 1025.

D.Minn. 2000. Quot. in case quot. in disc. After the Securities and Exchange Commission (SEC) obtained a permanent injunction barring the president of a Greek brokerage firm from associating with any broker in the United States securities industry, the SEC sued the Greek brokerage firm and its president and an American brokerage firm and its CEO for whom the Greek firm's president was serving as a “finder” of Greek customers, seeking injunctive relief for violations, and aiding and abetting of violations, of federal securities laws. This court granted the SEC’s motion for summary judgment and for entry of a permanent injunction, holding, inter alia, that the evidence sufficiently established that the Greek firm’s president was controlled by the American firm so that he was an “associated person” under federal securities law and was in violation of the SEC’s bar order and the Securities Exchange Act. U.S. S.E.C. v. Zahareas, 100 F.Supp.2d 1148, 1152, reversed in part, vacated in part 272 F.3d 1102 (8th Cir.2001).

D.Minn. 1999. Cit. in headnote and disc. Learning center student sued a special education district, several independent school districts, and school officials pursuant to Title IX and 42 U.S.C. § 1983, alleging that a teacher and several male students sexually harassed her. This court granted in part and denied in part defendants' motions for summary judgment, holding, inter alia, that the special education district was the independent school districts' agent in operating the learning center, and therefore, the independent school districts were liable for the special education district's related acts and omissions. The special education district acted explicitly under the independent school districts' control, and the creation and supervision of programs such as the learning center were explicitly within the scope of the special education district's authorized conduct on behalf of the independent school districts. Morlock v. West Central Education District, 46 F.Supp.2d 892, 902.

D.Minn. 1998. Cit. in headnotes, quot. in case quot. in disc. Owner/operator of sawmill sued contractor that designed the mill and provided milling equipment and manufacturer of equipment for, inter alia, fraud. Defendants moved for summary judgment. Granting the motion in part and denying it in part, the court held, among other things, that material factual issues existed as to whether contractor misrepresented the quality of its designs, the competency of its designers, and the capabilities of the equipment provided; however, manufacturer was not liable as contractor's principal because manufacturer relinquished ownership and title to the equipment before contractor sold it to plaintiff and in no way controlled where, to whom, or for how much the goods were sold. Minnesota Forest Products v. Ligna Machinery, 17 F.Supp.2d 892, 896, 913.

D.Minn. 1991. Quot. in case quot. in disc. A liability insurance policy issued to an insolvent bank's directors and officers contained exclusions for claims brought by the FDIC or any other federal or state regulatory agency against the bank's directors.
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and officers. The bank's insurer filed a declaratory judgment action against the FDIC, seeking a determination that it had no obligation to insure either the bank or its directors and officers in a proposed FDIC action against them. Granting the insurer's motion for summary judgment, this court held, inter alia, that the consent from the directors to one of the officers to obtain liability insurance for them made the officer an agent for the bank and the directors, and that the officer had the actual authority both to procure the renewal insurance and to agree to significant changes in the existing coverage, including the insurer's inclusion of the regulatory exclusion; thus, the insurer's notice to the officer of the policy changes could be imputed to the bank and the other officers.  


D.Minn.1987. Com. (b) cit. in case quot. in disc. The owner of a facility on which hazardous waste was discovered sued the former owner to recover incurred and expected response costs in cleaning up the facility under federal law and for contribution and indemnity. The waste was disposed of on the facility by a lessee whose lease the plaintiff purchased from the defendant. The court granted the defendant's motion for summary judgment, holding in part that the defendant was not liable as a principal for the lessee's conduct. The court stated that, because the lessee was not continuously subject to the defendant's will by way of the defendant's daily involvement in the lessee's operations, no agency relationship existed.  


D.Minn.1980. Cit. in disc. Trustees of employee benefit plan brought an action against employers to compel the employers to make contributions to the employee benefit plan. The District Court held that the employers were bound by the trust agreement which established the pension and welfare funds for the exclusive benefit of their participants and beneficiaries, and, therefore, the employers were liable to the fund for payments due under the agreements. The defendant employers contended, inter alia, that the trustee plaintiffs were their agents and therefore could be sued for alleged mismanagement under federal common law of collective bargaining and state common law. The court found that the trustees of the employee benefit trusts, established pursuant to the trust agreements entered into between the employers and the union, were not the employers' agents as they do not derive their authority from, nor serve upon the orders of, the employers, and the employers are not held vicariously liable if the trustees mismanage the funds. Therefore, the court held that the employers could not bring an action against the trustees for alleged mismanagement under federal common law. Judgment was entered in favor of the plaintiff trustees.  


D.Minn.Bkrtcy.Ct.2012. Cit. in case cit. in ftn. Chapter 11 trustee of bankruptcy estates of Ponzi-scheme perpetrator's debtor-company and company's debtor-subsidiaries brought an adversary proceeding on a theory of professional negligence against accounting firm that had performed audits and other services for subsidiaries. This court granted plaintiff's motion for an order to compel defendant to participate in arbitration, holding that estate of company, as the principal in an agency relationship with its subsidiaries, had the right to compel defendant to arbitrate estate's malpractice claims on an agency theory, even though company was a nonsignatory to the arbitration agreement between defendant and subsidiaries. The court reasoned that, since agency principles could bind both principal and agent to a contractual duty to arbitrate, it was reasonable to allow both agent and principal to assert the right to arbitration against an unwilling signatory-opponent, as long as the underlying substantive claims implicated the agency relationship.  


N.D.Miss.  

N.D.Miss.1971. Quot. in sup. This was a suit by a farmer to recover purchase price of his soy bean crop sold to an elevator which the farmer contended to be part of the defendant's business entity and to have been operated by defendant's agent. The defendant storage corporation brought a third party complaint which sought recovery from the elevator operator of any judgment awarded against defendant. The court held that the operator of the elevator had actual authority to purchase grain as defendant's agent
due to the fact that defendant furnished substantially all funds received by operator, controlled the price, weights, grades, and
destination of grain, directed the operator through constant contact, had the right to train operator's personnel, and inspected

W.D.Mo.

W.D.Mo.1997. Cit. in headnote, subsec. (3), com. (e) cit. in sup. Auctioneer sued automobile auction house for, inter alia,
vioations of the Americans With Disabilities Act (ADA), alleging that defendant terminated his services after discovering
that he had contracted spiral meningitis. Entering summary judgment for defendant, the court held that plaintiff controlled the
manner and means of his work, paid his own employment taxes and health insurance premiums, and received no training from
defendant; therefore, plaintiff was an independent contractor, not an employee of defendant, and, as such, was not covered
under the ADA. Case v. ADT Automotive, Inc., 17 F.Supp.2d 1077, 1078, 1080.

W.D.Mo.1995. Cit. in disc. After a woman died from a blood condition, her family sued the clinic, alleging that the clinic's
doctor failed to properly diagnose the cause of her severe anemia. Trial court granted the clinic partial summary judgment. This
court affirmed, rejecting, inter alia, plaintiffs' assertions that the doctor was the clinic's agent and acting within the scope of his
agency sufficiently to hold the clinic liable for the doctor's negligence. The doctor worked at the clinic to satisfy his scholarship
obligation to the National Health Services Corps, and the doctor did not have an agreement with the clinic to serve its interests.
Further, the government's agreement with the clinic granted the government the legal right to monitor, supervise, and control
the doctor. Wray v. Community Health Center, 901 S.W.2d 167, 170.

W.D.Mo.1993. Com. (a) quot. in part in sup. Physician whose staff privileges at two hospitals were terminated brought antitrust
action against hospitals and physicians who participated in a peer review process. Granting defendants' motions for summary
judgment, the court held, inter alia, that defendant hospitals could not conspire with their medical staffs in connection with
the peer review process, since the staff acted as hospitals' agent during the process and the final decision to exclude plaintiff
was made independently by the hospital board. The intracorporate immunity doctrine, said the court, applied to the peer review

W.D.Mo.1983. Cit. in sup. The plaintiff sued a city and a nonprofit corporation under Title VII and \$ 1983 for alleged
employment discrimination based on sex. This court dismissed the claims. The nonprofit corporation provided emergency
monetary aid to the poor, and it never employed more than ten persons at a time. The plaintiff claimed that she was denied a
promotion and later fired for an earlier complaint to the EEOC. This court dismissed the Title VII claim for lack of subject-matter
jurisdiction, as Title VII's applicability was limited to employers having 15 or more employees. The city and the corporation
were not a single entity. Nor was the corporation the city's agent, since it did not act on behalf of and subject to the city's control.
Massey v. Emergency Assistance, Inc., 580 F.Supp. 937, 943, order affirmed 724 F.2d 690 (8th Cir.1984), certiorari denied

W.D.Mo.1980. Quot. in part in sup. Plaintiff rail carrier asserted claims for unpaid freight charges against certain shippers
which were members of an incorporated nonprofit shippers association whose only function was to consolidate and distribute
freight for its shipper members to gain the benefits of volume shipping rates. The shippers association declared bankruptcy
and had no assets to satisfy the plaintiff's claims. The issue before the court was whether the shipper members were liable
under the law of agency as principals for freight charges for the movement of their own goods when the association failed to
make payment. Testimony revealed that the day-to-day affairs of the shippers association were managed by an independent
management company. Each shipment subject to a claim by plaintiff was made at the behest of a shipper member defendant.
The member prepared a bill of lading for the shippers association. The association, acting through its general manager, prepared
a second bill of lading which consolidated the various shipment requests in order to obtain the advantages of volume rates and
this bill of lading which went to plaintiff specified that the incorporated shippers association as consignor would be liable for payment. No shipments were ever made, except at the behest and for the benefit of a member. Each shipper exerted individual control over when and if his goods were shipped. If the association could not fulfill the shipper's direction, the shipment was not routed through the association. The association was compensated on the basis of the percentage of freight handled and assumed some financial responsibility for the corporation providing office space and paying insurance fees for each shipment. However, the members through their directors authorized all payments and signed all checks. The district court held that the facts in the case established that the shippers association had actual authority to act as agent for a member, was controlled by the members, and did, in fact, act as their agent in arranging transport for individual shippers. The shippers association bore no responsibility for freight charges vis-a-vis a member even though its name as consignor appeared on the consolidated bill of lading. The court held that plaintiff, even though it relied on the defunct shippers association as consignor, had the right to look to each member principal for ultimate liability on its individual freight charge when its agent shippers association had actual authority to make the particular shipment. Southern Pacific Transportation Company v. Continental Shippers Association, Inc., 485 F.Supp. 1313, 1316, affirmed 642 F.2d 236 (8th Cir.1981).

D.N.H.

D.N.H. 1993. Cit. in sup., quot. in ftn. A former employee of a bank sued the receiver of the bank and the bank's officers, asserting various claims arising from her discharge, including civil rights violation claims. This court, granting in part and denying in part the defendants' motion to dismiss, held, inter alia, that the plaintiff had sufficiently alleged that one of the officers was an agent of her employer by stating that, upon being granted a meeting with the officer, the officer informed her that he would not reverse the termination decision alleged by the employee to have been discriminatory on the basis of sex, and that he, in fact, took no action to correct the alleged discrimination. Lamirande v. Resolution Trust Corp., 834 F.Supp. 526, 529.

D.N.H.Bkrtcy.Ct.

D.N.H.Bkrtcy.Ct. 2005. Quot. in disc. Debtor corporation brought an adversary proceeding against grocers cooperative that had helped debtor buy two grocery stores, alleging, inter alia, breach of fiduciary duty. This court denied the breach-of-fiduciary-duty claim, holding, inter alia, that defendant was not acting as plaintiff's agent in connection with the purchase and sale of the stores, since there was insufficient evidence that plaintiff controlled defendant in defendant's negotiations with seller; there was no written agency or brokerage agreement between the parties, and no evidence existed that plaintiff consented to defendant acting as plaintiff's agent. Because no agency relationship existed, defendant was not acting as a broker for plaintiff, and was not plaintiff's fiduciary. In re Clarkeies Market, L.L.C., 322 B.R. 487, 493.

D.N.J.

D.N.J. 2008. Subsec. (1) quot. in case quot. in disc. Former mayor and his wife moved to dismiss mail-fraud charges brought against them for allegedly diverting campaign-committee funds. Denying defendants' motion, this court held, inter alia, that the government alleged a legally sufficient theory of "honest services" mail fraud by asserting that defendants schemed to deprive the campaign committees of the honest services of former mayor as a candidate and of his wife as committee treasurer. The court explained that the government's honest-services argument was predicated, in part, on defendants' common-law fiduciary duties, as agents, to the committees, as principals. U.S. v. Delle Donna, 552 F.Supp.2d 475, 492.

D.N.J. 2004. Cit. in disc. Moving company brought action against disgruntled customer whose possessions were stolen during move carried out by affiliated agent, on the basis that negative comments posted on Internet websites constituted libel, among other claims. This court denied both parties' motions for summary judgment on this claim, holding, inter alia, that genuine issues
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of material fact existed as to whether apparent authority existed where affiliated agent was permitted to use company's boxes, wear company's uniforms, use trucks containing company's logo, use order-for-insurance form printed with company's name and logo, and where agency relationship for interstate, but not intrastate, moves was not made clear to the customer. Mayflower Transit, LLC v. Prince, 314 F.Supp.2d 362, 373.

D.N.J. 2003. Cit. in ftn. After subcontractor's employee was injured while installing skylights at a train station, he sued general contractor, another subcontractor, a construction manager hired by city, and various supervisors, alleging that defendants were negligent in exercising reasonable care and providing proper safety procedures for the project. This court denied construction manager's motion for summary judgment on its cross-claim for indemnification against defendant contractors, holding, inter alia, that construction manager was not third-party beneficiary of contract between general contractor and city, in which contractor agreed to indemnify city and its agents or employees. Construction manager was not mentioned in contract, nor did manager prove that it qualified as an agent or employee of the city under contract's terms. Fulgham v. Daniel J. Keating Co., 285 F.Supp.2d 525, 539.

D.N.J. 1999. Cit. in disc. Suppliers of recyclable waste paper sued packagers for, inter alia, breach of contract, alleging that defendants, through a now-bankrupt paper broker, refused to pay for orders in an attempt to manipulate the market and cause prices for raw materials to collapse. Denying defendants' motions for summary judgment on this point, the court held, in part, that material factual issues existed as to whether broker had actual or apparent authority to purchase supplies and to contract on behalf of defendants; if so, broker's failure to pay could create liability on the part of defendants as principals. Additionally, a trier of fact should assess defendants' claim that broker was acting as an independent seller. Automated Salvage Transport v. NV Koninklijke KNP, 106 F.Supp.2d 606, 617.

D.N.J. 1996. Quot. in disc. In CERCLA action, manufacturer of mattresses and box springs sought contribution from investors in the fire extinguisher company that had previously occupied the site in question, at which solvents had been dumped. Plaintiff contended, among other things, that two investors were liable as operators of the facility because they had appointed third investor, which allegedly controlled the actions of fire extinguisher company, as their agent. Plaintiff also sought contribution or indemnification from third investor's vice president. Defendants moved for summary judgment. Granting the motions in part and denying them in part, the court held, inter alia, that material factual issues existed as to whether third investor exercised actual control over the day-to-day operations of fire extinguisher company, such that operator liability could be imposed; that third investor was not the agent of other two investors for purposes of CERCLA liability; and that plaintiff was not entitled to contribution or indemnification from third investor's vice president. Stearns & Foster Bedding v. Franklin Holding Corp., 947 F.Supp. 790, 809.

D.N.J. 1995. Cit. in disc. Woman sued her obstetrician and the obstetrician who delivered her baby for negligence following the newborn's death 11 days after birth. Plaintiff alleged that the physicians' coverage arrangement whereby one attended to the patients of both practices on alternate weekends indicated the existence of an agency relationship that allowed her to impute the negligence of one to the other. Granting nondelivering obstetrician's motion for summary judgment, the court held that the physicians were not agents of each other but independent contractors since they were highly skilled professionals who worked without supervising one another and who collected fees from their own patients exclusively. Moreover, absent allegations of misrepresentation or deceit on the part of the delivering obstetrician, plaintiff could not recover from her own obstetrician on an independent contractor-agency theory of liability. Dymburt v. Rao, 881 F.Supp. 942, 945.

D.N.J. 1995. Cit. in disc. Investors sued brokerage firms for securities fraud, breach of fiduciary duty, and unjust enrichment. Plaintiffs alleged that defendants breached their fiduciary obligation to disclose the material fact that defendants intended to execute plaintiffs' orders at the NASDAQ National Best Bid and Offer (NBBO) price quotations, rather than at superior available prices, in order to satisfy their duty of best execution. This court granted defendants summary judgment, holding, inter alia, that brokers did not commit securities fraud by referring to the NBBO price quotation without informing investors that other and
perhaps more favorable prices were obtainable on other electronic quotation services, since the brokers' duty of "best execution" was ill-defined under industry custom. In re Merrill Lynch Securities Litigation, 911 F.Supp. 754, 760, reversed 135 F.3d 266 (3d Cir.1998), cert. denied … U.S. …, 119 S.Ct. 44, 142 L.Ed.2d 34 (1998).

D.N.J.1994. Cit. in disc. A telephone company sued an aggregator of 800 inbound telecommunications services that offered end users access to the phone company's 800 inbound network at a discounted price, alleging that in contacting and soliciting end users for the aggregator's plan various sales representatives either improperly stated that they were with phone company or falsely misled end user into believing that aggregator's plan was an official phone company program. The court denied plaintiff's application for a preliminary injunction, holding, inter alia, that the aggregator and its president did not qualify under the Lanham Act as "any person" engaging in certain delineated misleading acts, because the sales representatives were independent contractors over whom defendants exercised insufficient control to amount to an agency relationship. Employees were paid on a commission basis and defendants' interaction with sales representatives was limited. AT & T v. Winback & Conserve Program, 851 F.Supp. 617, 625, vacated 42 F.3d 1421 (3d Cir.1994), cert. denied 514 U.S. 1103, 115 S.Ct. 1838, 131 L.Ed.2d 757 (1995).

D.N.J.1992. Cit. in disc. A corporation that manufactured and sold pollution control chemicals and related equipment sued its former agent in the Philippines, alleging various claims, including breach of fiduciary duty, and seeking preliminary injunctive relief. Plaintiff had entered into direct dealings with a major Philippine government customer after its agency agreement with defendant expired, but defendant had attempted to reposition itself as middleman in transactions between plaintiff and the customer and then represented itself to the customer as being able to provide competing chemicals and equipment at reduced prices. This court, determining that plaintiff was not entitled to injunctive relief, held, inter alia, that even though plaintiff had demonstrated a likelihood of success on its breach-of-fiduciary-duty claim allegedly arising out of defendant's holding itself out as plaintiff's agent after expiration of their relationship, there was no ongoing harm to plaintiff, as defendant had ceased purporting to act as plaintiff's agent and the customer had been notified that defendant was no longer authorized to do so. Apollo Technologies Corp. v. Centrosphere Indus. Corp., 805 F.Supp. 1157, 1195.

D.N.J.Bkrtcy.Ct.1980. Quot. in sup. The plaintiff reinsurance broker issued risks to other insurance companies (reinsurers) on behalf of the defendant, a primary insurance company, which did not want to insure those risks. In return, the defendant paid premiums to the plaintiff which the plaintiff was to pay the reinsurers. The plaintiff filed a petition of bankruptcy. The bankruptcy court found that the plaintiff was bankrupt, that it was an agent of the defendant, and therefore the reinsurers' claims should have been brought against the defendant and not against the plaintiff's bankrupt estate. The defendant appealed, claiming that when it had become aware of the plaintiff's financial situation it had paid the reinsurers directly and had stopped doing business with the plaintiff. Additionally, because the plaintiff had not transmitted the payments forwarded by the defendant, it had been forced to disburse additional premium monies to the reinsurers. The court determined that the conduct of the defendant and the plaintiff indicated an agency relationship. This relationship was evidenced by the actual authority that the defendant had delegated to the plaintiff for collecting and transmitting monies on its behalf. Further, the defendant had exercised some control over the plaintiff. Hence, the decision of the bankruptcy court was affirmed. Matter of Pritchard & Baird, Inc., 8 B.R. 265, 269, affirmed 673 F.2d 1299 (3d Cir.1981).

E.D.N.Y.12012. Quot. in case quot. in sup. Consumers of wireless services brought a putative class action against collection agency, alleging that defendant had no valid basis for seeking to recover collection costs from them and that doing so violated state and federal law. This court denied defendant's motion to compel plaintiffs to arbitrate their claims pursuant to arbitration agreements in plaintiffs' wireless-service contracts to which defendant was not a party. Denying defendant's motion for
reconsideration, this court held, inter alia, that an agency relationship did not exist between defendant and the wireless providers so as to justify estopping plaintiffs from opposing arbitration; while there was no doubt that defendant, as an independent contractor, could still simultaneously be an agent, there was no evidence here that wireless providers exercised control over defendant’s daily operations so as to support a finding of an agency relationship. Butto v. Collecto Inc., 845 F.Supp.2d 491, 497.

E.D.N.Y. 2012. Subsec. (1) cit. in case quot. in sup. Exclusive sales agent for food-packaging manufacturer brought a breach-of-contract claim, among other things, against manufacturer, seeking to recover unpaid commissions allegedly owed to it. Granting summary judgment for defendant, this court held, inter alia, that plaintiff was not entitled to commissions on sales of products manufactured by defendant’s affiliate. The court rejected plaintiff’s argument that affiliate served as defendant’s agent for the manufacture of such products, since plaintiff failed to show that defendant possessed control over affiliate in the manufacture of products at affiliate’s plant, and there was no evidence that affiliate acted for the benefit of defendant in manufacturing those products. Winter-Wolff Intern., Inc. v. Alcan Packaging Food and Tobacco Inc., 872 F.Supp.2d 215, 227.

E.D.N.Y. 2007. Com. (b) quot. in case quot. in disc. Ticketed passengers brought a class action against airline for, in part, breach of contract, arising from defendant's failure to operate international flights for which plaintiffs had purchased tickets from charter company. Denying in part defendant's motion for summary judgment, this court held that genuine issues of material fact existed as to whether charter company was defendant's agent, or vice versa, and whether defendant was bound by charter company's acts in entering into contracts with plaintiffs on defendant's behalf. The court noted that, while the agreement between charter company and defendant stipulated that defendant acted as charter company's agent in some respects, e.g., in securing ground transportation, defendant controlled all aircraft and crew, as well as other features; in addition, fact issues existed as to the allocation of risk with respect to the relationship. In re Nigeria Charter Flights Contract Litigation, 520 F.Supp.2d 447, 460.

E.D.N.Y. 2000. Com. (b) quot. in case quot. in disc., com. (e) cit. in disc. Seamen brought negligence and Jones Act action against president of their corporate employer and gasoline buyer, among others, seeking recovery for injuries they sustained from a fire while transferring gasoline from employer's vessel into a fuel truck. This court, inter alia, denied buyer's motion for summary judgment, holding that fact issues existed as to whether company hired to transport gasoline from vessel to buyer's premises was buyer's independent contractor, either performing inherently dangerous activity or negligently selected, thus rendering buyer liable for company's alleged negligence in removing gasoline. Jurgens v. Poling Transp. Corp., 113 F.Supp.2d 388, 398, 400.

E.D.N.Y. 1996. Com. (b) cit. in headnote and quot. in disc. Insurers, as subrogees of insured homeowners whose house was damaged by a fire allegedly caused by defective wiring installed by an electrical contractor, sued Board of Fire Underwriters for negligence because its inspector issued a certificate of compliance despite code violations. Granting defendant’s motion for summary judgment, the court held that, although defendant was not entitled to municipal tort immunity, plaintiffs' claim was time-barred under general statutes of limitations. The court said that governmental immunity was not available because defendant was neither an employee nor an independent contractor of the town; defendant, and not the town, controlled the manner in which inspections were performed, defendant received its fee directly from the owner or contractor, and the town neither collected any fees nor paid any funds to defendant as part of the inspection requirement. Royal Ins. Co. of America v. Ru-Val Elec. Corp., 918 F.Supp. 647, 648, 653.

E.D.N.Y. 1986. Com. (e) quot. in case quot. in sup. An investor who had opened a brokerage account at the defendant firm brought various actions against the firm and an employee of the firm, alleging damages from certain securities transactions. On one of several motions to dismiss the plaintiff’s claims, the court stated that it could not discern any set of circumstances under which principal and agent claims would garner for the plaintiff any different results than those previously pled respondeat superior claims. Therefore, the court dismissed the plaintiff’s causes of action stating claims under principal and agent theories. Morris v. Gilbert, 649 F.Supp. 1491, 1500.
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E.D.N.Y.1961. Cit. in sup. Where plaintiff sought declaratory relief from patent infringement, and defendant brought action charging infringement, and subsequently plaintiff sold its assets to another without knowledge of defendant's suit, it was not contempt of court to sell to a purchaser who was acting on his own behalf and not as agent for a principal. Boots Aircraft Nut Corp. v. Kaynar Manufacturing Co., 195 F.Supp. 444, 447.

E.D.N.Y.Bkrtcy.Ct.

E.D.N.Y.Bkrtcy.Ct.2012. Cit. in sup. Chapter 7 debtor brought an adversary proceeding against various student-loan providers, seeking a determination that her student-loan debt was discharged when this court entered a discharge order in her bankruptcy case. Denying debtor's requested relief, this court held that, because a loan-consolidation service, acting as debtor's agent, entered into an agreement consolidating debtor's student loans on her behalf, debtor was bound by the terms of the consolidation loan, which obligated her as to certain general student loan debt that the court found nondischargeable; the loan-consolidation service had actual authority to enter into the consolidation loan on debtor's behalf, or, alternatively, debtor ratified the consolidation loan by her conduct in knowingly enjoying, without objection, the substantial financial and other benefits that accrued to her as a result of the consolidation. In re Grubin, 476 B.R. 699, 708.

E.D.N.Y.Bkrtcy.Ct.2004. Subsec. (1) quot. in case quot. in sup. Creditors brought adversary proceeding against debtor to have debts deemed nondischargeable, alleging that debtor and his associate made misrepresentations to induce plaintiffs to enter into two leases and incur construction costs. This court entered judgment for plaintiffs, holding, inter alia, that plaintiffs had established by a preponderance of the evidence that they were fraudulently induced by debtor and his associate to enter into the leases and to make substantial alterations to each of the premises. Although associate made a majority of the false representations, debtor knew that associate was acting on behalf of their companies as vice president of operations. Debtor either knew or should have known that associate was making false representations to plaintiffs, and, therefore, associate's representations were imputed to debtor, as principal. In re Zaffron, 303 B.R. 563, 571.

N.D.N.Y.

N.D.N.Y.1996. Cit. in headnote, quot. in disc., com. (b) quot. in disc. Sixth-grader who claimed that she was sexually harassed by the boys in her class brought Title IX action against school, school board, her teacher, and an assistant superintendent. Defendants moved for summary judgment. Granting in part and denying in part the motion, the court held, inter alia, that material factual issues existed as to whether the conduct complained of was sexual harassment, whether it was based on plaintiff's sex, whether it affected the terms of her education, and whether defendants had actual notice of it. While constructive notice sufficed in a Title VII action, actual notice was required here because the agency concepts supporting constructive notice in an employment harassment action were absent from a Title IX peer-on-peer harassment case, where the harassing student was not considered the school's agent. Bruneau v. South Kortright Cent. School, 935 F.Supp. 162, 164, 173.

N.D.N.Y.1983. Subsec. (1) quot. in ftn. in sup. Tradesmen alleged that an international labor organization breached a collective bargaining agreement through the acts of affiliated local unions as its agents. The organization was the sole signatory of the agreement. This court held that the organization could be liable for the acts of the local unions as its agents only if the organization ratified or approved of the acts, or the acts were done pursuant to the fundamental agreement of association. Finding no such evidence to support vicarious liability, this court granted the organization's motion for summary judgment. Boss v. International Broth. of Boilermakers, etc., 567 F.Supp. 845, 847, judgment affirmed 742 F.2d 1446 (2d Cir.1983), certiorari denied 469 U.S. 819, 105 S.Ct. 89, 83 L.Ed.2d 36 (1984).
Echeverri, Daniel 9/22/2015
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N.D.N.Y.Bkrtcy.Ct.

N.D.N.Y.Bkrtcy.Ct.1989. Subsec. (1) quot. in case cit. in disc. After a man gave $15,000 to a female companion, allegedly to purchase a house for both of them, the woman deposited the money in her mother's checking account and used it for her own purposes. After the mother declared bankruptcy, the man sought a determination that the $15,000, plus punitive damages, was a nondischargeable debt based on the alleged fraud. The court found for the debtor, stating that even if the daughter had acted as the debtor's agent, there was no proof that the debtor had controlled or consented to any fraudulent activity perpetrated by the daughter. In re Verdon, 95 B.R. 877, 883.

S.D.N.Y.

S.D.N.Y.2014. Quot. in case quot. in sup. Defendant, a local political-party official, was charged with conspiring to commit wire fraud and bribery in connection with a particular real-estate deal in violation of the Honest Services Fraud Statute. Denying defendant's motion to dismiss the indictment, this court held that the statute was not unconstitutionally vague as applied to defendant, because defendant had fair notice that he could have owed and violated a duty of loyalty to the county committees and members of the local political party that he represented. The court noted that this fiduciary duty was derived from definitions of fiduciary and like relationships contained in state, federal, and common law, and cited federal case law quoting Restatement Second of Agency § 1 for the proposition that “agency” was the fiduciary relation that resulted from the manifestation of consent by one person to another that the other should act on his behalf and subject to his control, and consent by the other so to act. U.S. v. Smith, 985 F.Supp.2d 547, 601.

S.D.N.Y.2013. Subsec. (1) quot. in case quot. in sup. Members of outlaw motorcycle clubs were charged with, among other things, possession of firearms while being “employed for” convicted felons and known drug users in violation of the federal Bodyguard Statute. Denying defendants' motions to dismiss, in which they argued that the statute's failure to require a showing of an employer-employee relationship unconstitutionally criminalized mere association with prohibited persons, this court held, inter alia, that the statute did not violate defendants' First Amendment right of association, because the statute's “knowledge requirement” was properly interpreted as requiring a defendant to have known each of the following: that the defendant's employer was a prohibited person—i.e., a convicted felon, a drug user, etc.; that the defendant received, possessed, or transported a firearm; and that the defendant's receipt, possession, or transportation of the firearm was in the course of the defendant's employment for a prohibited person. The court noted that agency principles controlled the definition of “employed” and “employment” in the statute. U.S. v. Lahey, 967 F.Supp.2d 731, 748.

S.D.N.Y.2009. Cit. in disc., com. (b) quot. in sup. After certain chemical cargo allegedly caused or contributed to an explosion and fire aboard the vessel transporting the cargo, vessel's owner and entities that owned or insured other damaged cargo aboard the vessel sued the chemical cargo's buyer. This court, inter alia, denied buyer's motion for summary judgment as to plaintiffs' federal maritime common-law agency claim asserting that seller, which was buyer's wholly owned subsidiary, was buyer's agent, and that buyer was bound as principal by contracts made by seller on its behalf and was liable for any torts committed by seller. The court pointed to indicia of buyer's control over seller that raised fact issues as to whether a principal/agent relationship existed, and rejected buyer's contention that by the express terms of a C.I.F. sale, contractual parties could not qualify as agents; agency depended not on contractual formalities but on whether an agreement was made between principal and agent to the effect that the agent would act on the principal's account. In re M/V Rickmers Genoa Litigation, 622 F.Supp.2d 56, 73, 74.

S.D.N.Y.2009. Cit. in case cit. in ftn. Black South African citizens brought class actions against multinational automotive, computer hardware and software, banking, and armaments corporations under the Alien Tort Claims Act, alleging that defendants violated customary international law by committing, under direct, aiding and abetting, and/or conspiracy theories, apartheid, extrajudicial killing, torture, and other acts. Denying in part defendants' motion to dismiss and denying defendants'
motion for reconsideration, this court rejected defendants’ arguments that they could not be held liable for the actions alleged in the complaints because those acts were properly attributed to their subsidiaries, indirect subsidiaries, or affiliates; while a parent corporation was not liable for the acts of its subsidiaries simply because it owned the subsidiary's stock, plaintiffs made substantial allegations to support liability against defendants under agency theories. In re South African Apartheid Litigation, 617 F.Supp.2d 228, 272, 299.

S.D.N.Y. 2009. Cit. in case quot. in sup. and cit. in ftn. South African citizens filed class actions against subsidiary corporation and its parent corporation under the Alien Tort Claims Act, alleging that defendants aided and abetted torts in violation of customary international law by supplying the South African government with computers used to implement South Africa's racial pass laws, a crucial component of apartheid. Granting parent's motion to dismiss, this court held, inter alia, that plaintiffs failed to allege facts in support of its claim that subsidiary acted as parent's agent. The court noted that the relevant relationship between subsidiary and the South African government predated the relationship between subsidiary and parent, and concluded that plaintiffs' otherwise unsupported assertion that parent's management played “an increasing role in directing subsidiary's business activities” did not suffice to sustain a plausible claim that subsidiary acted as parent's agent in carrying out sales, particularly concerning a preexisting customer relationship. In re South African Apartheid Litigation, 633 F.Supp.2d 117, 121.

S.D.N.Y. 2005. Quot. in case quot. in disc. Insurer sued agents and brokers for, in part, breach of fiduciary duty after defendants allegedly failed to disclose to, inter alia, insurer that insurer had rejected a certain bond when defendants had previously offered it under the parties' agency agreement. Denying insurer's motion for partial summary judgment, this court held, inter alia, that, although defendants, under the agency agreement, were insurer's agents for the types of insurance to which they were authorized to bind insurer, the particular bond at issue here was one of a class that insurer had reserved the express right to approve or reject, and thus, in regard to this bond, defendants were merely brokers, not express agents. Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Services, 388 F.Supp.2d 292, 301.

S.D.N.Y. 2005. Subsec. (1) quot. in sup. and cit. in ftn. Health-benefit providers sued pharmaceutical manufacturer for allegedly misrepresenting to their pharmacy-benefit manager (PBM) the safety of an oral drug used for treating type 2 diabetes that was later withdrawn from the market, claiming that PBM acquired the drug, on behalf of plaintiffs, at higher prices than those charged for safer alternatives. Granting summary judgment for manufacturer, this court held, inter alia, that there was no agency relationship between plaintiffs and their PBM; plaintiffs had no ability to control PBM's conduct with respect to, among other things, the purchase of any certain drug or its inclusion of any certain drug in its formularies, and, without control, there was no agency. In re Rezulin Products Liability Litigation, 392 F.Supp.2d 597, 607, amending 390 F.Supp.2d 319 (S.D.N.Y. 2005).

S.D.N.Y. 2003. Cit. in disc. Investors alleged securities fraud against Bermuda accounting firm serving as auditor of offshore investment fund, and auditor association of which firm was member, after fund lost in excess of $4 million. Denying association summary judgment, this court held, inter alia, that fact issue existed as to whether firm partner involved in audit was also agent of association. Cromer Finance Ltd. v. Berger, 245 F.Supp.2d 552, 559.

S.D.N.Y. 2001. Com. (b) quot. in case quot. in disc. African-American prospective apartment tenant sued property owner, company that managed property, and real estate company and its broker, alleging that defendants discriminated against her in housing because of her race or color in violation of state and federal statutes. This court granted in part and denied in part defendants' motions for summary judgment, holding, inter alia, that there were fact issues as to existence of agency relationship between broker and management company such that broker's knowledge of plaintiff's race could be imputed to company. Management company provided broker information as to apartment availability, broker submitted leases and applications to company, and company gave broker standards and guidelines as to income and credit history of prospective tenants. Hughes v. Lillian Goldman Family, LLC, 153 F.Supp.2d 435, 450.
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S.D.N.Y.1999. Cit. in headnote, subsec. (1) quot. in disc. A customs surety asserted reimbursement and indemnity claims against a customhouse broker, the importer of record, and the actual importer. This court dismissed plaintiff's claims for breach of fiduciary duty, intentional misrepresentation, and unjust enrichment, holding, inter alia, that a fact issue existed as to whether the importer of record and the broker were the actual importer's agents. The actual importer authorized the importer of record and the customhouse broker to serve as its agents for the arrival and delivery of Brazilian steel into the United States. Because posting security was usually necessary when a party imported goods, the actual importer knew that the importer of record would post customs surety bonds on its behalf. Old Republic Insurance Company v. Hansa World Cargo Service, Inc., 51 F.Supp.2d 457, 471.

S.D.N.Y.1998. Subsec. (1), com. (b) cit. in disc. Producer of children's television series sued cable television programmer and various cable systems operators for copyright infringement, alleging that defendants continued to broadcast a number of episodes after the conclusion of the two-year exhibition period previously agreed upon. Defendants moved to dismiss. Granting the motion in part and denying it in part, the court held that plaintiff's claim for damages premised on a reasonable license fee was cognizable, that material factual issues existed as to the quantification of a reasonable license fee, that plaintiff failed to establish damage due to programmer's assertion that it held an exclusive 75-year license for plaintiff's pilot episode, and that systems operators were not agents of programmer to whom programmer's actions could be imputed. Encyclopedia Brown Productions v. Home Box Office, 25 F.Supp.2d 395, 403.

S.D.N.Y.1998. Subsec. (1) and com. (b) cit. in ftn. Fiduciaries of employee benefit plans sued the employer and its assignee under ERISA for contributions to employee funds that the assignor failed to make as required. This court granted in part the assignee's motion to dismiss, holding, inter alia, that the assignee for the benefit of the employer's creditors, sued in his capacity as such, was not an “employer” within the meaning of ERISA. The assignee could not properly be characterized as an agent because he was a trustee for the employer's creditors and therefore was not subject to the employer's direction and control. Mason Tenders Dis. Council Welfare v. Logic Const., 7 F.Supp.2d 351, 356.

S.D.N.Y.1995. Subsec. (1) cit. in headnote and quot. in case quot. in sup. A high school student who was a participant in the Marine Corps' delayed entry program was injured in a car accident as a passenger while traveling on a recruiting trip with a fellow participant. He sued the United States under the Federal Tort Claims Act, alleging that the government was liable for the participant driver's negligence, and for the Marine Corps recruiter's negligent supervision of the driver. This court granted in part and denied in part defendant's motion to dismiss, holding, inter alia, that plaintiff stated a cause of action as to defendant's liability for the driver's negligence, because plaintiff's allegations that he and the driver were carrying out the recruiter's instructions to help with recruitment, and that the driver was driving the recruiter's car with recruiter's consent and knowledge, raised a triable issue of fact as to whether driver was recruiter's agent. Heredia v. U.S., 887 F.Supp. 77, 78, 80.

S.D.N.Y.1991. Com. (b) cit. and quot. in cases cit. in disc. Several major publishing houses brought a copyright infringement suit under the Copyright Act of 1976 against a photocopying service, alleging that the defendant copied, without permission, excerpts from books whose rights were held by the plaintiffs, compiled the excerpts into course packets, and sold them to college students. The court found that the defendant's duplication of the excerpts was not a fair use of the plaintiffs' copyrights and, therefore, constituted infringement. The court refused to remit statutory damages, stating that the defendant did not act as an agent of any nonprofit educational institution when it copied the excerpts, since the defendant did not show that the college professors who ordered the course packets for use in their classes exerted a sufficient level of control over the relationship. Basic Books, Inc. v. Kinko's Graphics Corp., 758 F.Supp. 1522, 1546.

S.D.N.Y.1990. Subsec. (1) cit. in case cit. in sup. A debtor and its principals sued a creditor to avoid alleged fraudulent transfers, and also sued the creditor, the creditor's officer, and a business advisor on numerous counts. Adopting a magistrate's recommendations and granting the defendants' motion for summary judgment in part, this court held, inter alia, that the debtor's evidence that the creditor recommended the business advisor's services to the debtor, that the advisor eliminated the debtor's
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debt to the creditor, and that the advisor left the debtor without notice as soon as the debt was discharged failed to prove the existence of an agency relationship between the creditor and advisor, and thus the debtor's claims for voidable preferences and fraudulent conveyances were meritless. The court stated that even assuming arguendo that an agreement had been reached whereby the advisor would act for the benefit of the creditor, there was no indication that the creditor had the essential right to control the advisor's actions. In re Rubin Bros. Footwear, Inc., 119 B.R. 416, 422.

S.D.N.Y.1990. Cit. in disc., com. (e) cit. in disc. Under a voluntary settlement of an action brought by the federal government against a union and its executive board, an investigations officer was authorized to prosecute corrupt union members. The officer filed this application to take the sworn, in-person examination of an attorney as part of an investigation into the union's payment of legal fees to a union local president charged with extortion. The attorney had advised the executive board that it could pay the president's legal fees. This court granted the officer's application, holding that he had shown adequate cause to take the statement, and that the attorney was an agent of the union. The court explained that the attorney could be deemed a union agent because an attorney-client relationship had been formed between the attorney and the executive board. U.S. v. International Broth. of Teamsters, 133 F.R.D. 99, 102.

S.D.N.Y.1987. Subsec. (1) quot. in ftn. in sup. A foreign country borrowed money to finance the construction of an electric power plant. After it defaulted on a loan payment, guarantor banks that paid the full amount of the loan sued the country for repayment. The court denied the plaintiffs' motion for summary judgment. Although holding that the defendant had raised a triable issue of fact as to whether the guarantors made false representations, the court rejected the defendant's agency argument that any misstatements by the construction company should be attributed to the plaintiffs. The court noted that there was no evidence that the construction company was controlled by, or directed to speak for, the guarantors. Morgan Guar. Trust Co. of N.Y. v. Republic of Palau, 657 F.Supp. 1475, 1481.

S.D.N.Y.1987. Com. (b) cit. in disc. The SEC issued an injunction prohibiting a corporation from issuing unregistered commercial paper. A special master's report then recommended that the corporation be liquidated, since it had no other substantial sources of income and owed debts well in excess of its assets. Numerous holders of the corporation's commercial paper filed objections to the special master's report. This court accepted the report and dissolved the corporation, holding that the holders of treasury bills purchased by the corporation had a priority claim for their investments, since the corporation had a trustee relationship, not an agency or an agent-trustee relationship, with the treasury bill holders because the holders had had no real control over the corporation's handling of their accounts. S.E.C. v. American Bd. of Trade, Inc., 654 F.Supp. 361, 366.

S.D.N.Y.1986. Subsec. (1) and com. (b) cit. in case quot. in sup. After a man traded in the unused portion of an airline ticket and purchased a ticket on another airline through a ticket clearinghouse, he was killed by terrorists who hijacked his airplane. His wife sued the first airline for wrongful death, claiming that the second airline was an agent of the first one. This court granted the defendant's motion for summary judgment. The court held that there was no agency relationship between the two airlines, reasoning that the second airline was neither acting on behalf of the defendant, nor was it subject to the defendant's consent, direction, or control. Stanford v. Kuwait Airways Corp., 648 F.Supp. 1158, 1161-1162.

S.D.N.Y.1984. Quot. in case quot. in disc. In a previous action, union laborers brought an employment discrimination suit against an employer and the union which referred prospective employees. The employer entered a consent decree and agreed to remedial measures. The court entered a judgment against the union. In this action, the laborers and the settling employer in the prior action sought a declaratory judgment that the settling employer was not liable to the union for contribution or indemnification in connection with the judgment entered against the union. The court granted the plaintiffs' motion for summary judgment, holding that the employment referral practices between the employer and the union, without more, did not establish an agency relationship between the two. Anderson v. Local U. No. 3, Intern. Broth. of Elec., 582 F.Supp. 627, 630, judgment affirmed 751 F.2d 546 (2d Cir.1984).
S.D.N.Y.1983. Com. on subsec. (1) quot. in sup. An air carrier, having brought adversary proceeding in bankruptcy court against
a bankrupt defendant and defendant's secured creditor, appealed denial of its motion for summary judgment. In dispute was
whether plaintiff and defendant had a principal-agent or creditor-debtor relationship. Defendant, a provider of freight forwarding
services, had arranged shipments through plaintiff. Plaintiff asserted that defendant was its agent; therefore defendant's assets
attributable to plaintiff's services were the property of plaintiff. The codefendant bank argued that plaintiff was defendant's
creditor, whose right to defendant's assets was superseded by bank's perfected security interest. The court found that contract
language referring to defendant as an agent was insufficient to establish an agency relationship absent a showing that defendant
was a fiduciary subject to plaintiff's directions. Judgment affirmed. Matter of Shulman Transport Enterprises, Inc., 33 B.R. 383,
385, judgment affirmed 744 F.2d 293 (2d Cir.1984). See above case.

S.D.N.Y.1981. Cit. in disc., quot. in fn. and coms. (a), (b) quot. in fn. Attorney General of United States sought to enjoin
defendant unincorporated association from violating provisions of the Foreign Agents Registration Act. The court determined
that the Attorney General was entitled to a permanent injunction prohibiting defendant from violating act further. The court
found that the association had violated the act by failing to disclose that it was an agent of a foreign principal, the Irish Republican
Army provisional wing, failing to identify its officers and affiliates, failing to describe its activities on behalf of the foreign
principal, failing to supply sufficient financial statements, and failing to comply with the act's provisions governing the filing
and labelling of political propaganda. The court distinguished between the term “agent” under the Restatement and the term as
it is used in the Foreign Agents Registration Act, noting that it is not necessary for the Attorney General to prove that defendant
is an “agent” in the Restatement sense or “a person who acts in any other capacity … under the direction or control of the
I.R.A.”; it is sufficient under the act to establish that defendant is a representative of the I.R.A. or acts at its request. Attorney
General of United States v. Irish Northern Aid Committee, 530 F.Supp. 241, 256-257, judgment affirmed 668 F.2d 159 (2d
Cir.1982). See above case.

S.D.N.Y.1975. Cit. in sup. and dist. Plaintiff trustee in bankruptcy of a member broker of a commodities exchange brought
a suit to recover for alleged fraudulent conveyances of margin payments on cottonseed oil futures. Defendants, the exchange
and the clearing association, moved for summary judgments. The court held that the trustee raised genuine issues of material
fact bearing on the questions of whether the broker was insolvent at the time of the alleged fraudulent conveyances, whether
the broker received fair consideration for the payments, and whether the clearing association was a transferee of the payments,
or was merely an agent of its members. The court held that the good faith of defendant clearing association would have to be
established before it could benefit from the principle that a known agent who receives money paid to him by mistake is protected
from liability if innocently and in good faith he has paid money over to his principal before receipt of a notice of the payor's
mistake. Therefore, defendant association's motion for summary judgment was denied. The trustee further sought to hold the
exchange liable for the action of the association in receiving alleged fraudulent transfers of variation margin from the broker.
The court, however, held that, under the factual situation in this case, the exchange could not be held accountable for the action
of the clearing association in receiving the alleged fraudulent conveyances, and was, therefore, entitled to judgment as a matter

S.D.N.Y.Bkrty.Ct.

S.D.N.Y.Bkrty.Ct.2008. Cit. in case quot. in disc. Following the foreclosure sale of Chapter 13 debtor's home, this court
issued an order directing mortgage lender and state-court-appointed foreclosure referee to show cause why they should not
be held liable for willfully violating the automatic stay. After holding an evidentiary hearing, the court found, inter alia, that
subagent sent by mortgage lender's servicing agent to appear at the foreclosure sale had actual notice of debtor's bankruptcy
filing, and his bid at the sale constituted a willful violation of the automatic stay; because the acts of its agents bound mortgage
lender, as principal, lender was liable for their willful violation of the stay. In re Crawford, 388 B.R. 506, 519.
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S.D.N.Y.Bkrtcy.Ct.2007. Com. (b) quot. in case quot. in sup. In this single-asset real estate case, mortgagee of hotel, acting as sole petitioning creditor, filed an involuntary Chapter 7 petition against debtor mortgagor. Granting the petition, this court held that creditor sustained its burden to show that debtor had less than 12 creditors as of the petition date who held claims that were neither contingent nor subject to bona fide disputes. The court concluded that 87 vendors listed by debtor as its creditors were creditors of hotel's property manager, not debtor, for counting purposes under the Bankruptcy Code; additionally, property manager did not act as debtor's agent in regard to these creditors, because property manager, as franchisor, controlled the operations of the hotel, and debtor, its franchisee, had no right under the management agreement to interfere in those operations. In re Euro-American Lodging Corp., 357 B.R. 700, 716.

S.D.N.Y.Bkrtcy.Ct.2002. Subsec. (1) cit. in case quot. in sup. Company brought adversary proceeding for return of shoe sale proceeds against Chapter 11 debtor that sold company's shoes out of its department stores, alleging that proceeds were excluded from bankruptcy proceedings on contract, agency, or trust theory. Dismissing company's claims, this court held, inter alia, that company did not direct and control debtor's handling of shoe sale proceeds such that an agency relationship existed between the parties. In re Ames Dept. Stores, Inc., 274 B.R. 600, 618, order affirmed 2004 WL 1948754 (S.D.N.Y.2004).

S.D.N.Y.Bkrtcy.Ct.1995. Subsec. (1) quot. in case quot. in disc. In Chapter 11 bankruptcy case, assignee of debtor's rights in certain condominium units sought to exempt the transfer of the units from taxation pursuant to 11 U.S.C. § 1146(c). The City Department of Finance objected, arguing that the transfer was not tax-exempt because assignee was a nondebtor. The court entered judgment for Department of Finance, holding that the transfers were taxable since assignee was neither a debtor nor an agent of the debtor. The fact that assignee had full control over how and when to dispose of the condominium units was fatal to its claim that an agency relationship existed between it and debtor. In re Kerner Printing Co., Inc., 188 B.R. 121, 125.

S.D.N.Y.Bkrtcy.Ct.1990. Subsec. (1), com. (b) cit. in disc. After a corporation entered into a credit agreement with lenders, unconditionally guarantying a multimillion-dollar credit commitment to a wholly owned subsidiary, the corporation filed a petition for Chapter 11 bankruptcy. A majority of the lenders moved to modify the automatic stay under Chapter 11 to permit a collateral agent to retain in trust collateral proceeds owed to the corporation to preserve their alleged right to set off the corporation's obligation to them as against the corporation's share of those proceeds if they were not paid in full. Denying the motion, the court held that the movants failed to demonstrate a legally cognizable right to set off or recoup that should be protected by the proposed modification. The court stated that any order to the collateral agent to withhold distribution of the corporation's pro rata share would have required the collateral agent to violate the credit agreement between the corporation and the lenders. In re Drexel Burnham Lambert Group, Inc., 113 B.R. 830, 842.

S.D.N.Y.Bkrtcy.Ct.1989. Subsec. (1) quoit in disc. A debtor in Chapter 11 bankruptcy reorganization disputed the amount of a claim presented by a creditor. The debtor, a moving company, had had an agreement with the creditor allowing the creditor to ship goods under the debtor's ICC rights subject to the debtor being notified of any contracts of haulage made by the creditor. The creditor had been paid by the debtor for several contracts where notification had been late. The debtor argued that the creditor's claim should be offset by those payments since the creditor had breached the agency agreement and should not have been paid. This court held that the creditor indeed had been the debtor's agent and had breached the agreement, but was entitled to payment in quantum meruit. The court said that, since the creditor could only ship goods using the debtor's ICC rights, the debtor had control over the creditor's operations, creating an agency relationship. In re Neptune World Wide Moving, Inc., 99 B.R. 584, 588.

W.D.N.Y.

W.D.N.Y.2005. Com. (b) quot. in disc. and quot. in case quot. in disc. African-American prospective tenants sued an apartment-building owner for housing discrimination under civil-rights statutes and the Fair Housing Act after owner's rental agent reneged
on the rental agreement. This court granted owner judgment on the pleadings, holding that owner was not vicariously liable for the discrimination carried out by its agent. Owner turned over the entire management of the rental property to the agent, and it did not retain control over the rental process. Furthermore, owner did not have any knowledge of the prospective renters' racial identity. Cleveland v. Caplaw Enterprises, 379 F.Supp.2d 330, 334, 335, decision vacated 448 F.3d 518 (2d Cir.2006).

W.D.N.Y.1991. Subsec. (1) quot. in case quot. in disc. A former distributor of imported bottled water sued the bottler, the importer, and a rival distributor of the water, alleging the infringement of its copyright for the design of the bottles' labels. The court granted summary judgment to the defendants, holding that the plaintiff's copyright was unenforceable. The court also found that the plaintiff had acted in the capacity of an agent for the defendants while registering the copyright; therefore, by registering its copyright in the entire text and artwork of the label, including the parts that were derived from the bottler's previous label, the plaintiff violated its fiduciary duty by acquiring an interest adverse to that of the defendants and, by using the copyright against the defendants in this lawsuit, the plaintiff abused the special opportunity the defendants had given it to obtain the copyright in the label. GB Marketing USA v. Gerolsteiner Brunnen GmbH, 782 F.Supp. 763, 776.

W.D.N.C.1997. Cit. in case quot. in disc. A textile equipment manufacturer sued its former sales agent, alleging fraud, breach of fiduciary duty, and Lanham Act violations. This court denied the agent's motion for entry of judgment as a matter of law, holding, inter alia, that plaintiff's claims of breach of fiduciary duty and fraud did not reduce to breach of contract. In this case, plaintiff presented substantial evidence upon which a reasonable jury could find breach of fiduciary duty arising from trust and arising from agency under South Carolina law. Plaintiff, a relatively small Dutch manufacturer, trusted defendant completely to handle and promote plaintiff's American business. There was substantial evidence that defendant acted as plaintiff's agent, in that defendant acted on plaintiff's behalf, represented plaintiff to customers, and had authority to make binding commitments to customers for plaintiff. Vanwyk Textile Systems v. Zimmer Mach. Amer., Inc., 994 F.Supp. 350, 369.

N.D.Ohio, 2011. Cit. in case cit. in sup. Borrower that was incorporated in Alaska brought various claims against, among others, lender that was incorporated in Florida, and lender's president, who was a Florida resident, seeking to recover collateral it had posted as part of the loan transaction, after lender failed to disburse any funds to borrower. Granting president's motion to dismiss without prejudice for lack of personal jurisdiction, this court held that, while borrower solicited lender's business through an Ohio corporation that was in the business of arranging loans and through Ohio corporation's employee, who was an Ohio resident, there were no factual allegations plausibly indicating that the Ohio employee was acting as president's agent in his dealings with borrower. Moro Aircraft Leasing, Inc. v. Keith, 789 F.Supp.2d 841, 846.

N.D.Ohio, 1991. Cit. in sup. A local union was the exclusive referral source for labor at a nuclear power plant. Black persons who applied for or could have applied for positions at the plant sued the local union, its business manager, and the international union for civil rights violations, alleging that the defendants' policies and practices, which denied them union membership and employment opportunities because of their race, violated civil rights legislation. After a bench trial on the issue of liability, this court entered judgment for the plaintiffs. The court held, inter alia, that the international union was liable for the discriminatory activities of the local union because an agency relationship existed between the local union and the international union, and the international union knew about the discriminatory actions of the local union and acquiesced in them. Alexander v. Local 496, Laborers Intern., 778 F.Supp. 1401, 1420.
S.D.Ohio

S.D.Ohio, 2006. Com. (a) cit. in case quot. in sup. Insurer sued former directors and officers of corporation to recover certain costs advanced to them in connection with securities class-action lawsuits. Denying defendants' motions to dismiss based on lack of personal jurisdiction, this court held that defendants purposefully availed themselves of the privilege of conducting business in Ohio, the forum state, as required for the exercise of personal jurisdiction consistent with due process. The court reasoned that defendants chose to deal with insurer's affiliate in Ohio to obtain directors-and-officers liability insurance, and defendants' attorneys sought further contact with insurer in Ohio to provide notice of new lawsuits against defendants and to request payment of fees. The court noted that, in this analysis, actions of defendants' agents, such as their attorneys, were attributable to defendants. *Genesis Ins. Co. v. Alfi*, 425 F.Supp.2d 876, 887.


S.D.Ohio Bkrtcy.Ct. 1985. Quot. in sup. Chapter 11 debtors objected to claims which purported to be class proofs of claim. One group of the claims objected to was filed on behalf of allegedly defrauded purchasers of corporate securities, and the other group was filed on behalf of purchasers of single premium deferred annuities issued by a subsidiary insurance company of the corporation. The bankruptcy court granted the debtors' objections to these claims, holding that the claimants, while class representatives, were not agents for the purpose of filing the class proof of claim because there had been no consent by purported principals to such an agency relationship. This court also held that the claims could not be filed under the guise of class claims on behalf of individuals who did not file their own claims, and that the bar date notice was adequate and would not be extended. *Matter of Baldwin-United Corp.*, 52 B.R. 146, 148.

N.D.Okl.

N.D.Okl. 2009. Subsec. (1) cit. in case quot. in sup. Insured distributor of medical equipment sued insurer, seeking a defense and indemnity in connection with an underlying lawsuit in which patient alleged that she was injured by using therapeutic equipment that insured supplied to lessor under a marketing agreement and that lessor in turn rented to patient. Granting summary judgment for insured on the issue of coverage, this court held, inter alia, that a policy exclusion for injuries occurring away from insured's premises after insured's “work” had been completed did not apply. The court concluded that lessor was insured's “agent for getting the product to the marketplace” and thus insured's “work” was not completed until patient returned the equipment to lessor. *Orthopedic Resources, Inc. v. Nautilus Ins. Co.*, 654 F.Supp.2d 1307, 1314.

W.D.Okl.

W.D.Okl. 1991. Cit. in disc. Property owners sued an oil company, which owned oil and gas leases in an oil and gas production unit, alleging nuisance and asking for injunctive relief or temporary damages. Denying defendant's alternative motions for dismissal or summary judgment, except as to plaintiffs' temporary damages claim, this court held, inter alia, that to the extent the unit's operator-agent created or maintained a nuisance while defendant was a working interest owner in the unit, defendant was liable as a principal for operator-agent's actions. The court stated that, since defendant owned oil and gas leases included within the production unit, there was evidence that defendant was a working interest owner in the unit. Unit operator was merely the agent for the lessees who formed the unit, each of whom could designate a representative of the operating committee that supervised and controlled all matters regarding unit operation. *Branch v. Mobil Oil Corp.*, 788 F.Supp. 531, 533.
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**D.Or.**

D.Or. 2010. Cit. in case quot. in sup. Consumers sued debt-collection agency and law firm that obtained a judgment against them on behalf of agency, alleging, among other things, that a process server acting as defendants’ agent violated the Fair Debt Collection Practices Act by going to their home and in a loud voice at their entrance gate yelling certain statements that were oppressive, harassing, and abusive. Granting in part defendants’ motions for summary judgment, this court held, inter alia, that process server, who worked for and took direction from a process-serving company that had a professional relationship with agency, was not an agent of either defendant, and neither defendant was vicariously liable for his conduct, since there was no evidence that either defendant exercised any control over him. McNall v. Credit Bureau of Josephine County, 689 F.Supp.2d 1265, 1277.

D.Or. 1996. Cit. in headnotes, cit. in case cit. in disc. A temporary employment service brought a state court suit against the former operators of a local branch, who had begun competing against the service. Defendants argued that they were sublicensees of plaintiff's president, that they owned an independent business, that they paid the 50% split of the gross profit in return for the bookkeeping and payroll services of plaintiff, and that the business records belonged to defendants and did not have to be kept confidential. This court granted in part and denied in part defendants' motion for summary judgment, holding, inter alia, that a fact issue existed as to whether the defendants were agents of the plaintiff. The difficulty was that the agreement establishing the business relationship between the parties was an oral agreement. Dial Temporary Help Service, Inc. v. Shrock, 946 F.Supp. 847, 847, 848, 852.

D.Or. 1988. Subsec. (1) cit. in disc. A ship owner had its ship reconditioned by a contractor at a shipyard. When the contractor defaulted on payments to the yard, the yard claimed that it had a lien on the ship because of the services performed for its repair, and sued the owner to enforce it. This court ruled that the plaintiff held no valid lien because, in order to have a lien, it had to show reliance on the ship's credit, and not on the contractor, for payment for services rendered. The court rejected the plaintiff's argument that the contractor had been the owner's agent for purposes of binding the vessel for the yard services, pointing to a long-term relationship between the yard and the contractor, denial of an agency relationship in the owner-contractor agreement, and delegation by the owner of the ship's management to other parties. Port of Portland v. M/V Paralla, 703 F.Supp. 1446, 1449, decision affirmed 892 F.2d 825 (9th Cir.1989).

**E.D.Pa.**

E.D.Pa. 2008. Com. (b) quot. in case quot. in disc. Mortgagor and individuals who lived in the mortgaged home sued lender, alleging, among other things, that lender was liable for the allegedly fraudulent acts of mortgage broker. Granting defendant's motion to dismiss, this court held, inter alia, that plaintiffs failed to demonstrate a genuine issue of material fact as to whether an agency relationship existed between lender and broker, or that broker was anything more than an intermediary between borrowers and lenders. The court found, as to express agency, no evidence that defendant ever manifested an intent that broker was to act as its agent or that there was ever any understanding between the parties that an agency relationship was to be formed, and insufficient evidence of control by defendant. Morilus v. Countrywide Home Loans, Inc., 651 F.Supp.2d 292, 299.

E.D.Pa. 2007. Com. (b) quot. in case quot. in disc. Former manufacturer of products containing asbestos sought a declaratory judgment against insurers for a determination of its rights under its insurance policies regarding asbestos-related lawsuits filed against it. Entering judgment for defendants, this court held, inter alia, that insurance broker hired by plaintiff was not an agent of defendants; plaintiff failed to demonstrate that broker represented defendants’ interests in the negotiations or securing of the insurance policies. AstenJohnson v. Columbia Cas. Co., 483 F.Supp.2d 425, 461.
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E.D.Pa.2007. Com. (b) quot. in case quot. in disc. Borrowers sued mortgage broker and mortgage lender, alleging that they lost their opportunity to buy a home after broker failed to provide the promised mortgage financing from lender at the scheduled closing. Granting summary judgment for lender, this court held that, because there was no genuine issue of material fact that broker was not acting as lender's agent, none of broker's conduct could be attributed to lender. The court reasoned that broker's access to lender's internal proprietary software for analyzing applications, lender's policy of relying on brokers to communicate with borrowers, lender's status as a “correspondent bank,” and lender's occasional use of “partner” to refer to broker were not evidence of an agency relationship; in addition, lender's agreement with broker specifically disavowed any agency relationship. *Hawthorne v. American Mortg., Inc.*, 489 F.Supp.2d 480, 484.

E.D.Pa.2003. Cit. in disc. Mooring master brought state-court action for common-law negligence and maritime negligence against foreign supertanker-management company after suffering injuries when crane transferring him from supertanker to tender vessel collapsed while he was assisting in unloading of supertanker. After removal, this court granted company's motion to dismiss for lack of personal jurisdiction, holding, inter alia, that business entity that allegedly was involved in joint venture with company, and that employed a Pennsylvania resident, was not company's agent so as to confer personal jurisdiction over company. *Saudi v. Acomarit Maritimes Services, S.A.*, 245 F.Supp.2d 662, 676.

E.D.Pa.1998. Cit. in ftn., quot. in case quot. in ftn., subsec. (1) quot. in case quot. in disc. High school basketball referee sued state athletic association for violations of Title VII and Title IX, alleging that assignors, whose role was to select referees to officiate at interscholastic basketball games, discriminated against her on the basis of gender. Association moved for summary judgment, arguing, among other things, that assignors were chosen by local chapters of basketball officials, which were merely groups of individuals who were not association members. Granting the motion in part and denying it in part, the court analyzed master-servant and principal-agent relationships before holding, inter alia, that material factual issues existed as to whether local chapters were servants or agents of association, whether assignors were servants or agents of local chapters, and whether assignors were subservants or subagents of association. *Kemether v. Pennsylvania Interscholastic Athletic Ass'n*, 15 F.Supp.2d 740, 747.

E.D.Pa.1996. Com. (a) quot. in sup. State prison inmate who was convicted of murder and other charges petitioned for habeas corpus relief, alleging, in part, that his due process rights were violated by the failure to disclose at his trial the existence of an immunity agreement between a prosecution witness and federal officials investigating a burglary ring with which petitioner had been involved. Denying the petition, the court held, inter alia, that agency principles could not be used to impute to Commonwealth authorities constructive knowledge of the federal immunity agreement. The court said that the federal officials were not acting as agents for the Commonwealth prosecution team when they gave an informal grant of immunity to the witness to testify in a federal burglary trial, since they did not have the power or authority to bind the Commonwealth to the federal immunity agreement after a Pennsylvania assistant district attorney opposed the agreement. *Johnston v. Love*, 940 F.Supp. 738, 769.

E.D.Pa.1991. Quot. in disc. A terminated employee sued her former employer for wrongfully discharging her in retaliation for her threatening to report its wrongdoings, alleging, inter alia, a violation of the Pennsylvania Whistleblower Law, which protected public employees. Granting summary judgment for the defendant, the court held that, since there was no evidence that the employer was an agent of the publicly funded hospital with which it had contracted to operate a cancer center, the employer did not come within the definition of “public body” under the statute and the statute did not apply to it. *Cohen v. Salick Health Care, Inc.*, 772 F.Supp. 1521, 1527.

E.D.Pa.1990. Quot. in sup. When a woman defaulted on her mortgage held by the Department of Housing and Urban Development (HUD), HUD assigned the mortgage to another party for foreclosure. The mortgagor then filed for bankruptcy and filed an adversary complaint against HUD. When HUD moved for dismissal for lack of subject matter jurisdiction, this court held, inter alia, that that jurisdiction existed under a federal statute as long as the complaint was related to the bankruptcy
proceedings. The court held that the assignee of the defaulted mortgage was HUD's agent because it conducted the foreclosure proceedings per HUD's guidelines and was reimbursed for any costs involved. The court said that, since the assignee was a creditor who had filed a proof of claim in the bankruptcy proceeding, the complaint filed against the creditor's principal was related to the bankruptcy case. In re Epps, 110 B.R. 691, 698.

E.D.Pa.1985. Subsec. (1), com. (b) quot. in case quo. in sup. While attending a seminar conducted by a business organization in a Las Vegas hotel, a Pennsylvania resident was allegedly injured in a fall on the hotel sidewalk. When the plaintiff sued the hotel for damages in his home state, the court granted the defendant's motion to dismiss for lack of personal jurisdiction on the ground that the defendant did not transact business within the forum state. The court rejected the plaintiff's argument that the seminar solicitation activities of the business organization in the forum state indicated an actual agency relationship with the hotel. The court stated that the rental agreement between the hotel and the organization showed a total lack of control by the defendant over the organization's solicitation activities. Johnson v. Summa Corp., 632 F.Supp. 122, 125.

E.D.Pa.1984. Com. (b) cit. in disc. A husband filed this medical malpractice action against the director of the genetics division of the hospital where his wife died after an amniocentesis procedure, alleging negligent performance and a failure to warn of the risks of the procedure. The director was not the wife's physician, did not recommend or perform the procedure, and was not present during the procedure. The court granted the director's motion for summary judgment, holding that the director was not vicariously liable under the doctrine of respondeat superior for the negligence of others in connection with the amniocentesis because no agency relationship existed between them. The court found that the attendant physicians did not act on the director's behalf and that the director exerted no control over them. Karas v. Jackson, 582 F.Supp. 43, 46.

E.D.Pa.1982. Com. (b) cit. in disc. The plaintiff was a nationwide producer of promotional newspaper inserts and the defendant was an advertising agency. The defendant, on behalf of its clients, contracted with the plaintiff for a series of promotional newspaper inserts. The defendant was responsible for collecting payments for the inserts from its clients and remitting the full amount to the plaintiff, minus the defendant's commission. At the close of the advertising campaign the plaintiff billed the defendant, but the defendant, believing that its commission was higher than calculated by the plaintiff, issued a check in a lesser amount than requested. The check contained an express statement that any cashing of the check would constitute an agreement that it had been accepted as payment in full. The plaintiff cashed the check but later brought an action for the whole amount of its bill. The plaintiff contended that accord and satisfaction did not apply because an agency relationship existed between the parties, not a debtor/creditor relationship. The court granted summary judgment for the defendant, holding that even if accord and satisfaction did not apply in an agency relationship, the burden of establishing the existence of an agency was on the party making the assertion, and the plaintiff had brought forth no evidence whatsoever to support the existence of such a relationship. Goodway Marketing v. Faulkner Advertising Assoc., 545 F.Supp. 263, 267.

E.D.Pa.1981. Cit. and quot. in sup. The lessor of a trailer and the lessor's insurer brought a diversity action against the tractor owner who leased the trailer and his insurer to resolve issues of liability and insurance coverage with respect to a settled action which had been brought to recover for the death and injuries of automobile passengers resulting from a collision with the tractor-trailer, and the lessee of the trailer and its insurer counterclaimed. The court stated that generally, under the applicable law of Georgia, an employer is not liable for the negligent acts of an independent contractor employed by him; and one's status as independent contractor or servant turns on whether the employer has the power to control the manner in which the work is executed or whether he merely has the right to require certain results. At the time of the accident, the relationship between the lessee of the trailer and the lessor of the trailer was defined by the lease agreement. The court held, inter alia, that, although the tractor owner and driver who leased the trailer and the owner-lessee of the trailer described the tractor owner as an independent contractor, the relationship of master and servant existed where the driver agreed that the vehicle should be operated according to the trailer owner's rules, policies and practices, and that no freight would be transported on vehicles other than at the trailer owner's discretion; therefore, the trailer owner-lessee could not avoid liability for the death and injuries occurring in a collision between the tractor trailer and an automobile on the theory that the driver was an independent contractor. Judgment was entered
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E.D.Pa. 1978. Quot. in fn. in disc. Twelve blacks, on behalf of a class of minority workers, instituted an employment discrimination suit against a local union and a contractors and trade association, alleging discrimination in the local union’s membership practices, the operation of its referral system and hours and wages of minority workers. Also named as a plaintiff was the state, suing on behalf of its citizens and the above class. The court held that where the named plaintiffs were members of a class they sought to represent and alleged the same basic personal injury, and that which they alleged was suffered by the class, the prerequisites for standing were satisfied. Having met the class requirements, plaintiffs’ introduction of nonstatistical proof, together with statistical disparities, established a prima facie case of employment discrimination on the part of the union. Com. of Pa. v. Local U. 542, Intern. U., 469 F.Supp. 329, 411, affirmed 648 F.2d 922 (3rd Cir. 1981).

E.D.Pa. 1967. Cit. in sup. The manager of the agency of an insurance company converted assets of the insurer to his personal use, for which reason this action was brought to recover said amounts. The court, finding an agent-principal relationship, determined that the agent had breached his duty of loyalty to the insurer and was liable for all of the sums that he had received in violation of that duty and, in addition, ruled that he was liable in restitution for unjust enrichment. Phoenix Mut. Life Ins. Co. v. McLean, 263 F.Supp. 246, 253.


E.D.Pa.Bkrtcy.Ct. 1980. Cit. in fn. The plaintiff sought an order which would declare him to be the holder of all title to certain line equipment and which would direct the debtor to turn such equipment over to the plaintiff. The plaintiff asserted that the debtor had bought the equipment as an agent of the plaintiff. The debtor filed an answer and a counterclaim asserting that it was the owner of the equipment. The court held that the plaintiff was entitled to the equipment because the debtor, in purchasing it, was acting only as the plaintiff’s agent and did not acquire any rights in the equipment. The court explained that an agent merely holds the agency property for the benefit, and at the direction, of the principal, and the agent is under a duty to dispose of the property only as the principal directs. A judgment in favor of the plaintiff was entered. In re Crouthamel Potato Chip Co., Inc., 6 B.R. 501, 506, 509.

M.D.Pa.

M.D.Pa. 2000. Quot. in disc. Judicial clerks sued county, among others, for sexual harassment in violation of Title VII, alleging that it was liable for district justice's creation of a hostile work environment. On remand, the court granted in part and denied in part defendant's motion to dismiss, holding, inter alia, that district justice was an employee and agent not of defendant but of the commonwealth; however, because defendant could be deemed plaintiffs' coemployer, it could be found responsible for the illegal actions of both employees and nonemployees, and that material factual issues existed as to whether defendant took prompt remedial action with respect to five of the seven plaintiffs. Graves v. County of Dauphin, 98 F.Supp.2d 613, 619.

W.D.Pa.

W.D.Pa. 2013. Com. (b) quot. in case quot. in disc. Student sued university, seeking to recover damages for injuries he sustained after he left a dance that was hosted by a student organization and was shot on campus by a nonstudent who had also attended the dance. Granting summary judgment for university, this court held, among other things, that university did not owe a duty to student to prevent or protect him from the spontaneous, criminal shooting, because university's prior experiences with crime on campus did not give rise to a reasonable expectation that the type of harm that occurred would occur from the use to which
its property was put. The court reasoned, in part, that any actual or implicit notice to any member of the organization that the nonstudent had a weapon could not be imputed to university under any viable theory of agency; among other things, there was inadequate evidence to support a finding that university so controlled the actions of the organization that it became a mere extension of university and therefore its agent for purposes of sponsoring and holding the dance. James v. Duquesne University, 936 F.Supp.2d 618, 641.

W.D.Pa.2010. Cit. in case quot. in sup., com. (b) quot. in cases quot. in sup. Borrower sued mobile-home loan broker and lender that purchased his loan from broker, alleging, among other things, that lender, acting jointly or in concert with broker, misrepresented borrower's salary on his loan application. Denying in part lender's motion for summary judgment, this court held, inter alia, that a reasonable jury could find that lender intended to create an agency relationship with broker; while the assignment agreement between broker and lender disclaimed an agency relationship and there was no evidence that lender knew that broker's employees were forging and falsifying documents, the existence of a joint account over which broker had control along with lender, the fact that broker was lender's sole broker for mobile home loans over a four-year period, and lender's apparent failure to verify the information contained in borrower's application indicated that the arrangement was more akin to an agency relationship than an arms-length transaction. Poskin v. TD Banknorth, N.A., 687 F.Supp.2d 530, 545, 546.

W.D.Pa.2007. Com. (b) quot. in case quot. in disc. Truck buyer brought class action against truck manufacturer for, in part, breach of contract, alleging that defendant charged him for an upgraded radiator that it never provided to him. Denying defendant's motion for summary judgment, this court held, inter alia, that, although prior case law strongly suggested that automobile dealerships were generally not agents of manufacturers regarding the selling of vehicles, such cases did not establish a per se rule that such agency could not exist. The court recognized that determining an agency relationship was a fact-specific exercise that examined, among other things, the degree of control exerted by the principal and, in the instant case, the effect of a “no-agency” clause in the purchase agreement between plaintiff and dealership. Zeno v. Ford Motor Co., Inc., 480 F.Supp.2d 825, 841, 847.

W.D.Pa.2006. Com. (b) quot. in case quot. in sup. Purchaser of truck from authorized dealership sued truck manufacturer for breach of contract, alleging that he failed to receive a new upgraded radiator as part of a towing package advertised on the truck's window sticker. This court granted plaintiff's motion for statewide class certification, holding, inter alia, that whether an agency relationship existed between defendant and its authorized dealerships that could establish an exception to the requirement of contractual privity between plaintiff and defendant was susceptible to generalized proof. The court pointed out that plaintiff alleged common proof and a common course of conduct, including a standard-form sales-and-service agreement that all of defendant's authorized dealers were required to sign, under which all of the dealers were required to deliver to consumers, and maintain a copy of, the window stickers at issue. Zeno v. Ford Motor Co., Inc., 238 F.R.D. 173, 193.

W.D.Pa.1990. Subsec. (1), com. (b) quot. in case cit. in disc. The owner of remarketed computer equipment sued the lessee of the equipment for breach of contract when the lessee refused to pay the rent on the equipment. The court granted the defendant's motion to dismiss for failure to join an indispensable party, because the party with whom the lessee had contracted to rent the equipment, which was also the plaintiff's agent, could not be joined in the lawsuit. The court stated that the plaintiff would not be able to receive complete relief without the joinder of this party, since the plaintiff's claim against the defendant depended on its agency relationship with the indispensable party; this agency relationship provided the crucial link to the plaintiff's case, since the plaintiff was not in direct privity with the defendant. F & M Distributors, Inc. v. American Hardware Supply Co., 129 F.R.D. 494, 499.

W.D.Pa.1962. Cit. in sup. In action by United States against licensed auctioneer on theory of conversion to recover value of 3 cows auctioneer sold, auctioneer was liable for sale of cows which were covered by security agreement executed by farmer and Farmers Home Administration, because the auctioneer as an agent of the mortgagor stood in the shoes of his principal.
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W.D.Pa.Bkrtcy.Ct. 1994. Com. (b) cit. in headnotes and in sup. Overseas producer of alloy metal and debtor's receiver filed competing claims for the proceeds from debtor's sale to its customers of shipments of the alloy metal. Allowing receiver's claim, the court held that debtor received the goods as a buyer and that it was not acting as producer's agent when it resold them to its own customers; thus, producer had no interest in the proceeds from debtor's resale of the goods. The court said that the fact that the parties chose to call their relationship an "agency" did not mean that they were using the term to denote the legal concept of agency. In re HH(US), Inc., 175 B.R. 188, 189, 198.

D.P.R.

D.P.R. 1999. Coms. (a) and (b) cit. in disc. Landlords sued foreign consulate, among others, for, inter alia, breach of contract, seeking damages for destruction of property that was leased to couple that signed the rental agreement in their individual capacity but served on the premises as defendant's consuls. Defendant argued that it was entitled to immunity under the Foreign Sovereign Immunities Act (FSIA). Granting plaintiffs' motion for summary judgment, the court held, in part, that the agency relationship enjoyed by defendant and consuls was sufficient to provide the court with subject-matter jurisdiction under the FSIA, and that the "commercial activity" exception to the rule of immunity applied. Fagot Rodriguez v. Republic of Costa Rica, 99 F.Supp.2d 157, 164, vacated 139 F.Supp. 2d 173 (D.P.R. 2001).

D.P.R. 1993. Subsec. (1) quot. in disc. Puerto Rico corporation engaged in uniform manufacturing sued Alabama clothes manufacturer and Illinois corporation engaged in business of buying and selling camping supplies and clothing, seeking balance due on shipped items and damages for failure to honor agreements to purchase other items from plaintiff. Illinois corporation moved to dismiss for lack of personal jurisdiction. The court granted the motion, holding that other than Alabama corporation's supplying Illinois corporation with certain goods, Illinois corporation did not hire, retain, or authorize Alabama corporation to represent, discuss, negotiate, or enter into business agreements with plaintiff on its behalf. It noted that Illinois corporation had never entered into any agreements with plaintiff for purchase of goods, had no contacts with Puerto Rico, and was not authorized to do business there. Vitin Garment Mfg. v. Schreck Wholesale, 827 F.Supp. 847, 850.

D.R.I.

D.R.I. 2000. Subsec. (1) quot. in case quot. in disc. Patron injured by door at a franchise fast-food restaurant sued the restaurant franchisor for negligence. This court denied defendant's motion for summary judgment, holding, inter alia, that an agency relationship resulting in defendant's vicarious liability could be inferred from evidence that defendant had the requisite right to control the franchisee's activities through various manuals, a franchise license agreement, and an operator's lease. Furthermore, a fact issue existed as to whether the doctrine of apparent agency applied, because a customer could reasonably conclude that the franchisee's operator and employees were employees or agents of defendant. Butler v. McDonald's Corporation, 110 F.Supp.2d 62, 66.

D.R.I. 2000. Subsec. (1) quot. in case quot. in disc. Truck driver who was injured when he opened the trailer and was exposed to toxic fumes from four leaking barrels of nitric acid he had transported sued distributor, among others, for negligence. Denying distributor's motion for summary judgment, the court held, inter alia, that whether shipper was distributor's agent so as to render distributor vicariously liable for shipper's negligence was a matter for the jury to decide, since a genuine dispute of material
fact existed over whether distributor exerted control over shipper's activities of packaging and sealing the chemicals at issue. Toledo v. Van Waters & Rogers, Inc., 92 F.Supp.2d 44, 53.

D.R.I.1994. Subsec. (1) quot. in sup. Administrators of estates of sail trainees who died on a sailing ship that capsized during a tall ships race brought a wrongful death action under the Death on the High Seas Act and general maritime law against, among others, sail training association that administered the sail training program for the vessel's owners. The court held, inter alia, that defendant was not liable to plaintiffs under an agency theory as agent of the shipowners, since there was no evidence that the owners in any way retained the right to control defendant's work. The court said that none of defendant's activities in matching the ships with the sail trainees, providing instruction to the sail trainees, and assisting in organizing the race made defendant an agent of the shipowners in any way. McAleer v. Smith, 860 F.Supp. 924, 943.

D.R.I.1992. Subsec. (1) cit. in sup. and quot. in case quot. in sup. Insured mortgagee sued title insurer for breach of contract and negligence after it discovered that the mortgages it held to secure a defaulted loan were not second mortgages but were in fourth or fifth position. The jury awarded damages, but defendant moved for judgment n.o.v. Granting the motion in part, the court held that there was evidence from which a jury could find that defendant breached the insurance contract, but defendant was not liable for the failure of its policy-issuing attorney to conduct a title search before issuing a policy and had no duty to supervise attorney where attorney was not defendant's agent but an independent contractor; that insurer had no duty to conduct a title search where the parties did not contract for an opinion of title; and that insurer could not be held liable for negligent misrepresentation regarding the state of title where insurer had no duty to perform a title search. Focus Inv. Associates v. American Title Ins., 797 F.Supp. 109, 112, affirmed in part, vacated in part 992 F.2d 1231 (1st Cir.1993).

D.R.I.1992. Cit. in disc. Former owner of a professional football team sued the National Football League, its current and former commissioners, and several of its franchise clubs, alleging that defendants' rule prohibiting plaintiff from selling his team to a company not engaged in the business of professional football violated federal antitrust laws. In addition to determining that it lacked personal jurisdiction over defendants, the court held that venue did not exist in the district because none of the defendants resided, were found, or had an agent in the forum. Reasoning that whatever business that might have been transacted in Rhode Island on behalf of defendants was insufficient to establish the needed minimum contacts, the court transferred the case to the District of Massachusetts, since defendants agreed to submit to jurisdiction and venue there. Sullivan v. Tagliabue, 785 F.Supp. 1076, 1082.

D.S.C.2006. Cit. in case quot. in disc. After recovery agents employed by bail bond company mistakenly arrested the wrong individual, individual sued, among others, insurer that contracted with company, under a theory of vicarious liability. This court denied summary judgment for insurer, holding that questions of fact remained as to whether insurer had a right to control the agents and thus could be liable for their actions. The court pointed out that, while the contract specified that company was an independent contractor of insurer, it also provided, among other things, that company would transfer management authority to insurer, that only insurer could modify or terminate the contract, and that company's former director was not allowed on company's premises without insurer's permission. Patino v. Capital Bonding Corp., 465 F.Supp.2d 518, 523.

D.S.C.1983. Cit. in sup. The plaintiff brought this action to recover damages against a limited partnership which owned a hotel operated by a management company. While on her honeymoon, the plaintiff was assaulted and raped in her hotel room. This court held that the limited partnership could be liable for any negligence by the management company since the latter was an agent acting on behalf and subject to the control of the former. The court then held that the defendant was not negligent. Courtney v. Remler, 566 F.Supp. 1225, 1230, judgment affirmed 745 F.2d 50 (4th Cir.1984).
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D.S.Bkrtcy.Ct.

D.S.Bkrtcy.Ct.1992. Subsec. (1) cit. in disc. Chapter 7 trustee along with major secured creditor objected to proof of claim filed by debtor's daughter, who had loaned money to debtor's husband's business and had drafted promissory notes in husband's name on behalf of his insurance business. Sustaining the objections of trustee and creditor, this court held, inter alia, that an actual agency relationship never arose between debtor and her husband because debtor never manifested an intent, orally or in writing, that her husband should act on her behalf in accepting the daughter's loan. In addition, no ostensible agency relationship was created because there was insufficient proof that debtor misled daughter into believing that husband was acting on debtor's behalf, particularly when daughter carefully drafted the promissory notes to be executed by debtor's husband on behalf of his insurance business. In re Gridley, 149 B.R. 128, 136.

E.D.Tenn.

E.D.Tenn.1985. Cit. in disc. The plaintiff sued for alleged violations of securities laws and common law misrepresentation, fraud, and deceit. Persuaded by an agent for two named defendants (A and B), the plaintiff purchased stock that later proved unmarketable. The complaint alleged nine counts for liability. B moved for summary judgment on eight counts, claiming that the pertinent legal relationship was between the agent and A, not the agent and B. The plaintiff pointed to facts from which apparent authority, if not express authority, could be found. The court denied B's summary judgment motion except for count four alleging a violation of § 17(a) of the 1933 Securities Act. Whether an agent has “apparent authority” is determined by a two-factor test: (1) whether the principal held out the agent to the public as possessing authority; and (2) whether the person dealing with the agent believed that the agent had authority. Apparent authority does not always require a prior relationship between principal and agent. The court denied summary judgment, except on count four, and ruled that no private right of action exists for alleged violations of § 17(a). Jones v. First Equity Corp. of Florida, 607 F.Supp. 350, 352.

E.D.Tex.

E.D.Tex.2013. Subsec. (1) quot. in case quot. in sup. Provider of health-care services sued pharmacy benefits manager, alleging that defendant committed various acts of racketeering and breaches of fiduciary duties in connection with a pharmacy benefits administration agreement between plaintiff's wholly owned subsidiary and defendant. Denying defendant's motion to compel arbitration pursuant to an arbitration clause in the agreement, this court held that plaintiff, which was not a signatory to the agreement and did not agree to arbitrate, was not bound by the agreement's arbitration clause on an agency theory. Noting that defendant had the burden of proving that subsidiary signed the agreement as an agent of plaintiff and not for itself, the court rejected defendant's argument that subsidiary was plaintiff's agent based merely on its status as plaintiff's wholly owned subsidiary, explaining that a corporate relationship alone was generally not sufficient to bind a nonsignatory to an arbitration agreement. East Texas Medical Center Regional Healthcare System v. Slack, 918 F.Supp.2d 719, 722.

N.D.Tex.

N.D.Tex.1998. Cit. in disc. and headnote, cit. generally in ftn. In-ground swimming pool buyers sued the manufacturer of swimming pool components, alleging breach of contract, negligence, and violations of the Deceptive Trade Practices-Consumer Protection Act. This court granted defendant summary judgment, holding, inter alia, that defendant was not liable under an express or implied actual-agency theory for the conduct of the contractor who installed the pools, because plaintiffs failed to prove that defendant had a right to control the contractor's installation of the pools. Coffey v. Fort Wayne Pools, Inc., 24 F.Supp.2d 671, 672, 677.
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S.D.Tex.

S.D.Tex.2008. Subsec. (1) quot. in case quot. in sup. Reinsurers sued insured and its captive insurance company, seeking to compel arbitration of certain disputes arising from reinsurance certificates issued by plaintiffs to captive insurance company. While this court denied insured's motion to dismiss, it held, inter alia, that plaintiffs failed to state a claim against insured under a theory of agency. The court reasoned that, although the complaint asserted that captive insurance company was created for the purpose of obtaining insurance for insured, there was no allegation that captive insurance company acted on insured's behalf or as insured's agent in procuring or signing the reinsurance certificates that contained the arbitration clause. Ace American Ins. Co. v. Huntsman Corp., 255 F.R.D. 179, 194.

S.D.Tex.2007. Cit. in sup. Migrant agricultural workers who resided in Texas brought federal and state claims against Louisiana employers and Texas recruiters who hired them to work for employers in Louisiana. Denying employers' motion to dismiss for lack of personal jurisdiction, this court held, inter alia, that plaintiffs met their burden of establishing a prima facie case that defendants had minimum contacts with Texas, in light of their allegations that recruiters were employers' agents, acting on behalf of and under the direction of employers when they recruited, hired, and transported plaintiffs to employers' place of business in Louisiana, kept track of their hours, provided them with their paychecks, and supervised them during their employment in Louisiana. Moreno v. Poverty Point Produce, Inc., 243 F.R.D. 265, 271.

S.D.Tex.1970. Quot. in part in sup. Plaintiff bank sued defendant corporation for losses arising from the breach of a note purchase agreement, alleging damages in the loss of the difference between the price of the note and the amount realized in the foreclosure proceedings. The court found for the plaintiff, holding, inter alia, that a borrower who negotiated with the defendant was acting in his own interest and that of his partners and was not an agent of the plaintiff, that defendant's failure to disaffirm its retention of the commitment fee cured any possible defects in the contract and caused a ratification binding the defendant to such agreement, that there was no fraud on the part of defendant, that tender was sufficient, and that plaintiff's failure to file a contingent claim against the estate of one of the borrowers in his home state, where the defendant was free to file its own claim, did not constitute a release. Southern National Bank of Houston, Texas v. TRI Financial Corporation, 317 F.Supp. 1173, 1181.

D.Utah.

D.Utah.2010. Subsec. (1) quot. in case quot. in sup. and cit. in ftn. Internet seller of replacement contact lenses sued competitor, alleging that defendant's affiliate wrongfully bid on plaintiff's service marks as keywords to generate a sponsored link for defendant on search engines. Granting summary judgment for defendant, this court held that defendant could not be held vicariously liable for affiliate's actions under an agency theory because no jury could reasonably find that an agency relationship existed between defendant and affiliate; defendant had no authority to supervise affiliate's operations and did not exercise any degree of control over affiliate's website, and affiliate, which acted autonomously in choosing the language of its advertisements, did not act in a fiduciary capacity that was typical when an agency relationship existed and was not vested with authority to conduct or conclude transactions on behalf of defendant. 1-800 Contacts, Inc. v. Lens.com, Inc., 755 F.Supp.2d 1151, 1183.

D.Utah

D.Utah, 1997. Com. (e) quot. in sup. Makers of dishonored checks sued collection agency and its law firm for violations of the Fair Debt Collection Practices Act (FDCPA) in connection with defendants' allegedly abusive collection methods. Entering summary judgment in part for plaintiffs, the court held, inter alia, that a dishonored check constituted a debt for purposes of the FDCPA; that law firm's collection methods violated §§ 1692e and 1692f(1) of the FDCPA; that collection agency was vicariously liable for the actions of law firm, its agent, because agency vested firm with implied actual authority in that it knew
§ 1 Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

of firm's methods but did nothing to stop or prevent them; that firm also had apparent authority to act; and that, even if firm was an independent contractor, agency was not necessarily relieved of vicarious liability. Ditty v. CheckRite, Ltd., Inc., 973 F.Supp. 1320, 1334.

D.Vt.

D.Vt. 2013. Cit. in case cit. in sup., com. (b) quot. in case quot. in sup. Parent of a minor child, who was involved in a custody dispute with the child's biological mother following the dissolution of their same-sex civil union, sued Virginia university affiliated with a church that had employed mother, alleging that defendant aided and abetted mother in fleeing the United States with the child in order to evade a Vermont court's custody and visitation orders. Granting defendant's motion to dismiss for lack of personal jurisdiction, this court held, inter alia, that the actions of defendant's student-employee in soliciting donations to enable mother to remain outside the country did not subject defendant to specific jurisdiction in Vermont. The court concluded that, although plaintiff asserted conclusorily that student-employee was defendant's agent, it was undisputed that she had never been an officer, director, manager, or authorized agent of defendant, and there was no indication that defendant manifested consent that any of its student-employees should act as its agents. The court noted that, according to Restatement Second of Agency § 1, agency required, among other things, a manifestation by the principal that the agent would act for it. Jenkins v. Miller, 983 F.Supp.2d 423, 447.

D.Vt. 2005. Quot. in disc. Homeowners sued insulation manufacturer and dealer that installed insulation in homeowners' vacation home, seeking to recover for moisture damage allegedly caused by the insulation. This court adopted verbatim the magistrate judge's report recommending, inter alia, that manufacturer's motion for summary judgment be granted as to plaintiffs' claim that manufacturer was vicariously liable for dealer's conduct in completing manufacture of the insulation. The magistrate judge acknowledged that the rule of vicarious liability held a principal liable for the conduct of its agent within the scope of its agency, but determined that dealer was a purchaser of manufacturer's insulation, not manufacturer's agent, as it was undisputed that dealer purchased the insulation on its own account and was not paid any commissions or bonuses. Moffitt v. Icynene, Inc., 407 F.Supp.2d 591, 602.

E.D.Va.

E.D.Va. 2013. Cit. in case cit. in sup. After servicer of borrower's home-mortgage loan denied her application for a permanent loan modification under the Home Affordable Mortgage Program and notified her that she was in default because of a deficiency, borrower sued servicer for, inter alia, violations of the Fair Debt Collection Practices Act (FDCPA), alleging, among other things, that a law firm hired by servicer to represent it during the foreclosure sale of borrower's home directed certain debt-collection letters to borrower instead of to her attorney. Denying the parties' cross-motions for summary judgment as to this claim, this court held that a genuine issue of material fact existed as to whether servicer exercised direct control over law firm leading up to the transmission of the letters in violation of the FDCPA. The court explained that, under general principles of agency, servicer could be held liable for the FDCPA violations of its law firm, noting that courts had consistently held that, for a principal to be vicariously liable, it had to exercise control over the conduct and activities of its agent. Nash v. Green Tree Servicing, LLC, 943 F.Supp.2d 640, 654.

E.D.Va. 2006. Cit. in sup. After resident of assisted-living facility died, administrator of resident's estate sued facility for negligence. This court denied defendant's motion to compel arbitration, holding that daughter's signature on the agreement containing the arbitration clause, even when paired with resident's two years of residency at facility, was insufficient to establish that daughter acted as resident's agent or apparent agent. The court pointed out that resident did not sign, or consent to, and perhaps was completely unaware of, the agreement, daughter did not have a power of attorney, and there was no conclusive...
evidence that resident intended daughter to bind her or that daughter had full authority to bind her to all elements of that agreement. Giordano ex rel. Estate of Brennan v. Atria Assisted Living, Virginia Beach, L.L.C., 429 F.Supp.2d 732, 737.

E.D.Va.2005. Quot. in disc. Owner of patent for pharmaceutical drug used to treat high blood pressure brought suit for, in part, patent infringement against drug manufacturer and subsidiary that acted as manufacturer's agent in seeking approval from the FDA to market generic versions of the drug. This court denied motion to dismiss subsidiary as a party from the suit, stating that it was not inclined to dismiss a subsidiary that filed and countersigned an abbreviated new drug application to the FDA on its parent's behalf under circumstances where it appeared to be the parent's marketing arm in the United States. Aventis Pharma Deutschland GMBH v. Lupin Ltd., 403 F.Supp.2d 484, 493.

E.D.Va.2005. Coms. (a) and (b) quot. in sup. Virginia state prisoner filed a petition for writ of habeas corpus challenging his conviction for capital murder and his ensuing death sentence, alleging in part that trial counsel was ineffective by failing to timely object to the admission of a tape recording of a jailhouse telephone call between petitioner and his previous employer, in whom petitioner confided, who was acting as an informant for the state. Although the court dismissed the ineffectiveness-of-counsel claim, it held, inter alia, that, under clearly established Supreme Court law, employer acted as an agent of the state since the state recruited him to obtain information from a particular defendant; whether or not the parties intended to create an agency relationship or the state compensated employer was not determinative. Schmitt v. True, 387 F.Supp.2d 622, 646, 647.

E.D.Va.1994. Cit. in headnote and disc. A client brought a legal malpractice action against a law firm and the firm's partner who had represented her in a divorce action, alleging that the partner breached his employment contract to secure an accounting from the client's former husband for the misappropriation of funds entrusted to former husband by client for purchasing and building two vacation homes. This court entered judgment for plaintiff, holding, inter alia, that client would have been entitled to an accounting from her former husband, because a reasonable inquiry would have shown that husband was wife's agent for the purpose of obtaining access to, and use of, her separate funds to this specific, but limited purpose. McClung v. Smith, 870 F.Supp. 1384, 1385, 1399, affirmed in part, remanded in part, 89 F.3d 829 (4th Cir.1996).

E.D.Va.1975. Cit. in case cit. in sup. Franchisee brought an action against franchisor, automobile wholesaler, and automobile manufacturer, seeking damages for alleged breach of a franchise agreement and for alleged violation of state and federal law regulating automobile dealers. The court held that the franchisee was precluded from bringing suit against the manufacturer, with whom the franchisee had no franchise agreement or dealer-manufacturer agreement in the absence of any evidence that the franchisor was the manufacturer's agent; and that the franchisee was precluded from maintaining an action against the manufacturer under Virginia law. The court granted the manufacturer's motion to dismiss and the franchisor's motion to strike the franchisee's request for a jury trial, since there was a provision in the franchise contract providing that all lawsuits would be tried to a judge sitting without a jury. Smith-Johnson Motor Corp. v. Hoffman Motors Corp., 411 F.Supp. 670, 675.

W.D.Va.

W.D.Va.2010. Com. (e) quot. in sup. Retired union workers and others filed a class action against workers' former employer and employer's retiree healthcare benefit plan, seeking a declaration that defendants could not unilaterally reduce current retiree benefits. This court granted defendants' motion to strike from plaintiffs' exhibit list four documents prepared by an actuarial firm for employer's internal use, which concerned assumptions firm made in predicting the future costs of retiree benefits, holding that the documents contained inadmissible hearsay. The court rejected plaintiffs' argument that firm was employer's agent such that the documents qualified as admissions, reasoning that plaintiffs did not present any evidence that firm was authorized to speak on employer's behalf as to the duration of benefits employer promised to retirees in the collective bargaining agreements. Quesenberry v. Volvo Group North America, Inc., 267 F.R.D. 475, 483.
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

D.V.I.

D.V.I. 1980. Subsec. (1) cit. in sup. The plaintiff bought tickets for passage on the defendant's airline. When the plane became inoperable, the defendant arranged to have these passengers flown on another airline. The substitute plane crashed and the executor of the decedent's estate brought suit against the original airline to determine liability. The court held that the substitute airline was not an agent of the original airline because the substitute furnished its own pilot, plane, fuel, and flight plan. The court concluded, however, that the substitute airline was a non-agent contractor which, because of the absence of any dealings between the substitute and the passengers and because the substitute flight was unscheduled and for the benefit of the defendant airline's passengers alone, had the apparent authority to act on the defendant's behalf and, therefore, this constituted a basis for liability. The court further ruled that because the defendant was a common carrier, it had a nondelegable duty to those injured, both in the air and on the ground. Roberts v. Gonzalez, 495 F.Supp. 1310, 1314.

W.D.Wash.

W.D.Wash. 2007. Cit. and quot. in cases quot. in disc. Insured freight corporation under a cargo legal liability insurance policy sued insurer, seeking indemnification for its settlement of two lawsuits against it by customers asserting claims for lost or damaged shipments. On remand, this court granted summary judgment for insurer, holding that, because the facts were insufficient to establish a relationship between insured and the United States Postal Service (USPS), with which insured had contracted to make final delivery to consignees, insured was not liable to the customers for the losses at issue, which had occurred after insured had delivered the packages to the USPS; thus, insurer was not obligated to provide coverage under the insurance policy. The court found that an agency relationship was lacking because insured did not control the relevant manner of performance by the USPS, noting that the USPS was best characterized as a nonagent independent contractor for insured. Airborne Freight Corp. v. St. Paul Fire & Marine Ins. Co., 491 F.Supp.2d 989, 995.

N.D.W.Va.

N.D.W.Va. 2003. Cit. in case quot. in disc. Employer's insurer brought suit seeking declaratory judgment that it had no duty to defend or indemnify employer in connection with claims asserted by employees who were injured in work-related accident. Employer filed third-party complaint seeking declaratory judgment that insurer and insurance agent had duty to defend and indemnify and alleging that insurer breached duty to provide coverage. This court granted in part insurer's motion for summary judgment, holding, inter alia, that since insurance agent had neither actual nor apparent authority to act on insurer's behalf, any negligence on agent's part in procuring insurance for employer could not be imputed to insurer. Insurer did not exercise control over agent, and there was no manifestation of consent by insurer that agent could act on its behalf. American Equity Ins. Co. v. Lignetics, Inc., 284 F.Supp.2d 399, 409.

S.D.W.Va.

S.D.W.Va. 2000. Com. (b) cit. in disc. Following mortgage lender's failure to reduce the interest rate on borrowers' home equity loan after one year as promised, borrowers brought suit for, in part, fraud against lender, purchaser of loan, and purchaser's trustee. Denying summary judgment for movants/purchaser and trustee, the court held, inter alia, that a genuine issue of material fact existed concerning a possible agency relationship between lender and movants so as to impute lender's alleged fraud to movants. The evidence suggested that lender was making home equity loans on purchaser's behalf and immediately assigning them to purchaser's trustee, although the actual sales transaction took place when an appropriate number of loans had been made. England v. MG Investments, Inc., 93 F.Supp.2d 718, 722.
§ 1Agency; Principal; Agent, Restatement (Second) of Agency § 1 (1958)

E.D.Wis.

E.D.Wis. 2011. Subsec. (1) and com. (e) quot. in sup. Insurance agents who ended their affiliation with insurance company sued company, seeking termination commissions allegedly due them under their contracts; company counterclaimed for, among other things, breach of the duty of loyalty. This court held, inter alia, that plaintiffs breached their respective duties of loyalty to company. The court rejected plaintiffs' argument that the common-law duty of loyalty had no application to the contract at issue because plaintiffs were not employees of company, explaining that independent contractors could be agents, and thus owe a common-law duty of loyalty to their employers; the line between employees and independent contractors was not as bright as plaintiffs portrayed it to be. Jarosch v. American Family Mut. Ins. Co., 837 F.Supp.2d 980, 995.

E.D.Wis. 1995. Cit. generally in ftn., subsec. (1) cit. in headnotes and quot. in disc., com. (e) quot. in disc. Toy distributor sued a sales representative company and its president for breach of fiduciary duty and for tortious interference with the distributor's contractual and prospective economic relationship with a toy retailer. Defendants counterclaimed for unpaid commissions. This court granted in part and denied in part plaintiff's motion for summary judgment, holding, inter alia, that defendants owed fiduciary duties to plaintiff, because there was no factual dispute that defendants were plaintiff's subagents and were aware that they were acting on behalf of plaintiff with respect to the sale of a certain game. Select Creations, Inc. v. Paliafito America, Inc., 911 F.Supp. 1130, 1131, 1132, 1150, 1151.

E.D.Wis. 1995. Subsec. (1) cit. in headnote and quot. in sup., com. (b) cit. in sup. Insureds sued health insurer and insurance agent, alleging that insureds were denied benefits wrongfully and that agent was liable for knowingly failing to disclose one of the insured's past health problems on the application. This court denied insurer's motion for summary judgment, holding that a reasonable jury could find that insurance agent was an agent for insurer and thus his knowledge could be imputed to insurer. The court stated that the parties' written agreement required agent to comply with several of insurer's rules and agent was compensated by insurer. A reasonable jury could conclude that both insurer and agent manifested consent that agent would act for insurer, and that agent would be subject to its control. Steinberg v. Mikkelsen, 901 F.Supp. 1433, 1434, 1437.

E.D.Wis. 1967. Subsec. (1) quot. in part and subsecs. (2) and (3) quot. in sup. The plaintiffs brought an action in negligence against several defendants for injuries received in an automobile accident, among them the employer of the late driver of the other auto and a car rental service which they alleged was engaged in a joint enterprise with the employer. The court, recognizing that to be an agent one must act on behalf of another, to be a servant one must be controlled by that other, and that a distinction is made between the terms “agent” and “servant” because the principal is liable for the torts of the latter only, found in the relationship between the rental service and the driver's employer sufficient control over the latter by the former to deny the rental service's motion for summary judgment. Raasch v. Dulany, 273 F.Supp. 1015, 1017.

W.D.Wis.

W.D.Wis. 2013. Subsec. (1) quot. in case cit. in sup. Insureds brought a putative class action against national insurers, among others, seeking to recover premiums and rebates allegedly embezzled by insurance agency that sold insurance for and collected premiums on behalf of insurers. Granting in part and denying in part defendants' motion to dismiss, this court held that, while defendants were not liable on a respondeat-superior theory for insurance agency's fraudulent acts, because insurance agency was not acting within the scope of that agency relationship when it overbilled customers, plaintiffs stated a viable cause of action against defendants with respect to insurance agency's premium-overbilling scheme accomplished under the guise of apparent-agency authority. The court cited Restatement Second of Agency § 1(1) for the proposition that, under Wisconsin common law, agency doctrine allowed a person to bind and be bound by the actions of another designated to act on his or her behalf. Kolbe & Kolbe Millwork, Co., Inc. v. Manson Ins. Agency, Inc., 983 F.Supp.2d 1035, 1041.
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W.D.Wis.1996. Subsec. (1) cit. in headnote and cit. in disc. Plaintiff sued college and debt collection agency for violations of federal and state laws, contending that defendants attempted to collect interest and collection fees not permitted by state law on a college debt she incurred as a student. Granting plaintiff's motion for summary judgment, the court held, inter alia, that collection agency was college's agent in collecting plaintiff's student loan and, thus, collection agency's violations of the Wisconsin Consumer Act could be attributed to college for the purpose of applying the two-year statute of limitations for actions arising under open-end credit transactions. The court said that, although college did not control the manner in which collection agency was to collect the debt, it did require that the agency collect the debt, it received plaintiff's payments from the agency, and it told the agency to hold off on its collection efforts and functioned as the primary source of information about plaintiff's debt. Patzka v. Viterbo College, 917 F.Supp. 654, 656, 661.

D.Wyo.

D.Wyo.1998. Quot. in case quot. in disc. A cruise passenger sued a cruise line, alleging she was injured during a cruise as a result of the ship owner's negligence. Plaintiff alleged that an independent travel agency acted as defendant's agent in Wyoming, and therefore the travel agency's solicitation of her business in Wyoming established sufficient contacts for the court to exercise specific jurisdiction over defendant. Concluding that it lacked personal jurisdiction over defendant, this court granted defendant's motion to dismiss. The court held, inter alia, that there was insufficient evidence that the travel agency was the cruise line's agent in Wyoming such that the travel agency's actions would give rise to personal jurisdiction against the cruise line in Wyoming. There was no evidence that the cruise line had any right to control the travel agency, as evidence showed that the travel agency acted as an independent broker or contractor in selling the tours. Afflerbach v. Cunard Line, Ltd., 14 F.Supp.2d 1260, 1265.

D.Wyo.1989. Cit. in case quot. in disc. A surety sued its defaulting principals for indemnity under a bond indemnification and pledge agreement. Granting the plaintiff's motion for summary judgment, the court held that the defendants were required to indemnify the plaintiff in accordance with the agreement. The court also granted the plaintiff's motion for summary judgment on the defendants' counterclaim that the plaintiff should be held liable for the acts of the investment advisers who allegedly defrauded the defendants, causing their default, because the advisers, by filling out the forms that they submitted to the plaintiff, became its agents under an implied agency theory. The court held, on the contrary, that there was no evidence that the plaintiff exercised any control over the investment advisers. Insurance Co. of North America v. Bath, 726 F.Supp. 1247, 1253.

Ala.

Ala.2006. Quot. in ftn., cit. in case quot. in disc., com. (a) quot. in sup. and quot. in case quot. in diss. op. After patient died of brain damage that occurred during her recovery from anesthesia, patient's mother, as administrator of her estate, brought medical-malpractice and wrongful-death claims against nurse anesthetist, anesthesiologist, and their employer. The trial court entered judgment on a jury verdict for plaintiff. Reversing and remanding for a new trial, this court held, inter alia, that anesthesiologist was not vicariously liable for nurse anesthetist's conduct. The dissent argued that nurse anesthetist consented or acquiesced to enter into anesthesiologist's service, and that anesthesiologist retained a right of control over her actions that arose out of their relationship as supervising anesthesiologist and supervised nurse anesthetist. Ware v. Timmons, 954 So.2d 545, 552, 553, 555, 564.

Ala.2003. Com. (d) quot. in disc. Contractor sued property owners, seeking payment for work performed under contract to construct a hotel. Trial court granted motion to amend complaint to substitute contractor's alleged principal as plaintiff. On remand, trial court entered judgment for owners. This court affirmed, holding, inter alia, that trial court did not err in applying the right-of-control test in determining that contractor was the business's owner rather than an agent and, thus, that the contract was void because contractor lacked valid contractor's license. Right-of-control test applied because the issue was whether the
alleged principal or contractor was the actual proprietor, not whether the alleged principal ratified the contract. Lee v. YES of Russellville, Inc., 858 So.2d 250, 254.

Ala. 1988. Quot. in disc. After a manufacturer of farm equipment that had extended credit to a buyer of a combine sued the buyer in detinue and for breach of contract, the buyer counterclaimed for fraud, misrepresentation, and conspiracy, alleging that a dealer that had sold the buyer a tractor, which subsequently burned without the benefit of physical damage insurance, had represented that the tractor would be insured and that anything the manufacturer sold on credit was required to have insurance. The trial court granted the manufacturer's motion for summary judgment on the counterclaim. Reversing and remanding, this court held that genuine issues of material fact existed concerning whether the dealer was an agent of the manufacturer or an independent retailer of farm equipment when it negotiated the transfer of the tractor, with the manufacturer's authorization, from a prior installment buyer to the counterclaimant. Turner v. Deutz-Allis Credit Corp., 544 So.2d 840, 842.

Alaska

Alaska, 2007. Cit. in diss. op., cit. in fn. to diss. op. After two sitting Alaska judges filed their “declarations of candidacy for retention” with the Alaska Division of Elections following the expiration of the statutory filing period, the Division determined that both judges were ineligible to stand for retention. The judges sued for injunctive and declaratory relief, and the trial court granted them summary judgment. This court reversed and ordered the judges to vacate their seats within 90 days, concluding that the Division's determination was supported by the facts and had a reasonable basis in law. The dissent argued that the Division had authority to accept the Alaska Judicial Council's favorable evaluations of the judges as declarations of candidacy, noting that the Council's authority to act on behalf of the judges arose under a specific provision of state law, not by the judges' own consent. State v. Jeffery, 170 P.3d 226, 248.

Alaska, 1997. Cit. in disc. A guest of a motor home tenant and the guest's grandfather sued the motor home owner, alleging that the guest was injured from carbon monoxide generated by a propane stove in the motor home. A jury found that the tenant was negligent, that the owner was not negligent, and that the tenant was not the owner's agent. The trial court denied plaintiffs' motion for judgment n.o.v. This court affirmed, holding, inter alia, that a jury could reasonably conclude that the owner and the tenant were not principal and agent. The court stated that the tenant's mere occupancy of the motor home and performance of duties that one would ordinarily expect of a tenant or bailee occupant would not entail sufficient acting on the account of the owner to create an agency relationship. The jury could have concluded that there was no agreement for services beyond that inherent in a normal landlord-tenant or bailor-bailee relationship, and therefore no agency relationship was created. It could also conclude that the owner retained no right to control the tenant beyond the right to terminate the bailment or tenancy and expel the tenant from the motor home. Harris v. Keys, 948 P.2d 460, 464.

Alaska, 1988. Cit. in disc. Three men invested in a real estate purchase, but the one who handled the transaction took the deed in his name alone. The other two did not discover this fact for 35 years. After they sued the titleholder for a decree requiring the defendant to convey an undivided one-third interest to each plaintiff, the trial court granted the defendant's motion for summary judgment. Reversing and remanding, this court held that there was enough evidence of fraud to raise an issue for trial, since there was a question of fact as to whether the defendant was a fiduciary whose failure to disclose the information about title could be viewed as fraud. Carter v. Hoblit, 755 P.2d 1084, 1086.

Alaska, 1983. Subsec. (1) quot. in sup. Several subcontractors appealed a decision by the state's department of revenue assessing additional taxes against the subcontractors for unreported reimbursable costs. The superior court affirmed the department's decision. This court also affirmed, holding that the subcontractors had not qualified for the agency exception to the gross receipts statute because they had failed to establish either that the general contractor had given its consent to the subcontractors to act as the general contractor's agents, or that the general contractor had exerted control over the subcontractors. The court noted
that the contract expressly provided that the subcontractors were not agents of the general contractor. Green Const. Co. v. State, Dept. of Revenue, 674 P.2d 260, 265.

Alaska, 1982. Cit. in sup. A developer asked a real estate broker to find a large piece of land suitable for development. The broker contacted the defendant landowner, but the defendant refused to sell. The defendant eventually changed his mind after the broker assured him that the developer was financially stable and was experienced as a developer. A sales agreement was signed which included a standard term naming the broker as agent of the defendant seller. Before the closing date, the developer filed for bankruptcy and assigned his interest in the sales agreement to his landlady, who eventually assigned to the plaintiff. When the defendant learned of the developer's true financial state, he declared the sales agreement void. The plaintiff, as assignee of the developer, brought suit for specific performance. The trial court held for the defendant, and the plaintiff appealed. This court affirmed, holding that the broker was, contrary to the agreement an agent for the developer. His misrepresentations made the contract voidable at the will of the defendant. The misrepresentations were not made immaterial by the assignment because the plaintiff assignee was not an experienced developer, which was necessary for successful completion of the project at issue. Foster v. Cross, 650 P.2d 406, 409.

Alaska, 1981. Cit. in sup. The defendant broadcasting company appealed from a jury verdict and award for wrongful discharge in favor of the plaintiff employee in a suit for breach of an employment contract. The trial court denied the defendant's motions for directed verdict and judgment notwithstanding the verdict. The plaintiff was the general manager of a television station owned by the defendant. According to the employment contract the plaintiff was subject to the supervision and control of the station's Board of Directors. Prior to the expiration of the plaintiff's contract of employment, the defendant discharged the plaintiff for refusing to follow the directions of the Board to discharge another employee. The plaintiff argued that the defendant was not justified in terminating the employment contract because a wilful failure by an employee to obey a reasonable order from his employer may, but does not necessarily, constitute a material breach where the resulting harm is small. Applying what it considered the unquestioned general rule that an employee's refusal to obey the reasonable instructions of his employer constitutes proper grounds for dismissal, the court found the plaintiff's argument to be without merit and held that the defendant was entitled to judgment. While recognizing the general principal that only a material breach justifies termination, the court reasoned that within the context of an employment contract the duty of obedience owed by the employee to the employer is an essential element of the agreement. Because the element of employer control constitutes the essential distinction between an independent contractor and an employee, the court looked to the terms of the contract to determine the degree of control that the employer could exercise over his employee. Where the employment contract specified that the employee was subject to the supervision and control of the employer, the court concluded that a wilful refusal by the employee to follow a reasonable order directly undermined the contractual relationship and justified dismissal, regardless of how small the resulting harm. Because the Board's order was within its authority under the contract, and because the plaintiff wilfully refused to follow the reasonable instructions of his employer, the court held that the plaintiff’s breach was material as a matter of law and the defendant therefore was justified in terminating the contract. Central Alaska Broadcasting v. Bracale, 637 P.2d 711, 713.

Alaska, 1975. Quot. in ftn. in sup. and dist. Borough filed a complaint against the state seeking a declaratory judgment that the state must indemnify the borough for reasonable settlements, judgments, costs and attorney's fees incurred in a suit brought against the borough for death and injury resulting from a school bus collision with an automobile. From a judgment for the state, the borough appealed. The court affirmed. While the state did supervise the transportation service, insofar as it related to the funding provided by it, and while it also had certain regulations in effect pertaining to the over-all safety of the transportation system, the actual control of the transportation services was undertaken by the borough. It was determined that the borough was not acting as an agent of the state in furnishing the transportation of pupils. There was no statute or contract authorizing the borough to employ a driver on behalf of the state. Kenai Peninsula Borough v. State, 532 P.2d 1019, 1022.

Alaska, 1970. Subsec. (3), com. (e) cit. in sup. in ftn. Plaintiff borrowed money from the defendant for a car. Later he moved to another state. Claiming default, the defendant repossessed through a recovery service in the second state. Plaintiff brought action
in the second state against the defendant for tortious or unlawful repossession by means of a long-arm statute. He prevailed. He then brought suit in the first state on the judgment and received a summary judgment. On appeal the court reversed and remanded, holding that there was a genuine issue of fact as to whether the recovery service was not an agent but simply an independent contractor and therefore would be immunized from “long-arm” jurisdiction. ALP Federal Credit Union v. Ashborn, 477 P.2d 348, 350.


Ariz.App.2005. Quot. in sup. Insurer that was placed into receivership sued company that had contracted with insurer to provide pharmacy-management services, alleging that company breached the contract by refusing to pay insurer unpaid rebate funds from drug manufacturers that company retained as an offset against insurer’s indebtedness to company. The trial court granted defendant summary judgment. This court affirmed, holding that, due to the absence of language in the contract creating an agency relationship and the lack of control by insurer over manner in which defendant negotiated and collected rebates, an agency relationship did not exist between insurer and defendant as to defendant's obligation to pay rebate funds to insurer. Thus, defendant could retain rebate funds as an offset. Urias v. PCS Health Systems, Inc., 211 Ariz. 81, 118 P.3d 29, 36.

Ariz.App.1991. Com. (b) cit. in disc. The trustees of a living trust sued to determine the validity of attempted modifications of the amended trust indenture by the settlor's daughter as attorney-in-fact. The trust indenture provided that power to amend or revoke the trust was personal to the settlor and not exercisable by any guardian or personal representative of the settlor. The trial court granted partial summary judgment in favor of the trustees. The daughter, who had been appointed guardian/conservator for the settlor, argued that the trust indenture did not preclude her from amending the trust because she was acting as attorney-in-fact and not as guardian/conservator or as a personal representative. This court affirmed, holding that the power to amend the trust was personal and that the trust indenture did not permit the settlor to delegate power to amend the trust to her attorney-in-fact. The court reasoned that an agent is always a representative; therefore, the daughter, as her mother's attorney-in-fact, was a personal representative who could not exercise the power of amendment. Matter of Marital Trust, 169 Ariz. 443, 819 P.2d 1029, 1030.

Ariz.App.1986. Cit. in disc., com. (e) cit. in disc. A bar owner's insurance company retained an attorney to represent the bar owner in a wrongful death action brought against him. Before the case was settled, the insurance company became insolvent and the Arizona Guaranty Fund assumed the claim. The fund retained another attorney to represent the bar owner and that attorney subsequently rendered legal advice to the fund that was adverse to the bar owner. The bar owner sued the attorney retained by the fund, and the trial court granted summary judgment to the defendant, holding that the attorney was immune from suit as an agent of the fund. Reversing, this court held that because the attorney was retained by the fund to represent the insolvent company's insured, the attorney was an agent of the insured and immunity did not apply. Barmat v. John and Jane Doe Partners A-D, 155 Ariz. 515, 747 P.2d 1214, 1216.

Ariz.App.1984. Quot. in disc. Mother sued airplane owner for wrongful death of her son in a crash during a test flight after the plane had been repaired. The trial court entered judgment n.o.v. for the owner following a jury verdict for the mother, and this court affirmed. Liability for the pilot's negligence could not be imposed on the owner where the relationship between the pilot and the owner was one of bailment and not of agency, since the owner had no right to control the pilot's performance of the test flight. Neither was the owner independently liable for failure to discover and warn of missing counterweights because the defect of the missing counterweights arose after the bailment was created; therefore knowledge of the defect could not be charged to the owner. Nava v. Truly Nolen Exterminating, 140 Ariz. 497, 683 P.2d 296, 299.

Ariz.App.1983. Com. (e) cit. in sup. The defendants in a class action brought a defamation action against the plaintiff-clients and their attorneys in the class action, based on statements published in a newspaper article. The lower court vacated a default
judgment entered against one client and granted summary judgment for all the clients and attorneys. This court affirmed, holding that the attorneys, in relation to their clients, were independent contractors, that the attorney-client relationship was one of agent and principal, and that under the rules of agency that applied to the relationship, the clients were not vicariously liable for their attorneys' defamatory statements, since there was no evidence that the clients actually or apparently authorized or ratified those statements. Green Acres Trust v. London, 142 Ariz. 12, 688 P.2d 658, 664, affirmed in part and vacated in part 141 Ariz. 609, 688 P.2d 617 (1984).

Ariz.App. 1978. Cit. in sup. The state brought a special action to challenge the lower court's order which granted the motion of defendant, charged with vehicular manslaughter, for a protective order which precluded the state from taking the deposition of a claims adjuster for defendant's automobile liability insurer. The lower court granted the order on the ground that since the claims adjuster was the defense counsel's investigative agent, the information sought was privileged. The court found on appeal that the lower court erred in granting defendant's motion for a protective order, since defendant failed to establish that the material sought was protected. The court held that the fact that the claims adjuster had been given authority by the attorney to take insured's statements and develop information based thereon which could be used for the benefit of the adjuster, provided he would maintain the confidentiality of such information, did not make the claims adjuster the agent of the attorney so as to preclude disclosure of the materials acquired during the claims adjuster's investigation. State v. Superior Court, In and For Pima County, 120 Ariz. 501, 586 P.2d 1313, 1316.

Ariz.App. 1965. Cit. in sup. Where one corporation was formed by another solely to act for the latter's benefit and to contract for that latter, the newer corporation became the agent of the older corporation when it contracted for the latter. Peterman-Donnelly Eng'r and Contractors Corp. v. First Nat'l Bank of Arizona, 2 Ariz.App. 321, 408 P.2d 841, 845.

Ark. 2013. Com. (a) cit. in case quot. in sup. Estate of deceased nursing-home resident sued nursing home, seeking damages for negligence, medical malpractice, and violations of the Arkansas Long-Term Care Residents' Rights Act. The trial court denied defendant's motion to compel arbitration, concluding that questions of fact remained regarding the authority of resident's son to bind resident to the arbitration agreement. Affirming, this court held, inter alia, that there was no valid arbitration agreement as a matter of law, because resident's son did not have actual authority to enter into the agreement on resident's behalf. The court noted that it had previously adopted the definition of agency contained in Restatement Second of Agency § 1, Comment a, which provided that the relation of agency was created as the result of conduct by two parties manifesting that one of them was willing for the other to act for him subject to his control, and that the other consented so to act. Courtyard Gardens Health and Rehabilitation, LLC v. Quarles, 2013 Ark. 228, 428 S.W.3d 437, 442.

Ark. 1996. Cit. in headnotes, cit. generally in diss. op., com. (b) quot. in sup. Woman sued newspaper publisher, among others, for injuries sustained when she was struck by a truck driven by one of publisher's deliverymen. Specifically, plaintiff alleged that publisher, as principal, was liable for the torts of deliveryman, its agent. The trial court disagreed and granted publisher's motion for summary judgment on the ground that, even if an agency relationship could be inferred from the parties' conduct, plaintiff presented no proof that such a relationship was intended. Reversing and remanding, this court held that the extent of control exercised by the recipient of services over the one giving them, not the intent of the parties, was the crucial factor in the determination of the existence of an agency relationship, and that material factual questions remained as to the control publisher maintained over deliveryman. Dissent believed that agency could not be established absent proof of conduct by the parties indicating their assent to an employment relationship. Howard v. Dallas Morning News, Inc., 324 Ark. 91, 918 S.W.2d 178, 179, 182, 185, 186.
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Ark.1988. Com. (a) cit. in diss. op. A husband and wife were injured when their automobile crashed into the back of a stalled lumber truck, which was hauling lumber for a company that had contracted to cut and haul lumber for a second company. When the injured couple sued the second company for damages, the trial court entered judgment on a jury verdict for the plaintiffs on the ground that a master-servant relationship existed between the two companies, and this court affirmed. The dissent argued that the relationship between the companies was clearly one of owner-independent contractor, since the first company was not subject to the defendant's control when physically cutting, loading, and hauling the logs, although it was subject to the defendant's control and direction as to the end result of the work. Johnson Timber Corp. v. Sturdivant, 295 Ark. 622, 752 S.W.2d 241, 262, rehearing granted 295 Ark. 663A, 752 S.W.2d 279 (1988).

Ark.1988. Com. (a) cit. in disc. Plaintiffs sued the lessee of a tractor-trailer rig, claiming that the driver, who was allegedly an employee and agent of the lessee, was acting within the scope of his employment when he became involved in an accident with the vehicle in which they rode. The trial court granted the lessee's motion for a directed verdict, and this court affirmed, holding that there was no agency relationship between the driver and the lessee, whose only involvement in the case arose from its relationship with the owner-lessee. The court noted that the driver was not subject to the lessee's control or authorization, but noted that the driver was subject to the control of the owner-lessee of the tractor-trailer rig, yet the plaintiff had failed to develop or argue the relationship between the lessee and lessor, instead focusing on the driver's respective connections with the lessee and lessor and arguing that the driver was subject to the lessee's control. Jumper v. L & M Transport, Inc., 296 Ark. 319, 756 S.W.2d 901, 902.

Ark.1985. Com. (a) cit. in sup. The owner of an automobile that was struck by a second automobile brought suit against the driver and the person to whom the second automobile had been entrusted. The trial court found for the plaintiff against the driver, but held that the entrustee was not liable where the driver was not an agent of the entrustee. This court affirmed, finding that the evidence raised a question of whether the entrustee controlled the actions of the driver and holding that the question of control was properly put before the jury. Evans v. White, 284 Ark. 376, 682 S.W.2d 733, 734.

Ark.1968. Quot. in sup. Plaintiff was injured while riding in her family car, which was being driven by a third party. The car collided with a bus and plaintiff was injured. The trial court decided as a matter of law that any negligence on the part of the driver was to be imputed to the passenger, and the jury returned a verdict for defendant. On appeal, the court reversed. The court held that no agency relationship had been established because plaintiff lacked sufficient control over the driver. The plaintiff was not licensed and the car was owned by her mother, who had relinquished control to the driver. Plaintiff could not and did not tell the driver the manner in which the car was to be operated, nor did plaintiff choose the route taken to their destination. The driver's negligence could not be imputed to the passenger. Crouch v. Twin City Transit, Inc., 245 Ark. 768, 434 S.W.2d 816, 817.


Ark.App.2012. Adopted in cases cit. in sup., cit. in case quot. in sup. Estate of passenger who was killed during a business trip in the crash of an airplane privately owned by decedent's employer's president brought a wrongful-death action against president, who had piloted the plane when it crashed. The Workers' Compensation Commission determined that president was decedent's employer under the Workers' Compensation Act at the time of the accident, and thus the exclusive remedy under the Act applied to preclude plaintiff's suit. Reversing, this court held that president was not entitled to immunity under the Act, because, although decedent and president were acting within the scope of their employment while traveling to the business meeting, employer did not direct or control the means of travel, and, more specifically, did not control or direct president in maintaining and operating the airplane with reasonable care and skill; thus, the actions of president for which plaintiff sought damages arose from president's own failure to use reasonable care and skill in maintaining and piloting the plane. Honeysuckle v. Curtis H. Stout, Inc., 2009 Ark. App. 696, 12, 374 S.W.3d 14, 22.
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Ark.App. 2001. Com. (a) cit. in sup. After bail bondsman's friend distributed bondsman's business cards at county jail, licensing board found bondsman guilty of improperly soliciting business in a place where prisoners were confined, and it imposed a fine and suspension. Trial court affirmed. This court affirmed, holding that bondsman was accountable for friend's actions as her agent, because there was substantial evidence that friend was acting on bondsman's behalf when distributing her business cards at jail. Although bondsman did not pay friend, she gave friend access to her business cards and cellular phone and instructed friend to obtain information from prospective customers. Bondsman's instructions to friend to never pass out her cards again at a jail showed that friend was subject to bondsman's control. Frawley v. Nickolich, 73 Ark.App. 231, 41 S.W.3d 420, 422.

Ark.App. 1990. Cit. in disc., com. (a) cit. in disc. A bank sued a corporation and its vice president on an instrument of guaranty signed by the vice president, after an improvement district defaulted on its loan from the bank. The trial court entered judgment on a jury verdict for the defendants. Reversing and remanding, this court stated that the trial court erred in submitting to the jury the questions whether the township commissioners who approached the defendant vice president about guaranteeing the note were agents of the bank and thus whether their knowledge of his statement concerning his lack of authority to bind the corporation should be imputed to the bank. The court held that the trial court should have ruled, as a matter of law, that the commissioners were not agents of the bank. First Commercial Bank v. McGaughey Bros., 30 Ark.App. 174, 785 S.W.2d 236, 238.

Cal.App. 1991. Com. (a) cit. in disc. Hotel owners sued the manager of the hotels for damages and a judicial declaration that the management contracts could be terminated, after the manager allegedly breached the contracts. The trial court granted the defendant's motion for a preliminary injunction enjoining the plaintiffs from terminating the management contracts pending resolution of arbitration to determine whether the manager breached the contracts. Reversing, this court held that the trial court's order granting an injunction to compel continued performance of the management contracts was error as a matter of law, because the relationship between the parties was one of agency and the principal retained the unrestricted power to revoke the agent's authority. Rejecting the defendant's argument that, because the plaintiffs entrusted the defendant with the entire operation of the hotels, the parties' relationship was not a true agency, the court said that the very nature of a managerial relationship was the delegation of authority from principal to agent and that actual supervision of the manager's daily activities was not necessary. Woolley v. Embassy Suites, Inc., 227 Cal.App.3d 1520, 278 Cal.Rptr. 719, 725.

Cal.App. 1986. Com. (e) cit. in disc. When a woman and her fiance fell behind in paying their apartment rent, the landlord hired an attorney to handle court proceedings, resulting in the eviction of both tenants. However, the eviction of the woman was illegal, because she was not served the complaint and her name did not appear on any documentation given to the sheriff. After she sued the landlord in tort, the trial court found the defendant vicariously liable for the negligence of his attorney. Reversing, this court held that an attorney was an independent contractor in his role as trial counsel and, absent compelling reasons of public policy, an employer was not liable for the negligence of an independent contractor. Lynn v. Superior Court (Waldron), 180 Cal.App.3d 346, 225 Cal.Rptr. 427, 429.

Cal.App. 1985. Cit. in disc. Student participating in a basketball tournament was severely injured when a car in which she was riding, driven by a volunteer student host, overturned. Student sued the host school district and her home school district, contending that the districts negligently organized and conducted the tournament and that the volunteer host was an agent whose negligence was attributable to the districts. The trial court granted summary judgment to defendants based on a statute shielding school districts from liability for injuries incurred on field trips and on the additional ground that the volunteer host was not defendants' employee. This court reversed, holding that the statute, as qualified by a subsequent statute, did not bar liability for a school-sponsored off-campus activity; that defendants could be held liable for negligent selection of hosts; and that the trial court erred in ruling as a matter of law that the volunteer host was not an employee, since a determination of the master/servant

Cal.App.1981. Com. (a) quot. in sup., com. (c) cit. in sup. The defendant, a licensed real estate broker doing business under an assumed business name, contracted to buy a piece of undeveloped real estate for himself from the plaintiff and to split the broker's commission between the listing broker and his assumed business name. The plaintiff sought to rescind the sale on the grounds of breach of fiduciary duty of disclosure. The plaintiff claimed that the defendant, by accepting a percentage of the broker's fee, was acting as an agent of the plaintiff and thereby breached his fiduciary duty in failing to reveal the fact that the value of the property had increased due to the planned development of nearby properties. The plaintiff further claimed that the breach caused the plaintiff to sell the property to the defendant below its true value, which was known to the defendant at the time of the sale. The trial court found a fiduciary relationship between the parties based on agency, and entered judgment for the plaintiff after finding a breach of that duty. The appellate court reversed after finding that the defendant was not acting as the seller's agent and therefore owed the seller no fiduciary duty of disclosure. The court found that, although the defendant accepted a percentage of the commission, the defendant established that he was acting solely for his own benefit in obtaining title to the property. Where the defendant did not agree to act for the benefit of the plaintiff, nor undertook any action for the benefit of anyone but himself, there was no agency relationship between the parties, and therefore no fiduciary duty of disclosure existed. Cook v. Westersund, 127 Cal.App.3d 192, 179 Cal.Rptr. 396, 400.

Cal.App.1976. Quot. in part in sup. Two friends embarked on an errand in which both had an interest, and were involved in an auto accident. The court held, in this suit to recover for injuries sustained by a third party in the accident, inter alia, that where there was no evidence that defendant passenger asserted the right to control defendant owner-driver's actions, the passenger could not be held liable on a theory that the driver was acting as passenger's agent. DeSuza v. Andersack, 63 Cal.App.3d 694, 699, 133 Cal.Rptr. 920, 924.

Cal.App.1973. Com. (a) cit. in sup. The plaintiffs, a supplier and a contractor, sought to foreclose liens under the Oil and Gas Lien Act. The defendants were the lessee of the property on which the drilling to which the plaintiffs contributed was performed, the lessee's assignee, and one to whom the assignee had given an option to purchase the leasehold and the right to drill a pilot well before the option's exercise date. The option, which was never exercised, was granted as an inducement to drill a well which the grantor thereof had to do every six months in order to avoid paying rent. The court found that the option and drilling agreement did not make the optionee the grantor's agent and did not subject him to the grantor's control in the drilling operations. However, the court found that the Lien Act's definition of an "owner" of an oil and gas leasehold, against whom liens could be obtained, included a "person holding any interest in the legal or equitable title" to the leasehold, and that the agreement granted the optionee such an interest by virtue of its entitling him to the profits of the well he was to drill if he would exercise the option, and it therefore held that the plaintiffs had valid liens against him. Cal-Cut Pipe & Supply, Inc. v. Haradine Petroleum, Inc., 35 Cal.App.3d 359, 110 Cal.Rptr. 666, 672.

Cal.App.1973. Com. (e) cit. in sup. plaintiff, assignee of assured's claim, brought an action on assured's claims against assured's carrier for the latter's bad faith and negligent defense of a personal injury action brought against assured. On plaintiff's appeal from a judgment on the pleadings in favor of defendant on the count for negligent defense, and defendant's appeal from judgment on a verdict for plaintiff on the other counts, the court affirmed in part, reversed in part, with directions, and held, with respect to the charge of negligent handling and conduct of the defense in the personal injury case, that vicarious liability does not fall upon one who retains independent trial counsel to conduct litigation on behalf of a third party, despite such counsel's malpractice in conducting the defense, such counsel being independent contractors retained to perform professional services. Merritt v. Reserve Insurance Company, 34 Cal.App.3d 858, 110 Cal.Rptr. 511, 527.

Cal.App.1966. Cit. in sup. The plaintiffs sought to impose a constructive trust on certain real estate condemned by the defendant State and for other relief on the grounds that the State practiced extrinsic fraud against them in condemning property for
construction of a State mental hospital. This court reversed a recovery for the plaintiffs on the grounds that the agent selected for the purpose of concluding successful negotiation with the relevant state officials knew of the state's intended use of the land and that such knowledge was imputable to the plaintiffs to bar their cause of action based on extrinsic fraud commenced nine years after the State had taken the land. Capron v. State, 247 Cal.App.2d 212, 55 Cal.Rptr. 330, 342.

Colo.

Colo.2003. Quot. in sup. Workers' compensation claimant sought penalties against attorneys, as employer's agents, who advised claimant's employer to violate court order requiring it to pay for claimant's chiropractic treatment. Industrial Claim Appeals Office dismissed claim and claimant sought review. Appellate court affirmed in part, holding that attorneys did not fail, neglect, or refuse to obey lawful order under statute, but attorneys could be liable under penalty statute if they acted with fraud or malice. Granting certiorari, this court affirmed in part, reversed in part, and remanded, holding that attorney lacked ability to bind insurer and thus was not agent of insurer, therefore, attorney did not violate penalty statute by advising insurer to violate court order, even if attorney acted with fraud or malice. Dworkin, Chambers & Williams, P.C. v. Provo, 81 P.3d 1053, 1058.

Colo.1998. Subsec. (1) cit. in diss. op., com. (e) quot. in diss. op. (cit. as s 1 cmt. on subsection (3)). Concert promoter appealed a city revenue department's administrative decision that it was liable for a seat tax on tickets for a series of concerts that it had promoted under a joint venture with the city's zoological foundation, an agent of the city. The trial court affirmed the administrative decision, and the court of appeals reversed. Reversing and remanding, this court held that the concert series was not eligible for the seat-tax exemption for sales by the city or a department of the city because an agency relationship did not exist between the zoo and the joint venture, which sold the tickets, and thus the tickets were not sold by an agent or a subagent of the city. The dissent argued that the exemption was available because promoter, viewed either alone or as part of a joint venture, acted as an agent of the zoo in promoting the concert series; in carrying out its duties, it at all times acted on behalf of the zoo, for the zoo's benefit, and subject to the zoo's ultimate control. City & County of Denver v. Fey Concert Co., 960 P.2d 657, 669, 670.

Colo.1993. Subsec. (1) and com. (b) quot. in conc. and diss. op., com. (a) quot. in disc. Parishioner sued Episcopal diocese and its bishop for injuries she allegedly sustained as a result of her sexual relations with priest to whom she had gone for counseling. The trial court entered judgment on a jury verdict awarding plaintiff damages. Affirming in part, this court held, inter alia, that diocese was liable for negligent hiring and supervision of priest, since an agency or employment relationship existed between diocese and priest and there was sufficient evidence that diocese's placement of priest in the role of counselor and its lack of supervision of priest breached diocese's duty of care to plaintiff. A concurring and dissenting opinion argued that diocese could not be liable for negligent hiring or supervision since it was neither principal nor employer of priest. Moses v. Diocese of Colorado, 863 P.2d 310, 324, 332, cert. denied 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994).

Colo.1987. Subsec. (1) quot. in disc., subsecs. (2) and (3) and com. (b) cit. in disc. A prospective purchaser accepted a seller's counterproposal on the price of a house through a nonlisting broker. However, before the seller was notified, he accepted another offer. When the purchaser sued the seller for specific performance, the trial court granted summary judgment to the defendant on the ground that notice to the nonlisting broker did not constitute notice to the seller. Reversing and remanding, this court held that, since the nonlisting broker was an agent of the listing broker and a subagent of the seller, the notice must be imputed to the seller. The court reasoned that the authority given by a listing agreement generally included the implied authority to appoint others as subagents to perform the tasks assigned to the broker for the term of the contract. The court noted that, if it was determined that there was an agency relationship between the plaintiff and the nonlisting broker, the plaintiff would have no cause of action against the seller. Stortroen v. Beneficial Finance Co., 736 P.2d 391, 395.

Colo.App.
Colo.App. 2011. Subsec. (1) quot. in case quot. in sup. Wife and sons of a deceased nursing-home patient sued owner of nursing facility, owner's parent company, and personnel-services company, asserting claims for negligence and outrageous conduct. The trial court directed a verdict for defendants on sons' claims, and entered judgment on a jury verdict for wife. Reversing in part, vacating in part, and remanding, this court held, inter alia, that neither parent company nor personnel-services company were liable for nursing facility's alleged negligence, because there was no evidence that these defendants owed a duty of care to patient on the theory that nursing facility's employees were their agents. The court reasoned that the mere fact that personnel-services company provided a corporate-structure document to facility's nursing-home administrator for facility's license application was clearly insufficient to establish an agency relationship between personnel-services company and administrator. Reigel v. SavaSeniorCare L.L.C., 292 P.3d 977, 984.

Colo.App. 2006. Subsec. (1) quot. in case quot. in disc. Dealer sued manufacturer of fire and rescue vehicles after manufacturer unilaterally terminated the parties' sales and service agreement, asserting, in part, a claim for aiding and abetting a breach of fiduciary duty. The trial court entered judgment on a jury verdict for plaintiff on all claims. Affirming in part, this court declined to set aside the jury verdict finding defendant liable for aiding and abetting dealer's salesman's breach of fiduciary duty, holding, inter alia, that there was sufficient evidence that salesman owed plaintiff a fiduciary duty, since both plaintiff and salesman intended salesman to act as plaintiff's agent and to be subject to plaintiff's control. Western Fire Truck, Inc. v. Emergency One, Inc., 134 P.3d 570, 575.

Colo.App. 2004. Subsec. (1) cit. in disc. Computer software company sued Indian tribe for breach of contract, unjust enrichment, and promissory estoppel, alleging that tribe's chief financial officer (CFO) had authority to execute the contract and waiver of sovereign immunity on tribe's behalf. Trial court denied tribe's motion to dismiss. This court affirmed, holding that CFO had apparent authority to sign contract and waive tribe's sovereign immunity. The court said that the words, actions, and conduct of tribe caused plaintiff to believe that tribe consented to have contract and waiver signed on its behalf by CFO, CFO held himself out as tribe's agent and acted at least with apparent authority in assenting to contract and waiver therein, plaintiff relied to its detriment on CFO's apparent authority. Rush Creek Solutions, Inc. v. Ute Mountain Ute Tribe, 107 P.3d 402, 407, cert. denied 2005 WL 39177 (Colo.2005).

Conn. 2010. Cit. in case quot. in ftn. State employee brought an interpleader action, on his own behalf and on behalf of all others similarly situated, against state and insurance company, alleging that, upon company's conversion from a mutual insurance company to a stock corporation, state had received approximately 1.6 million shares of company stock that should have been distributed to plaintiff and other state employees. The trial court, inter alia, denied state's motion to dismiss plaintiff's claim of an unconstitutional taking under the state constitution. Reversing as to this claim, this court held that plaintiff's claim failed because plaintiff neither alleged nor presented evidence that state had received the stock as agent for plaintiff and others similarly situated; specifically, plaintiff failed to allege any facts capable of establishing a manifestation of his assent that state would act on his behalf, that state agreed to receive the stock on his behalf, or that the parties understood that plaintiff ultimately would be in control of the stock. Gold v. Rowland, 296 Conn. 186, 203, 994 A.2d 106, 118.

Conn. 2006. Cit. in case quot. in sup. Automobile lessees sued lessor and dealership, seeking reformation of their automobile leasing contract to include lessee wife, who while driving the vehicle had been involved in a serious accident, as an authorized driver of the leased vehicle. The trial court entered judgment for lessees, reforming the contract. Reversing and remanding, this court held that the trial court's finding that dealership was lessor's agent so as to impute to lessor the actions of dealership's employees with respect to execution of the lease was clearly erroneous; dealership's power-of-attorney granted in the dealership agreement was limited to the power to title vehicles, the agreement did not require dealership to use lessor to finance its vehicle
leases, and dealership was a separate entity not owned by lessor. *Wesley v. Schaller Subaru, Inc.*, 277 Conn. 526, 543, 893 A.2d 389, 400.

**Conn.** 2004. Cit. generally in disc. Law firm brought action against former airline pilots, seeking to recover legal fees incurred in previous representation of pilots. Trial court, inter alia, directed a partial verdict for law firm on breach-of-contract claim. This court reversed, finding that the jury reasonably could have determined that pilot's attorney had no authority to bind pilots to contract with law firm. *Updike, Kelly and Spellacy, P.C. v. Beckett*, 269 Conn. 613, 633, 850 A.2d 145, 160.

**Conn.** 2003. Quot. in disc. Condominium owners brought action to quiet title following mortgagee's refusal to release mortgage after mortgage company failed to forward total amount of mortgage to mortgagee. Trial court granted judgment in part for owners. Affirming, this court held, inter alia, that mortgage company had actual implied authority to collect owners' monthly payments on behalf of mortgagee, who was an out-of-state investor with no interest in managing property details; thus, mortgage company was acting as agent of mortgagee when it collected total amount of mortgage due on condominium. *Gordon v. Tobias*, 262 Conn. 844, 849, 817 A.2d 683, 688.

**Conn.** 2003. Quot. in disc. Pedestrian injured by falling tree branch sued town and church on whose property tree was located for negligence in failing to inspect tree or warn pedestrians. Trial court entered judgment on jury verdict for defendants. Appellate court affirmed, holding that plaintiff was not prejudiced by trial court's failure to instruct jury on agency law. This court affirmed, holding that trial court's instruction, describing town's liability for negligent acts of its employees, gave ample guidance to jury. Jury was not misled in its determination that town was not negligent merely because instruction was within context of municipal liability statute, rather than in context of agency instruction. *McDermott v. Calvary Baptist Church*, 263 Conn. 378, 384, 819 A.2d 795, 799.

**Conn.** 2002. Quot. in ftn. Automobile accident victims sued liability insurer, its brokers, annuity issuer, and their parent corporation, alleging, inter alia, breach of implied duty of good faith and fair dealing and breach of fiduciary duty in relation to structured settlements. The trial court granted defendants' motion to strike complaint. Affirming in part, reversing in part, and remanding, this court held, inter alia, that defendants, whose contractual relationship with victims was limited to purchasing annuities for victims, were not agents for victims and therefore did not owe victims fiduciary duty. *Macomber v. Travelers Property and Casualty Corp.*, 261 Conn. 620, 804 A.2d 180, 192.

**Conn.** 1998. Cit. in ftn. Owners of brokerage accounts brought suit for an order directing a brokerage firm to proceed with the arbitration of plaintiffs' claims regarding six investment accounts that were maintained with the firm. Reversing the trial court's denial of plaintiffs' motion for summary judgment, the court held, inter alia, that plaintiff university did not lack standing to compel arbitration of claims arising under the contract that governed its account, and that the Federal Arbitration Act entitled plaintiffs to an order directing defendant to proceed with arbitration of all claims raised by plaintiffs regarding their accounts. The court said that the evidence was sufficient to establish that when the named plaintiff executed the contracts governing the university's account, he did so not in his individual capacity, but on behalf of the university. *Levine v. Advest, Inc.*, 244 Conn. 732, 759, 714 A.2d 649, 663.

**Conn.** 1997. Com. (b) cit. in case quot. in disc. Mortgagees whose names were omitted from the insurance policy covering a rooming house they owned sued insurance broker for negligence after the house was severely damaged by fire. The trial court entered judgment on a jury verdict for senior mortgagee but directed a verdict against junior mortgagees. Mortgagees then sued insurer for breach of contract, alleging that insurer, broker's principal, was liable for having failed to notify them that the policy had been canceled. The trial court directed a verdict for insurer. The appeals in the two cases were consolidated. Reversing, in part, the judgment in the first action and remanding, and affirming the judgment in the second case, this court held that the lower court erred when it refused to allow broker to present evidence of the steps senior mortgagee took to mitigate his damages, but
that the directed verdict in insurer's favor was proper, as broker was neither an actual nor an apparent agent of insurer. Hallas v. Boehmke and Dobosz, Inc., 239 Conn. 658, 686 A.2d 491, 499.

Conn. 1995. Cit. in case quot. in disc., com. (b) cit. in case quot. in disc. Landlord in commercial lease sued assignee and her employer for breach of the lease agreement after defendant assignee failed to make necessary building repairs. Finding, inter alia, that defendant assignee's reassignment of the lease terminated her obligations under it and that plaintiffs had failed to show an agency relationship between defendants, the trial court entered judgment for them. Following a transfer of plaintiff's appeal from the intermediate appellate court, this court reversed and remanded, holding that the lower court committed prejudicial error by refusing to admit deposition testimony wherein defendant assignee detailed the nature of her relationship with her employer. The court believed that this evidence would have enabled plaintiffs to prove that defendant assignee had acted strictly on her employer's behalf. Gateway Co. v. DiNoia, 232 Conn. 223, 654 A.2d 342, 350, 351.

Conn. 1988. Cit. in case cit. in disc., com. (b) cit. in disc. A conservatrix sued the city, the housing authority, and others, alleging that they were negligent in managing and in providing security for the housing project where her brother was attacked and permanently injured by a group of youths. The trial court granted the city's motion to strike the counts against it, holding that the city owed no duty to provide police protection to the plaintiff's brother as a matter of law, and that the housing authority was an independent body and therefore had no agency relationship with the city. Affirming, this court held, inter alia, that, although the finding of an agency relationship was normally a question of fact, the court was permitted to dismiss the counts against the city because the plaintiff had relied only on a statutory argument, and the statute in question did not permit the finding of an agency relationship; therefore the city could not be liable for any negligence on the part of the housing authority. Gordon v. Bridgeport Housing Authority, 208 Conn. 161, 544 A.2d 1185, 1198.

Conn. 1988. Com. (e) quot. in disc. and in sup. Real estate developers sued their attorneys for legal malpractice, fraud, negligent misrepresentation, and violations of unfair trade practices laws after the defendants allegedly mishandled the developers' antitrust suit. The trial court dismissed the claim against one out-of-state attorney on the ground that it lacked personal jurisdiction. Affirming, this court held, inter alia, that the out-of-state attorney did not qualify as the agent of the other defendant attorney for purposes of jurisdiction. The court concluded that the trial court was not clearly erroneous in resolving the factual issue regarding whether the out-of-state attorney was an independent contractor or an agent. Rosenblit v. Danaher, 206 Conn. 125, 537 A.2d 145, 154.

Conn. 1983. Quot. in part in case quot. in disc., com. (b) cit. in disc. A developer sued a roofing contractor and the supplier of the roofing materials after the roof installed by the roofer developed leaks. The roofer and the supplier had an agreement whereby the supplier would furnish a bond if the roofer complied with certain specifications, but this roof had not passed an inspection and no bond had been issued. The developer claimed that the supplier was liable under an agency theory, but the trial court found the supplier not liable. This court affirmed. It analyzed the facts in light of several factors used in defining an agency relationship, concluding that the roofer was not the supplier's agent, and finding no evidence of an apparent agency. Beckenstein v. Potter and Carrier, Inc., 191 Conn. 120, 464 A.2d 6, 13, 14.

Conn. 1981. Cit. in case quot. in sup. The plaintiff, the executrix of her sister's estate, brought an action to recover money expended by the defendant, allegedly pursuant to a power of attorney executed by the plaintiff's decedent. The lower court ruled for the plaintiff, and the defendant appealed. The court affirmed because the defendant had acted outside the scope of consent given by the decedent. The defendant alleged that the power of attorney was intended to be a gift of all the decedent's assets. The court held that the written power of attorney created a principal-agent relationship between the decedent and the defendant. The defendant was, therefore, bound by the limitations in the written power of attorney because an agent cannot act without the consent of the principal. Long v. Schull, 184 Conn. 252, 439 A.2d 975, 977.
Conn.1979. Quot. in disc. and com. (b) cit. and quot. in ftn. Vendee brought an action for specific performance against the defendants, husband and wife, to compel conveyance of their land in accordance with the terms of a lease and option-to-purchase agreement signed by the husband, the owner of an undivided half interest in the property. The trial court found the issue for the plaintiff and ordered specific performance. Defendants appealed, alleging that the wife was never a party to the agreement, that its terms may not be enforced as to her, and that the option was so ambiguous and indefinite that it failed to satisfy the Statute of Frauds and was, therefore, unenforceable. The court reversed in part and affirmed in part. As to the wife, the court reversed, holding that the husband did not act as the wife's agent in discussions concerning the sale of the land, or in the execution of the agreement, and that the wife did not ratify the agreement because she had neither the intent to do so, nor knowledge of the circumstances surrounding the sale. As to the husband, the court affirmed, holding that because the vendee was given absolute right to anticipate any and all payments and could pay the entire balance of the purchase price in cash, the option agreement satisfied the Statute of Frauds. Therefore, although the husband's ownership was restricted to an undivided one-half interest, he still had the capacity to contract away that interest. Botticello v. Stefanovicz, 177 Conn. 22, 411 A.2d 16, 19.

Conn.1973. Quot. in sup. The plaintiff brought a wrongful death action against the defendant franchisor seeking to impose liability for her husband's death which had been caused by the negligence of the driver of a delivery truck owned by the defendant's franchisee. The court upheld the trial court's determination that the driver was the agent of the franchisee and not of the franchisor, which determination had been based primarily upon the fact that the franchise agreement gave no right of control to the defendant over the driver, noting that agency is an issue of fact. McLaughlin v. Chicken Delight, Inc., 164 Conn. 317, 321 A.2d 456, 459.

Conn.1970. This was a suit against a nonresident individual for injuries alleged to have been caused by negligence and by breach of warranty incident to the sale to plaintiff's employer of a ladder which broke while being used in the course of plaintiff's employment, causing plaintiff to fall. Plaintiff's employer had purchased the ladder f.o.b. by check, after having seen defendant's advertisement in a trade journal. The court held that the lower court did not have jurisdiction in personam over the defendant and affirmed a judgment dismissing the action. In its opinion, the court held that defendant did not act personally or by an agent within the state as specified in the state statute. “Although an ‘agent’ in the legal sense may include an artificial, as well as a natural, person, the facts in this case disclose no right of control by the defendant over the publication in which he advertised, or over the mails which could give rise to one of the essential elements of an agency relationship.” Lane v. Hopfeld, 160 Conn. 53, 273 A.2d 721, 723, 724.

Conn.1970. Com. (a) cit. in dictum. The plaintiff real estate vendor brought an action against the purchaser for injuries sustained in a fall while plaintiff was directing cleaning operations after the sale. Plaintiff contended that the person who negligently left water on the floor was defendant's agent. Defendant contended that the person was either an independent contractor or an agent of plaintiff who was an agent of defendant. The court set aside the directed verdict for defendant, and held that these were factual issues to be decided by the jury. Leary v. Johnson, 159 Conn. 101, 267 A.2d 658, 660.

Conn.App.2012. Cit. in case quot. in sup. Owner of a vehicle that was left at a transmission shop to be repaired brought claims for statutory theft and conversion, among other things, against shop and auto repair company under whose name the shop operated, alleging that company was vicariously liable for shop's failure to return the vehicle to him and for the addition of 900 miles to the vehicle's mileage as a result of shop owner's personal use. The trial court granted judgment for plaintiff. Reversing in part, this court held that company was not vicariously liable for shop's actions, because shop was not company's agent, nor did it have apparent authority to bind company for its actions; plaintiff failed to prove that there was an agency relationship between defendants, because it offered no evidence that company exercised any control over shop's operations. L and V Contractors, LLC v. Heritage Warranty Ins. Risk Retention Group, Inc., 136 Conn.App. 662, 667, 47 A.3d 887, 890.
Conn.App.2008. Cit. and quot. in case quot. in sup. Firefighter who was injured while responding to a condominium fire brought personal-injury action against condominium's owner, contractor hired by owner, and plumber hired by contractor, alleging, among other things, that contractor was vicariously liable for plumber's actions in negligently or recklessly causing the fire. The trial court granted defendants' motion to strike the claims against contractor. Affirming, this court held, inter alia, that, as a matter of law, plaintiff failed to allege the facts necessary to prove the existence of an agency relationship between contractor and plumber. The court pointed out that, although plaintiff asserted that plumber acted as contractor's agent and subcontractor, he failed to allege that contractor had the right to control plumber's work. Hollister v. Thomas, 110 Conn.App. 692, 706, 955 A.2d 1212, 1221.

Conn.App.1992. Quot. but disc., cit. generally in case quot. in disc., com. (b) cit. but dist. Lender, who had relied on husband to obtain wife's signature on mortgage, later sought foreclosure of marital property. Wife claimed that husband procured her signature through fraud. The trial court agreed and imputed husband's fraud to lender through agency relationship that existed because lender benefitted from mortgage and relied on husband to obtain wife's signature. This court reversed and remanded for new trial, holding that the trial court erred in finding an agency relationship, since there was no evidence that lender directed and controlled husband's actions or that lender paid husband to obtain wife's signature. The court noted that loan benefitted husband's corporation rather than lender. First Charter Nat. Bank v. Ross, 29 Conn.App. 667, 617 A.2d 909, 912, certification granted in part 225 Conn. 903, 621 A.2d 286 (1993).

Conn.App.1985. Quot. in case cit. in disc., com. (b) cit. in sup. A newspaper publisher sued a bank that advertised in the newspaper, seeking to collect unpaid bills. The bank had paid an advertising company on a monthly basis to buy advertising space. The advertising company went bankrupt, and money that the bank had paid to the advertising company never reached the newspaper publisher. The trial court found for the newspaper publisher, holding that the advertising firm was acting as an agent of the bank. On the bank's appeal, this court reversed and granted judgment for the bank, defining agency as the relationship that resulted from a manifestation by one person to another that the other shall act on his behalf and subject to his control, and holding that the publisher did not prove that the bank controlled the advertising firm. Housatonic Valley Pub. Co. v. Citytrust, 4 Conn.App. 12, 492 A.2d 203, 205.

Conn.Super.1977. Cit. in sup. The plaintiff appealed from the granting of an application to discharge a mechanic's lien which it had filed on land owned by the defendant company. The plaintiff had filed the lien after performing certain work on the land pursuant to a contract with a developer who had conditionally agreed to buy the land from the defendant company. The president of the defendant company observed the plaintiff's engineering crews on its land and had actual notice of the services rendered there for the developer. Between the plaintiff and the defendant, however, there was no contract, express or implied, which would support the obligation necessary for a valid mechanic's lien. The defendant had never authorized the developer to incur any obligation at its expense, it had not approved or consented to the contract between the developer and the plaintiff, and it never received, used, or benefited from the results of the plaintiff's services. Therefore, the court held that there was no ground on which the plaintiff's claim for a mechanic's lien could be supported. The court stated that to be allowed under the state's mechanic's lien statute, a claim for services rendered in the improvement of land must arise “by virtue of an agreement with or by consent of the owner … or of some person having authority from or rightfully acting for such owner …” The court noted that the owner must be so closely identified with the work done that he could be held liable under an implied contract in the absence of an express contract and that mere knowledge on the part of the owner that work is being performed on his land does not constitute the consent necessary to support a mechanic's lien. The court also held that an agency relationship exists only where there has been a manifestation by the principal to the agent that the agent may act on his account and consent by
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the agent so to act, and that the evidence supported the trial court's conclusion that the developer was never the agent of the defendant. Wilbur Smith & Associates, Inc. v. F & J, Inc., 34 Conn.Sup. 638, 382 A.2d 541, 543.

Del.

Del.2006. Cit. in case cit. in ftn. Mechanic who was injured while working at an automotive service station petitioned industrial accident board to determine his eligibility for workers' compensation. The board determined that mechanic was an ineligible independent contractor, and the superior court affirmed. Reversing and remanding, this court applied the criteria set forth in Restatement Second of Agency § 220, which the court found well-suited for determining whether a workers' compensation claimant was an eligible employee or an independent contractor of a single business, and concluded that the totality of the factors showed that mechanic's relationship with service station was that of an employee rather than an independent contractor. Falconi v. Coombs & Coombs, Inc., 902 A.2d 1094, 1098, appeal after remand 2006 WL 3393489 (Del.Super.2006).

Del.2005. Subsec. (1) quot. in ftn., com. (b) cit. in ftn. Driver who was injured in a car accident sued driver of other car and its owner, alleging negligent entrustment and an agency theory of liability. After jury found for defendant owner, trial court granted plaintiff a new trial, which resulted in jury verdict for plaintiff. This court vacated and remanded, concluding that trial court abused its discretion by setting aside first jury's factual findings and verdict. The court held that jury could reasonably have found that owner's control over driver fell short of an uncontestable conclusion that an agency relationship existed. The court stated that in situations where vehicle owner allowed another to drive, it was not indisputably clear that owner's presence as a passenger in vehicle at the time of accident dictated a finding of agency as a matter of law. Lang v. Morant, 867 A.2d 182, 186.

Del.1997. Cit. in headnotes, cit. in disc., com. (d) cit. in disc. A member of a chicken-catching crew that had been assembled by a weighmaster hired by a chicken-processing business sued the business to recover damages for injuries he suffered in a motor vehicle accident, alleging that defendant was vicariously liable for the weighmaster's negligent driving. Reversing the trial court's grant of summary judgment for defendant, this court held, inter alia, that a genuine issue of material fact as to whether the weighmaster was defendant's servant or an independent contractor precluded summary judgment. The court held further that if the jury found that the weighmaster was an independent contractor, it must then determine whether he was an agent or a nonagent independent contractor. Fisher v. Townsends, Inc., 695 A.2d 53, 54, 58.

Del.Ch.

Del.Ch.2008. Subsec. (1) cit. in case quot. in sup. and cit. in ftn. After company's minority shareholder sued majority shareholder for a declaratory judgment concerning her right to compete with the company, she moved to enforce an agreement purportedly reached by the parties to settle the dispute, following majority shareholder's rejection of the agreement and refusal to sign it. Granting plaintiff's motion, this court held that defendant was bound to the settlement agreement, since, under the principles of agency law, defendant's long-time attorney, business associate, and close personal friend, who had agreed to the settlement after protracted negotiations, had actual, implied, and apparent authority to settle the dispute, even though he was not counsel of record in the case. Dweck v. Nasser, 959 A.2d 29, 39.

Del.Ch.2003. Subsec. (1) and com. (f) quot. in ftn. Following his federal indictment, attorney sued corporate client for advancement of litigation expenses pursuant to corporation's bylaws and Delaware General Corporation Law that allowed corporation to advance litigation expenses to its “agents.” This court granted in part and denied in part parties' motions for summary judgment, holding, inter alia, that pursuant to common-law definition of “agent,” most claims against plaintiff did not arise from his actions as an agent for corporation. The Legislature intended that the term “agent” be used in its traditional sense as involving action by a person (an agent) acting on behalf of another (the principal) as to third parties. Fasciana v. Electronic Data Systems Corp., 829 A.2d 160, 170.

D.C.App. 1991. Subsec. (1) cit. in sup. For approximately 25 years, the defendant had purchased Washington Redskins season tickets and was reimbursed by the plaintiffs for the tickets offered to them. The plaintiffs, former friends of the defendant, sued the defendant, alleging an ownership interest in five season tickets. The trial court ruled that the plaintiffs had a property interest in two of the tickets, as ownership was held in a constructive trust for their use, enjoyment, and benefit. Reversing in part, this court held that the defendant was the absolute owner of all five tickets; he was not committed to offer tickets annually to the plaintiffs, and no evidence established an agency whereby the defendant bought the tickets on the plaintiff's behalf. The court said that the defendant acted for his own benefit in buying the tickets, and that, in the absence of detrimental reliance, the plaintiffs' mere expectancy of a continued course of conduct was not enough to create an ownership interest. Davey v. King, 595 A.2d 999, 1002.

D.C.App. 1984. Quot. in part in disc. Law school deans brought a breach of employment contract claim against the university and the university brought a breach of fiduciary duty counterclaim against the deans. This court affirmed the trial court's award of damages to the deans for the loss of fringe benefits, and reversed the denial of damages to the university on its breach of fiduciary duty claim. The legal relationship between the deans and the university was that of principal and agent, the court held, and the deans owed a fiduciary duty to the university that hired them, not to the law school's students and clients, in managing the university's funds with which they were entrusted and to which they were given access. Therefore, the court held that the university was entitled to recover the amounts the deans paid to attorneys, without authorization, from the university's funds. Cahn v. Antioch University, 482 A.2d 120, 131.

D.C.App. 1982. Subsec. (1) quot. in part in sup. The plaintiffs sued the defendants for damages resulting from their investment in a fraudulent Maryland real estate venture. The defendants and a third party had formed a limited partnership, in which they were the general partners, for the purpose of buying real property for development. The third party had induced the plaintiffs to purchase shares in the limited partnership, representing that the purchase price of the property was to be $400,000. The defendants actually acquired the property for $300,000 and resold it to the limited partnership, sharing a secret profit of $100,000. The trial court dismissed the action, stating that it had no personal jurisdiction over the defendants. On appeal, the issue was whether the third party had done business as the defendants' agent in the District of Columbia, thereby subjecting the defendants to jurisdiction under the District's "long-arm" statute. This court reversed the trial court and remanded the case for further proceedings. Where, after the partnership was formed, the third party had meetings with the plaintiffs and secured their signatures on the limited partnership agreement, these activities indicated that the defendants consented to and had control over the third party's actions. This degree of control was sufficient to establish an agency relationship, for jurisdiction purposes, between the defendants and the third party. Smith v. Jenkins, 452 A.2d 333, 335.

D.C.App. 1978. Subsec. (1) quot. in part in sup. Appeal by plaintiff attorney, from ruling of a District of Columbia court that defendant, a Connecticut corporation, could not be sued in the District of Columbia in a suit brought to recover fees and expenses allegedly due under a contract. Plaintiff was retained by the Corporation to negotiate on its behalf with the Food and Drug Administration; expenses of setting up an office in the District of Columbia to facilitate the negotiations were to be paid by the corporation. The court reversed and remanded holding that plaintiff was defendant's agent and, therefore, defendant was "transacting business" in the District "by an agent" within the meaning of the District of Columbia Code provision that "A District of Columbia Court may exercise personal jurisdiction over a person, who acts directly or by agents, as to a claim for relief arising from the person's—(1) transacting any business in the District of Columbia" … and that defendant accordingly had established the "minimum contacts" necessary for personal jurisdiction over it in the District consistent with due process. Plaintiff was an agent and not an independent contractor by virtue of the control defendant's exercised over him through the
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Fla.

Fla.2003. Quot. in ftn. Personal representative of estate of his deceased wife brought a wrongful-death action against health-maintenance organization, alleging that defendant was vicariously liable for negligence of decedent's treating physicians. The trial court granted summary judgment for defendant. Quashing and remanding, this court held, inter alia, that genuine issues of material fact existed as to whether defendant could be held vicariously liable for the alleged medical negligence of its member physicians under theories of actual and apparent agency. Villazon v. Prudential Health Care Plan, 843 So.2d 842, 853.

Fla.1990. Cit. in ftn. in sup. Parents filed a malpractice action on behalf of their daughter against a doctor, alleging failure to diagnose and treat appendicitis. The alleged incidents of malpractice spanned several days, including times when another doctor was covering for the defendant in the defendant's absence. Refusing to permit the jury to consider whether the defendant was liable for the other doctor's negligence because the complaint did not specifically allege vicarious liability, the trial court entered judgment on a jury verdict for the defendant. The intermediate appellate court reversed, holding that the evidence created a jury question as to whether the substitute doctor was an agent of the defendant. Reinstating the jury verdict for the defendant, this court held that because the complaint failed to set forth any facts establishing a basis for vicarious liability, it failed to allege any grounds entitling the plaintiffs to relief. The court noted that the trial court correctly denied an instruction on actual agency since the record was devoid of any evidence to support a finding that the defendant had control over the substitute doctor's actions. Goldschmidt v. Holman, 571 So.2d 422, 424.

Fla.App.

Fla.App.2008. Quot. in case quot. in sup. Investors in a factoring company that engaged in a massive fraud sued accounting firm that audited company's financial statements, and international firm of which accounting firm was a member, alleging that defendants committed accounting malpractice and also alleging that international firm was vicariously liable as principal for the acts and omissions of accounting firm as agent. After limiting the claim against international firm to one based on actual agency, the trial court, inter alia, directed a verdict for international firm. Reversing and remanding, this court held that whether an actual-agency relationship existed here was a question of fact that had to be analyzed by looking at the totality of the circumstances; plaintiff had to show acknowledgment by principal that agent would work for him, agent's acceptance of the undertaking, and control by principal over agent's actions. Banco Espirito Santo Intern., Ltd. v. BDO Intern., B.V., 979 So.2d 1030, 1032.

Fla.App.2007. Cit. in sup. Attorney filed suit against corporation, its former president, and its former vice president to recover unpaid legal fees incurred in a defamation action brought by defendants against six members of corporations' board. After a bench trial, the trial court rendered a judgment for plaintiff. Reversing with instructions to enter a judgment for corporation, this court held, inter alia, that the evidence presented did not support a finding that president had actual or apparent authority to act on behalf of corporation. The court noted that president had been removed from office five days before she purported to sign the retainer agreement on behalf of corporation, and that plaintiff had been informed that president was no longer authorized to act on corporation's behalf. Florida State Oriental Medical Ass'n, Inc. v. Slepin, 971 So.2d 141, 145.

Fla.App.2006. Cit. in case quot. in sup. Student and others who were injured in a motor-vehicle accident that occurred during a trip to the beach organized by teacher sued college that employed teacher for negligence under theories of respondeat superior and agency. The trial court granted summary judgment for college. Affirming, this court held, inter alia, that teacher was not an actual agent of college at the time of the accident because, although the trip was announced and organized during scheduled classes, the trip was scheduled to take place and took place after the term ended, and college did not authorize or in any way
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benefit from the trip. The court also pointed out that it was undisputed that teacher did not inform college about the trip. Fernandez v. Florida Nat. College, Inc., 925 So.2d 1096, 1101.

Fla.App. 2005. Com. (b) quot. in diss. op. Homeowner who allegedly was injured while hosting a church meeting at her home when she was struck by the car of a church member who was leaving the meeting to engage in that day’s field service consisting of door-to-door canvassing and proselytizing sued, among others, the church, publisher of church’s Bible-based materials, and holder of the copyright to the materials, alleging, in part, that defendants were vicariously liable for church member's negligence. Affirming the trial court's grant of summary judgment for defendants, this court held that no agency relationship was demonstrated between defendants and church member. The dissent argued that fact issues as to whether defendants had the right to control member's activities during field service and thus whether member was acting as defendants' volunteer agent at common law when plaintiff was injured precluded summary judgment. Gillet v. Watchtower Bible & Tract Soc. of Pennsylvania, Inc., 913 So.2d 618, 623.

Fla.App. 1995. Cit. in headnotes and disc. Child's parents brought a medical malpractice action against doctors who were hired as part-time consultants at a health-care facility run by the state department of health and rehabilitative services. Trial court granted summary judgment for the doctors and their professional association. This court affirmed in part, reversed in part, and remanded, holding, inter alia, that trial court properly granted summary judgment to the association, because one of the doctors was not acting in the scope of his employment for the association when the malpractice was allegedly committed. However, there were fact questions as to the health-care facility's liability, particularly as to whether anyone in the facility's hierarchy had the power to veto the medical decision of a consultant doctor. Noel By and Through Noel v. No. Broward, 664 So.2d 989, 990, 992.

Fla.App. 1994. Quot. in sup. Electronics manufacturer sued its agent for breach of bailment after $900,000 worth of plaintiff's merchandise was destroyed in the arson fire of a warehouse that defendant had chosen to hold the goods pending exportation to Latin America. Affirming the trial court's entry of judgment on a jury verdict for plaintiff, this court held that the parties were operating as principal and agent rather than as bailor and bailee and that plaintiff was not negligent in its selection of the warehouse. In support of its decision, the court differentiated between bailment, where the bailor retains no control of the property, and agency, where the agent works for and on behalf of the principal. Since plaintiff was prohibited by law from taking possession of merchandise destined for exportation, no bailment existed. Monroe Systems v. Intertrans Corp., 650 So.2d 72, 75.

Fla.App. 1964. Subsec. (1) and com. (b) cit. in sup. in ftn. The plaintiff sued an insurance company and its alleged agent for breach of contract to supply insurance. The court held that it was error to grant a directed verdict in favor of only one defendant, since the question of the agent's liability concerns the relationship of the defendants and is a question to be determined by the jury. Patek v. Associated Ins. Underwriters, Inc., 160 So.2d 721, 722.


Ga.App. 1985. Cit. in sup. A landowner sued the county that condemned his land for use as a landfill for the market value of the land and for consequential damages which the landowner claimed totalled over $723,000. A special master awarded the landowner over $427,000. Both parties appealed the award to the trial court. A jury awarded the landowner $314,177 and the landowner appealed to this court, opposing the award amount and alleging that a juror should have been disqualified because he was an agent of the defendant county. This court affirmed the jury verdict because the landowner failed to forward a transcript of the trial and because he could show no evidence that the juror was under the county's control. Thurmond v. Board of Com'r's of Hall County, 174 Ga.App. 570, 330 S.E.2d 787, 788.
Idaho

Idaho, 1986. Cit. in disc. Harvesters sued the state for converting rice that they harvested on land jointly owned by the state and the federal government. The trial court entered judgment in favor of the harvesters for one-half the value of the rice. Affirming, this court held that, although the harvesters were trespassers, as prior possessors of the rice, they had a superior right against the state to possession of the value of the rice that was attributable to the federal government's land. The court further noted that the state failed to prove the existence of an agency relationship with the federal government to support its contention that it was authorized by the federal government to keep the rice on its behalf. Gissel v. State, 111 Idaho 725, 727 P.2d 1153, 1156.

Idaho, 1969. Cit in sup. and cit. subsec. (1) and quot. com. (b) in ftms. in diss. op. This was a prosecution for embezzlement. A gas station service station manager entrusted with an oil company's gasoline for the purpose of its sale failed to perform his duty of turning over to the company a portion of the proceeds of sales belonging to the company. The court held the manager guilty of embezzlement of proceeds entrusted to his care. State v. Compton, 92 Idaho 739, 450 P.2d 79, 80, 83, 84.

Idaho App.

Idaho App. 1992. Cit. in case quot. in disc. Hauler contracted to buy supplier's hay crop. Farmer later contracted to purchase hay from hauler. Not receiving the hay, farmer sued supplier for breach based on agency and third-party beneficiary contract theories, inter alia. The magistrate found for farmer, and the trial court affirmed. Reversing and remanding for entry of judgment for supplier, this court rejected any implied or apparent agency argument, since any actions taken by supplier that could have led hauler or farmer to believe hauler had authority to bind supplier occurred after farmer contracted with hauler. In addition, there was no evidence that farmer was intended beneficiary of contract between supplier and hauler. Hilt v. Draper, 122 Idaho 612, 836 P.2d 558, 562.

Idaho App. 1986. Quot. in sup., cit. in ftn. Cattle owners filed a lawsuit against a dairy, alleging that the livestock the owners leased to the dairy had been provided inadequate care, which reduced their market value. At trial, the jury awarded damages against an agent of the dairy, but not against the dairy itself. The trial court, however, entered judgment n.o.v., extending liability to the dairy as well. The dairy appealed, and this court affirmed in part and reversed in part, finding, inter alia, that the dairy, having undertaken the performance of the cattle leases, assumed a contractual obligation that was coextensive with the dairy's duty in tort to exercise reasonable care concerning property entrusted to its possession, and this duty could not be delegated. Herbst v. Bothof Dairies, Inc., 110 Idaho 971, 719 P.2d 1231, 1233, 1234.

Ill.

Ill. 2004. Cit. in diss. op., com. (b) quot. in diss. op., com. (e) cit. in diss. op. Architectural firm that, with the assistance of legal counsel, obtained judgment against real-estate developer for unpaid debt was sued by developer for tortious interference with business relationships after firm's counsel publicly disclosed developer's tax information as part of its collection efforts. Trial court granted firm summary judgment, but the appellate court reversed. Reversing, this court held, inter alia, that no genuine issue of material fact existed, since there was no evidence that counsel acted as firm's agent when it engaged in the intentionally tortious conduct, or that firm ratified such misconduct. A dissent argued that counsel was acting as both an independent contractor and an agent with a fiduciary relationship with firm, and a genuine issue of material fact remained as to whether, even if actions of counsel fell outside the scope of its authority, firm acquiesced to or ratified the misconduct. Horwitz v. Holabird & Root, 212 Ill.2d 1, 287 Ill. Dec. 510, 816 N.E.2d 272, 285, 286, 288.
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Ill.2000. Cit. in disc. After Little League coach was attacked and beaten by opposing team's manager and assistant coaches during tournament, he sued assailants and Little League association that sponsored assailants' team, among others. Trial court entered judgment on jury verdict for plaintiff; appellate court affirmed. This court reversed, holding, inter alia, that assistant coaches were servants of sponsor. Although plaintiff did not argue that coaches were servants, he asserted that coaches were agents of sponsor, which had duty to control their actions. Following instruction on right to control actions of another, jury's verdict for plaintiff implicitly determined that coaches met instruction's definition of agency. Hills v. Bridgeview Little League Ass'n, 195 Ill.2d 210, 253 Ill.Dec. 632, 745 N.E.2d 1166, 1182.

Ill.2000. Cit. in diss. op. Estate of a foster child who drowned in a toilet while in the care of his foster parents sued the foster parents for negligence. The trial court dismissed on the ground that the action was barred by sovereign immunity, and the appellate court affirmed. Reversing and remanding, this court held, inter alia, that defendants were independent contractors, rather than employees or agents of the state, and that they were not entitled to the protection of sovereign immunity. A dissent argued that defendants were agents of the state because they performed services for the state, received reimbursement from the state, and were subject to the state's control. Nichol v. Stass, 192 Ill.2d 233, 264, 248 Ill.Dec. 931, 948, 735 N.E.2d 582, 599.

Ill.App.

Ill.App.2003. Cit. in disc. After rental-truck driver who was delivering food products to Georgia struck a car, injured car driver and her husband sued food company that rented the truck and a marketing company that had sponsorship agreement with food company, alleging negligence. Trial court granted food company summary judgment. This court affirmed, holding that plaintiffs failed to prove that truck driver was food company's agent. Food company did not exercise any control over truck or its driver, as driver was employed by marketing company, which decided to sell food products at the Olympic games in Atlanta, and driver who injured plaintiff was actually delivering the products of a different company. Kaporovskiy v. Grecian Delight Foods, Inc., 338 Ill.App.3d 206, 211, 272 Ill.Dec. 453, 457, 787 N.E.2d 268, 272.

Ill.App.1997. Cit. in disc. The former exclusive distributor of a manufacturer's office products in Mexico sued the manufacturer for breach of fiduciary duty in connection with the manufacturer's termination of the distributorship and its provision of the distributor's confidential information to a company that the manufacturer subsequently appointed as the new exclusive distributor. The trial court set off the amount awarded by the jury to plaintiff on its claim for breach of fiduciary duty against the amount awarded to defendant on its counterclaim for payment of an outstanding account, and entered judgment for plaintiff for the difference. Affirming in part and remanding with directions, this court held, inter alia, that sufficient evidence existed to support the jury's finding that defendant owed plaintiff a fiduciary duty based on a special relationship between the parties by virtue of their intimate working relationship. The court said that defendant's representatives regularly attended plaintiff's business meetings and were privy to its business plans, and that defendant provided credit to plaintiff and guaranteed its financial obligations. Ransom v. A.B. Dick Co., 289 Ill.App.3d 663, 671, 224 Ill.Dec. 753, 760, 682 N.E.2d 314, 321.

Ill.App.1994. Cit. in disc. An insurer sued brokers, alleging fraud from failure to disclose overcharges to insureds on policies written by the insurer. This court reversed judgment on a jury verdict awarding the insurer compensatory and punitive damages, holding, inter alia, that, under the agreement between the insurer and the brokers, the brokers were, in fact, brokers or "producers," not general agents, and thus, they had no fiduciary duty to disclose and remit to the insurer overcharges they made to insureds. The brokers, said the court, had no power to bind the insurer and acted as agents of the insureds when charging them for the cost of insurance. State Sec. Ins. Co. v. Frank B. Hall & Co., 258 Ill.App.3d 588, 595, 196 Ill.Dec. 775, 781, 630 N.E.2d 940, 946.

Ill.App.1985. Com. (e) cit. in disc. Debtors brought an action against their creditor, repossessors hired by the creditor, and a garage to which the repossessors delivered the debtors' truck following default on a loan. The truck exploded while stored at
the garage. The trial court granted summary judgment for the creditor and the garage, and entered default judgments against the unlocated reposessors. The court of appeals affirmed the judgment for the garage, holding, inter alia, that the debtors retained their right of action against the garage for damage to their truck, regardless of their default. The court noted that even if the reposessors were considered agents of the bank, their activities rendered them independent contractors and thus relieved the bank of liability. Kouba v. East Joliet Bank, 135 Ill.App.2d 264, 89 Ill.Dec. 774, 777, 481 N.E.2d 325, 328.

Ill.App.1974. Cit. in sup. Plaintiff-judgment creditor (Krug) brought suit to determine the rights and interests of the parties in a parcel of land which had been conveyed by the judgment debtor to the third party defendants, and subsequently conveyed to defendants (Machen). The trial court determined that plaintiff had a first and prior lien on the property in the amount of his judgment. The issue on appeal concerns who is liable for any losses in connection with the lien. The court affirmed the lower court's holding that the bank, even though it recorded the deeds contrary to the specific instructions of the third party defendant's attorney, was not obligated to indemnify the third party defendants for any losses. The court reversed the trial court's holding as to the liability of the third party defendants. Reasoning that the issue was whether the legal relationship between defendants and third party defendants with reference to the property was one of principal and agent or buyer and seller, the court determined that the third party defendants were agents for defendants. As such the third party defendants' warranty deed would be merely a matter of form and was ineffective in warranting that the property was free from encumbrances. Consequently, only negligence would make the third party defendants liable to defendants. The court found the agency relationship because the third party defendants were subject to Machen's control and were acting primarily for the benefit of Machen, who would not recognize any taxable gain on the transactions. Krug v. Machen, 24 Ill.App.3d 526, 321 N.E.2d 85, 89.

Ind. 2006. Cit. in disc. Victim involved in automobile accident with employee driving his employer's truck sued employer and employee's estate. The trial court, inter alia, granted summary judgment for estate on its cross-claim for defense and indemnity from employer, which self-insured the truck; the court of appeals affirmed in part. Vacating the trial court's order, this court held that a self-insured employer that supplied a vehicle for an employee's use had a duty to inform the employee of liability risks in using the vehicle, and that a breach of that duty imposed upon the employer an obligation to indemnify and defend the employee against liability arising from permissive use of the vehicle. The court remanded for further proceedings on whether employer made appropriate disclosure here. Northern Indiana Public Service v. Bloom, 847 N.E.2d 175, 187.

Ind. 2000. Subsec. (1) cit. in headnote and cit. in case cit. in disc. An intermediary who had been indebted to an oil supply company and an auto parts service company represented to auto parts service company that he would ship 720 cases of antifreeze in exchange for release of his debt. After intermediary arranged for oil supply company to deliver the antifreeze to auto parts service company, oil supply company sued auto parts service company to recover the cost of the cases of antifreeze that it shipped. Trial court awarded oil supply company the value of the antifreeze and set off the debt that intermediary owed to auto parts service company. The appellate court affirmed. This court affirmed as to the value of the antifreeze and reversed as to the setoff of the debt. The court held, inter alia, that an undisclosed agency existed between agent/intermediary and principal/oil supply company. Auto parts service company was not entitled to set off intermediary's debt against the value of the goods that were shipped, because auto parts service company was chargeable with notice of the existence of oil supply company as the principal. Oil Supply Co. v. Hires Parts Service, 726 N.E.2d 246, 247, 248.

Ind. 1992. Com. (e) cit. in disc. Family that purchased real estate subject to a mortgage sued real estate broker for the amount required to clear the bank's lien after the sellers failed to pay their agreed-upon portion of the mortgage, alleging that broker should have paid off mortgage when buyers gave downpayment. Trial court entered judgment for purchasers, determining that broker, as sellers' agent, had a duty to satisfy and obtain release of the mortgage liens upon payment at closing. On remand, trial court found for broker; however, appellate court reversed and remanded for determination of what broker owed plaintiffs.
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as a result of trial court's original conclusion that broker should account for its agent's misapplication of trust money. Affirming the trial court, this court held that because broker was the sellers' agent, he did not owe a fiduciary duty to plaintiffs to act in plaintiffs' best interest and could not be held liable for negligence. *McAdams v. Dorothy Edwards Realtors*, 604 N.E.2d 607, 611.

**Ind.App.**

*Ind.App.* 1994. Cit. in headnote, cit. in case cit. in disc. Lawyer whom clients sued for legal malpractice in connection with the sale of their town home brought a third-party complaint for indemnity and fraud, inter alia, against purchaser and her brother and brother's attorney. Affirming the trial court's denial of third-party defendants' motion to dismiss for lack of personal jurisdiction, this court held, inter alia, that, although purchaser was unaware of the misrepresentations made by her brother and his attorney, the facts that purchaser implicitly consented to allow her brother to take the steps necessary to buy the property and accepted title as a result of the negotiations of her brother and his attorney provided the inference that they were acting on purchaser's behalf and subject to her control and thus were sufficient to establish the existence of an agency; therefore, the contacts of purchaser's brother and his attorney with Indiana were attributable to purchaser, who resided in Washington, D.C., and were sufficient to confer jurisdiction over her by Indiana courts. *Mullen v. Cogdell*, 643 N.E.2d 390, 392, 398.

*Ind.App.* 1988. Cit. in disc. A management company sued a coal mining company for breach of contract after the mining company gave notice that it was terminating their management agreement effective immediately. The trial court granted partial summary judgment to the plaintiff on the ground that the contract clearly required 60 days' notice of termination. Reversing and remanding, this court held that, since the plaintiff was the defendant's agent, the defendant could terminate the contract prematurely if the plaintiff breached its fiduciary duty by undermining the defendant's business, but that questions of fact remained regarding the alleged breach of fiduciary duty. *Union Miniere, S.A. v. Parday Corp.*, 521 N.E.2d 700, 703.

**Ind.Tax Ct.**

*Ind.Tax Ct.* 2004. Quot. in ftn. Temporary-employee-services franchisor that was assessed for unpaid taxes on earned franchise fees appealed letter of findings issued by revenue department. Granting summary judgment in favor of plaintiff, this court found that the department had unjustifiably changed its earlier position on the interpretation of gross income tax and the manner of its imposition, as there was no modification to the franchise agreements or change in the governing regulations to warrant an increase in plaintiff's tax liability. *Norrell Services, Inc. v. Indiana Department of State Revenue*, 816 N.E.2d 517, 520.

*Ind.Tax Ct.* 1999. Quot. in sup. Taxpayer challenged state revenue department's determination that reimbursements received from customers constituted taxable gross income. Reversing and remanding, this court held that the reimbursements, which were made because taxpayer had advanced money to various state agencies on behalf of its customers, were “pass throughs” of income and that, in processing the insurance reports that ultimately gave rise to the reimbursements, taxpayer was acting as customers' agent. *Policy Management Systems v. Dept. of Rev.*, 720 N.E.2d 20, 23.

*Ind.Tax Ct.* 1994. Subsec. (1) quot. in ftn. Corporations filing consolidated tax return challenged state's denial of gross income tax refund. The tax court held that reimbursement transactions among the corporations were not pass-through income but were gross income subject to taxation. The court affirmed on rehearing but struck language requiring “complete” control in revenue statute defining agency, since it was overly restrictive when compared with common law. It held that reimbursements to corporations performing administrative tasks were reimbursements for those corporations' own expenses, such as paying their own employees' wages, not monies paid to third parties; therefore, there was no pass-through, and for receipts to be beyond reach of gross income tax, it held that there must be both agency relationship among the corporations and pass-through. *Universal Group v. Ind. Dept. of Revenue*, 642 N.E.2d 553, 556.
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Iowa

Iowa, 1999. Com. (b) quot. in disc. Driver whose automobile was rear-ended by rental vehicle operated by friend of lessee's live-in boyfriend brought personal-injury action against lessor, lessee, and boyfriend's friend. Reversing the trial court's entry of judgment against lessee, this court held, in part, that lessee was not liable under an agency theory to plaintiff for negligence of boyfriend's friend in operating the rental vehicle. Boyfriend was not acting as lessee's agent when he agreed to return the vehicle to lessor as a favor to lessee, since lessee exercised no control over boyfriend's conduct in returning the vehicle, and thus boyfriend's friend, who was driving the vehicle at boyfriend's request, could not be considered lessee's subagent. Benson v. Webster, 593 N.W.2d 126, 130.

Iowa, 1988. Com. (b) cit. in disc. A publishing company sued a former employee for interference with contractual relations, breach of fiduciary duty and oral employment contract, and misappropriation of trade secrets, inter alia, after the employee opened a competing publishing company and published books by authors who previously had used the employer's company. The trial court entered judgment for the defendant on the ground that he had caused no interference with the plaintiff's contractual relations with the authors who went over to the defendant's publishing company and that the list of authors the plaintiff claimed had been misappropriated was not a trade secret. Affirming, this court held that the relationship between the authors and the plaintiff had deteriorated before any offer had been made by the defendant and that the list of authors was not a trade secret because it was openly disclosed to the public. The court also concluded that the plaintiff's claim that the defendant had breached his duty of loyalty and the oral employment contract was barred by the statute of limitations because the statute began to run when the plaintiff discovered that the defendant was working for his own publishing company while still employed by the plaintiff's company. Kendall/Hunt Pub. Co. v. Rowe, 424 N.W.2d 235, 244.

Iowa, 1985. Cit. in sup. A livestock feed supplier sued a landlord and a tenant to recover for supplies furnished to the tenant. The trial court found the landlord liable under a stock-share lease theory of partnership and on the bases of agency and unjust enrichment. The intermediate appellate court affirmed by operation of law because of a split decision. Vacating the decision below, this court found that the trial court had erred in characterizing the landlord-tenant relationship as a partnership. The court noted that all of the elements of a landlord-tenant relationship were present, while the crucial test of partnership, intent to associate, was not. The court also found that the tenant had not acted subject to the landlord's control in the management of the farm and on that basis held that the landlord was not liable to the feed company under agency theories. The theory of unjust enrichment also did not operate to extend liability to the landlord, the court stated, because the feed company had made no mistake as to the party with whom it had dealt, and the tenant had accepted delivery of the grain and had promised to pay. Chariton Feed and Grain, Inc. v. Harder, 369 N.W.2d 777, 790.

Iowa, 1973. Quot. in part in sup. A seller of fertilizer brought actions against a purchaser and his landlords to foreclose mechanic's liens. The trial court rendered default judgment against the purchaser, but dismissed the actions against the landlords. The court affirmed, holding that plaintiff had failed to establish that the purchaser had acted on behalf of the landlords as their agent in making the purchases of fertilizer. Plaintiff had sought to proceed under an Iowa rule of proof of agency in cases where a mechanic's lien is asserted against a landlord by reason of improvements to the land made by a tenant. A provision in the lease requiring the tenant to purchase and apply fertilizer and chemicals, the court held, was for the benefit of the lessee to enable him to produce the most profitable crop without injury to the land, and conferred no substantial benefit on the realty which reverted. Since there was no improvement to the landlords' reversion, and no other evidence that the lessee had acted on their behalf, the court concluded that the lessee had made the purchases on his own account and not as the landlord's agent. Landas Fertilizer Company v. Hargreaves, 206 N.W.2d 675, 676.

Iowa, 1963. Cit. in sup. No agency relationship was proved where no evidence was produced to show that plaintiff consented to defendant's acting in the former's behalf, and there was no substantial evidence that plaintiff exercised any control over
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defendant in buying cattle, but rather that defendant purchased the cattle where and from whom he pleased, presumably paid for them and took title in his own name. Reed v. Bunger, 255 Iowa 322, 122 N.W.2d 290, 294.

Iowa App.

Iowa App. 1986. Com. (b) cit. in sup. A finance agency lent money to a business through an insurance broker for the purchase of an insurance policy, which was obtained by the broker. After the business failed to make a loan payment, the agency canceled the policy and the insurer issued a refund to the broker, who kept the money. When the agency sued the insurer for repayment, the trial court found that the broker was the plaintiff's agent even though the finance contract stated otherwise. Affirming, this court held that a trial court could disregard a statement in an agreement to ascertain properly the relationships among the parties. Budget Premium Co. v. Motor Ways, Inc., 400 N.W.2d 60, 64.


Ky. App. 1962. Cit. in sup. Evidence that suppliers by their representative induced the defendants to act in making an advance to contractor, knowing that post-dated check accepted from contractor gave notice of its lack of honor and was given for purpose of inducing the defendants to act, precluded the suppliers from asserting that the representative acted as agent for the defendant. McAlister v. Whitford, 365 S.W.2d 317, 319.

Me.

Me. 2001. Subsec. (1) quot. in ftn. Pizza-delivery employee who was assaulted and robbed sued assailants and assailants' friend, who allowed assailants to use her phone to place the order and provided her grandmother's vacant home as the delivery address, alleging negligent and intentional infliction of emotional distress. Plaintiff also alleged that, because assailants were acting as the friend's agents, the friend was responsible for their actions. Trial court granted friend's motion for summary judgment. This court affirmed in part, holding, inter alia, that plaintiff offered no evidence from which a jury could conclude that a principal-agent relationship existed between friend and the assailants. Curtis v. Porter, 2001 ME 158, 784 A.2d 18, 26.

Me. 1998. Subsec. (1) quot. in ftn. Former high school science teacher sued school committee and principal, among others, for violations of the state Whistleblowers' Protection Act, alleging that her contract was not renewed after she complained about conditions in the school chemistry laboratory. The trial court entered judgment on its finding that committee was not liable, but that principal was liable. Modifying and affirming, this court held that principal was committee's agent, and therefore committee was liable in respondeat superior for principal's tortious acts; however, teacher was unable to establish a causal connection between her complaints and the nonrenewal of her contract. DiCentes v. Michaud, 1998 ME 227, 719 A.2d 509, 514.

Me. 1998. Subsec. (1) cit. in headnote and disc. (erron. cit. as § 1.1), com. (b) cit. in headnote and disc. After a tractor-trailer struck a car, the injured occupants of the car sued a transport company for negligence, alleging that the truck's owner was an agent of the transport company, that the truck driver was an employee of the truck owner, the accident was a result of the truck driver's negligence, and that the transport company was responsible for the negligence of its agent's employee. Trial court granted the transport company summary judgment. This court affirmed, holding that the evidence was insufficient to establish an agency relationship between the transport company and the truck owner, because there was no evidence that the truck owner and the truck driver were subject to the transport company's control on the date of the accident. There was no evidence that the truck was leased to the transport company, and the truck's insurance and license were held by the truck owner. Page v. Boone's Transport, Ltd., 710 A.2d 256, 256, 257.
Me.1997. Cit. in disc. A volunteer member of an emergency medical services organization sued the organization and its president, alleging slander, slander per se, and respondeat superior liability. Plaintiff alleged that the organization was covered by the liability insurance policy procured by the town and thus had waived immunity provided by statute. The trial court denied defendants' motion for summary judgment; this court vacated and remanded to the trial court with direction to enter a judgment for defendants. The court held, inter alia, that the organization was immune from suit, because the fact that the town provided financial support for the organization did not involve the exercise of such control by the town that would make the organization its agent. Berard v. McKinnis, 699 A.2d 1148, 1153.

Me.1992. Quot. in disc. A landowner whose timber mistakenly was chopped down sued a property manager for damages, alleging that defendant was liable as a principal for the timber cutter's trespass. Vacating the trial court's judgment for plaintiff and remanding, this court held that because defendant neither directed the timber cutter's actions nor authorized the trespass onto plaintiff's land, the timber cutter was more properly characterized as an independent contractor than as an agent. The court noted that while independent contractors could be considered agents in some cases, the lack of supervision by defendant over the timber cutter precluded that categorization here. The court explained that, in general, there was no vicarious liability upon the employer of an independent contractor. Bonk v. McPherson, 605 A.2d 74, 78.

Me.1990. Cit. in disc. A woman residing in Maine contacted an out-of-state trucking company and entered into an agreement to solicit haulage contracts for the company in Maine in exchange for a commission. The woman obtained one haulage contract and sued the company when it stopped paying her commission on that contract. The trial court dismissed the suit for lack of personal jurisdiction. Reversing, this court stated that, since the defendant had entered into an agency agreement with the plaintiff for the purpose of infiltrating the Maine market for trucking services, it could have reasonably anticipated litigation in Maine and was subject to the jurisdiction of Maine courts. Caluri v. Rypkema, 570 A.2d 830, 833, cert. denied 498 U.S. 818, 111 S.Ct. 62, 112 L.Ed.2d 37 (1990).

Me.1980. Subsec. (1) quot. in case quot. in disc. The plaintiff, a private corporation, contracted with a city to provide it with school bus service. A local union then began a drive to organize the plaintiff's school bus drivers. The union filed with the Maine Labor Relations Board for unit determination and a bargaining agent election. The examiner found that the Board had jurisdiction because the plaintiff was a public employer. The plaintiff appealed. This court stated that in a unit determination proceeding, the Board's findings of fact are final, absent fraud. The court stated that applicable statutes provide that any person acting on behalf of a municipality is a public employer. "Acting on behalf of" invokes general agency principles, so that agents may be agent-servants or agent-independent contractors, depending upon whether the agent's performance is subject to another's control. One may be both an agent and an independent contractor. A servant is controlled by the master as to physical conduct but an independent contractor's physical conduct is not subject to another's control. The plaintiff acted on behalf of the city and under its control so that it was a public employer for purposes of the Labor Relations Law. Baker Bus Service, Inc. v. Keith, 416 A.2d 727, 730.

Me.1975. Cit. in sup. Plaintiff brought suit for deceit and breach of fiduciary duty. The lower court entered judgment for plaintiff and awarded defendant a real estate broker's commission. Plaintiff's appeal from the award of the commission was sustained. Defendant never claimed such a commission, and the court erred awarding the commission gratuitously. Whatever the nature of defendant's antecedent interest in the property, his acquisition of the property was an indubitable incident of the agency. An agent who, in violation of his duty to his principal, uses, for his own purposes, assets of the principal's business is subject to liability to the principal for the value of the use. Thus, defendant was liable to his principal for secret profits, in this case moneys wrongfully retained after the purpose of the agency was accomplished. The court concluded that the measure of plaintiff's damage was the difference between the sum entrusted to defendant and the contract price actually paid by defendant to acquire the property in his own name prior to the transfer to plaintiff in accordance with the agency relation. Desfosses v. Notis, 333 A.2d 83, 86.
Md. 2005. Com. (b) quot. generally in disc. Business sued out-of-state online-gaming-industry-software developer and its holding company for violations of state anti-spam statute, after business received unsolicited e-mails. The trial court dismissed, concluding that plaintiff failed to establish a prima facie case for personal jurisdiction over defendants. This court affirmed, holding, inter alia, that no agency relationship existed between defendants and interactive online casino promoted by the e-mails based solely on an electronic link between casino’s website and an IP address where customers could download defendants’ software, and thus no substantive contact with the state was established to justify the exercise of personal jurisdiction. Beyond Systems, Inc. v. Realtime Gaming Holding Co., LLC, 388 Md. 1, 878 A.2d 567, 582.

Md. 2001. Quot. in case quot. in disc. Insurer sued agent and insurance agency, alleging conversion, breach of fiduciary duty, and negligence arising out of agent's knowledge of, and participation in, a premium-diversion scheme. Trial court entered judgment for defendants. This court reversed and remanded, holding, inter alia, that defendant agent was agent of insurer for purpose of collecting and forwarding premiums, and that he breached his fiduciary duty to insurer by failing to do so. Insurance Co. of North America v. Miller, 362 Md. 361, 765 A.2d 587, 593.

Md. 1987. Com. (a) quot. in disc. A worker employed by a subcontractor was killed in a fall on the job. The worker's survivors sued a safety management contractor who had been employed by the same government entity that had employed the principal construction contractor who had hired the subcontractor by whom the worker was employed. The trial court granted summary judgment for the defendant, holding that because the government entity was a statutory employer, the defendant was immune from suit under worker compensation law for performing the entity's nondelegable duty. This court reversed and remanded, holding that the government entity was not a statutory employer because it was not performing a contract itself. The court further held that the defendant contractor was not, for purposes of a sole remedy statute, an agent of the government entity, because the entity did not exercise control over the defendant to the extent it would over a servant or employee. Brady v. Ralph Parsons Co., 308 Md. 486, 520 A.2d 717, 729-730, appeal after remand 82 Md.App. 519, 572 A.2d 1115 (1990).

Md. 1985. Cit. in disc. A landowner sued his agent for damages, alleging that the agent, who had been given power of attorney by the landowner, had committed breaches of trust and fiduciary duty when he transferred a piece of property, to the landowner's detriment, in violation of the power of attorney. The trial court granted the landowner's motion for summary judgment, holding that the agent had negligently violated the existent fiduciary relationship when he gratuitously transferred property to the landowner's wife. The agent appealed, and the court of special appeals affirmed, holding that the broad language of the power of attorney did not authorize the conveyance absent favorable consideration for the landowner. As a case of first impression, this court granted certiorari and affirmed the trial court's granting of summary judgment, stating that the agent could not give away the principal's property unless that power was expressly conferred, arose as a necessary implication from conferred powers, or was clearly intended by the parties. King v. Bankerd, 303 Md. 98, 492 A.2d 608, 611.

Md. 1974. Fol. After obtaining a judgment against a debtor for his client, which judgment included a sum specified as attorney's fees, the plaintiff attorney sought priority for this amount over a subsequent attachment made by the defendant, a creditor of the plaintiff's client, on the entire sum. The proceeds of the judgment were held, according to the wishes of the parties, by an escrow agent. The court held, first, that the judgment was one sum and owned in its entirety by the plaintiff's client, and that therefore, the defendant could attach all of it; and second, that the escrow agent who held the money at the request of the competing parties was not the agent of the plaintiff so as to give him possession of the sum and thus a retaining lien since the escrowee was not subject to the defendant's control but only to the terms of the escrow agreement. Campen v. Talbot Bank of Easton, 271 Md. 610, 319 A.2d 125, 129.
Md.Spec.App. 2009. Quot. in case quot. in disc. Prior owner of property intervened in a foreclosure action instituted against record owner of the property by substitute trustees under a deed of trust and by holder of a promissory note secured by the deed of trust, alleging that she was entitled to relief under the Protection of Homeowners in Foreclosure Act as a victim of a “mortgage foreclosure scam” perpetrated by record owner and others. The trial court overruled prior owner’s exceptions and ratified the sale. Affirming, this court held, inter alia, that prior owner’s original lender, who assigned the note to holder, was protected by the Act as a bona fide purchaser or lender, and there was no evidence that the persons who allegedly violated the Act were actual express agents of lender, or that an agency relationship between those persons and lender existed by inference. Julian v. Buonassissi, 183 Md.App. 678, 963 A.2d 234, 245.

Md.Spec.App. 2008. Quot. in disc. Obligor on note for purchase of real property sued estate of property seller, seeking funds that it paid into escrow in exchange for estate's release of the deed of trust, alleging, inter alia, that seller's girlfriend acted as estate's agent when she received payments made by plaintiff, fulfilling its obligations on the note, and diverted them to pay estate's debts. The trial court awarded the escrow money to plaintiff. This court reversed and remanded with instructions to revise the award, holding, inter alia, that to the extent that the trial court found that girlfriend was an agent of the estate, its finding was clearly erroneous, because the trial court inferred such a relationship solely from the actions of girlfriend, when the law was clear that a principal-agent relationship could only arise from the conduct of the principal; here, there was no evidence that seller or estate authorized girlfriend to receive payments on the note. Jackson v. 2109 Brandywine, LLC, 180 Md.App. 535, 952 A.2d 304, 321.

Md.Spec.App. 2006. Quot. in case quot. in sup. Passenger in a van that collided with a skidloader sued driver of the skidloader for negligence. Skidloader driver counterclaimed for indemnity or contribution, arguing that van driver, who was passenger's husband, acted as the agent of passenger and her father, who was killed in the accident, so that husband's alleged negligence could be imputed to them. The trial court denied skidloader driver's motion for partial summary judgment on the agency issue, and entered judgment on a jury verdict for passenger on the negligence claim. Affirming in part, this court held, inter alia, that whether an agency relationship was created was a jury issue, and that the evidence supported the jury's finding that no such relationship was created; it was far from clear whether passenger had a right to control her husband's actions on the night of the accident and whether husband had a duty to act primarily for passenger's benefit. Bowser v. Resh, 170 Md.App. 614, 907 A.2d 910, 921.

Md.Spec.App. 2000. Subsec. (1), com. (b) cit. in disc. Attorney/guardian made an improper loan from guardianship estate funds to a client to enable client to repurchase his house, which had been sold at foreclosure due to guardian's misconduct and legal malpractice. To obtain the loan, client executed a promissory note and deed of trust in favor of the estate. Substitute guardian initiated foreclosure proceedings against client's house; client counterclaimed, seeking to cancel or modify the note and deed of trust based on original guardian's fraud and malpractice. Substitute guardian meanwhile settled claim on guardian bond and assigned estate's claims to surety. Trial court entered an award of restitution for surety, but excused client from paying $50,000 of the balance due under the note. This court reversed and remanded, holding that the risk of loss fell on the client, as the principal of a fraudulent agent, and as the party who enabled his attorney's misconduct toward an innocent guardianship estate. Seaboard Surety v. Boney, 135 Md.App. 99, 761 A.2d 985, 992.

Md.Spec.App. 1999. Quot. in disc., cit. in headnotes. After a passenger was killed when the driver drove the passenger's car into a utility pole, the decedent's husband sued the driver for wrongful death and survival. Trial court granted defendant summary judgment. This court affirmed in part, reversed in part, and remanded, holding, inter alia, that the trial court erred in granting defendant summary judgment based on an agency theory. The court determined that agency principles did not, as a matter of law, necessarily defeat the claim of an owner-passenger who sued his or her driver for injuries caused by the driver's negligence.
Even if an agency relationship existed between the decedent and the driver because of the rebuttable presumption that the driver of the decedent's car was the decedent's agent, this would not have precluded the decedent, had she lived, from suing the driver for his negligent driving. Faith v. Keefer, 127 Md.App. 706, 736 A.2d 422, 439.

**Md.Spec.App.**1999. Cit. in headnote, quot. in disc. Customers brought a class action against a tax preparation company for breach of fiduciary duty, fraudulent concealment, and violation of the Consumer Protection Act, alleging that the company failed to disclose its financial stakes in the portion of a rapid refund program through which the customers obtained bank loans secured by anticipated refunds. Trial court granted defendant's motion to dismiss, holding that defendant had no duty to disclose the benefits because no fiduciary obligation existed between defendant and its customers. This court reversed, holding that there was a fact issue regarding the existence of a principal-agent relationship that gave rise to a fiduciary duty to disclose any conflict of interest. Green v. H & R Block, Inc., 355 Md. 488, 735 A.2d 1039, 1047.

**Md.Spec.App.**1991. Subsec. (1), com. (b) quot. in case quoit in disc. The state attorney general sued a franchisor of transmission repair facilities, alleging violations of the state's consumer protection act. The trial court granted the plaintiff's motion for summary judgment, inter alia, and ruled that, as a matter of law, there was no agency relationship between the defendant and its franchisees. Affirming in part, this court held that there was no dispute of any material fact regarding the absence of an agency relationship. The court said that there was not sufficient evidence that the franchisees had a duty to act primarily for the franchisor's benefit, the record indicating that the franchisor received 20% of its franchisees' gross sales and the franchisees retained 79%. State v. Cottman Transmissions, 86 Md.App. 714, 587 A.2d 1190, 1199, cert. denied 324 Md. 121, 596 A.2d 627 (1991).

**Md.Spec.App.**1988. Quot. in sup. The prospective buyers of real estate sued the sellers and their brokerage firm for, inter alia, breach of fiduciary duty, alleging that the broker improperly induced the sellers to raise the price and included an ambiguous financing clause in the contract. The trial court found for the plaintiffs. This court affirmed in part and reversed in part, holding, inter alia, that the broker was an agent of the sellers and therefore had no fiduciary duty toward the buyers. The court reasoned that the broker could not have acted for both the buyers and sellers in its position as the sellers' agent because of the potential conflict of interest. Proctor v. Holden, 75 Md.App. 1, 540 A.2d 133, 142, cert. denied 313 Md. 506, 545 A.2d 1343 (1988).

**Md.Spec.App.**1985. Subsec. (1) quot. in sup., com. (b) quot. in sup. Valuables were stolen from a couple's hotel room. The couple and their insurer brought this action against various defendants connected with the hotel. The trial court granted a directed verdict in favor of the defendant franchiser. On appeal, this court affirmed. The court noted the absence of an express agency relationship, since the hotel was a franchise and the licensing agreement disavowed any agency relationship. Moreover, the court would not infer an agency relationship, particularly in view of the franchiser's lack of requisite control over the hotel's operation. Although the franchisee had a duty to act in the interest of the franchiser and the franchiser had a right to insure compliance with its standards, said the court, this fact did not create an agency relationship. Schear v. Motel Management Corp., 61 Md.App. 670, 487 A.2d 1240, 1248-1249.

**Md.Spec.App.**1984. Cit. in disc., coms. (d) and (e) cit. in disc. Owner of race horses sued race track for negligently failing to discover that the owner's trainer had entered the wrong horse in two races. The owner alleged that defendant's negligence in allowing the poorer horse to run under the name of the better horse resulted in a loss in the value of the better horse. A jury found that the trainer's contributory negligence barred the owner from recovering. On appeal, the owner argued that because the trainer was an independent contractor, rather than a servant, the owner was not vicariously liable for the trainer's negligence. This court affirmed. It agreed that a trainer who ran his own business and retained control over his duties was an independent contractor, but noted various circumstances in which a principal could be liable for the tortious conduct of an agent who was not a servant. Because the owner placed the trainer in a position to misrepresent the horses and defraud the track and the public, the owner was liable for the trainer's mistakes. Sanders v. Rowan, 61 Md.App. 40, 484 A.2d 1023, 1028.
Mass.

Mass.2012. Subsec. (1) quot. in case quot. in ftn. Following the foreclosure sale of her home by a mortgage holder that did not hold the underlying note, mortgagor sought to enjoin a summary process action to evict her. The trial court granted a preliminary injunction for mortgagor. This court vacated the injunction and remanded, holding that the term "mortgagor" in statutes governing foreclosure by sale referred to a person or entity holding the mortgage and also either holding the underlying mortgage note or acting on behalf of the note holder; on remand, mortgagor could support a renewed injunction request with facts indicating that at the time of the foreclosure, mortgage holder neither held the note nor acted on behalf of the note holder. The court noted that a foreclosing mortgagee did not have to have physical possession of the mortgage note in order to effect a valid foreclosure, and thus one who, although not the note holder himself, acted as the authorized agent of the note holder could stand in the shoes of the "mortgagee." Eaton v. Federal Nat. Mortg. Ass'n, 462 Mass. 569, 586, 969 N.E.2d 1118, 1131.

Mass.2001. Quot. in case cit. in disc. Defendant convicted of vehicular homicide applied for direct appellate review. Affirming defendant's conviction, this court held that because hospital personnel were neither defendant's nor his attorney's agents when they conducted blood alcohol test on defendant at attorney's request, and because there was no evidence that either defendant or attorney expected or believed hospital personnel to be their agents, the Commonwealth could lawfully subpoena the test results. Com. v. Senior, 433 Mass. 453, 455-456, 744 N.E.2d 614, 616.

Mass.2000. Cit. in case cit. in disc., quot. in case cit. in ftn. Buyer of a used truck sued the truck's manufacturer and manufacturer's distributor and authorized parts-and-service dealer for breach of the implied warranty of merchantability and vicarious liability. Trial court granted manufacturer summary judgment and the appellate court affirmed, holding that manufacturer was not vicariously liable for dealer's negligent repair of truck. This court affirmed, holding, inter alia, that buyer failed to advance sufficient evidence to raise a fact issue of manufacturer's liability under a theory of actual or apparent authority where minimum performance standard in agreement between manufacturer and dealer did not establish the kind of close control over dealer's nonwarranty work that would indicate that dealer was serving as manufacturer's agent for the work. Theos & Sons, Inc. v. Mack Trucks, Inc., 431 Mass. 736, 729 N.E.2d 1113, 1119.

Mass.1996. Cit. in disc. and headnote. A teachers' union sought a preliminary injunction to prevent the implementation of an agreement under which a state university would participate in the management of a public school system. The agreement's validity was contingent on the committee's board of aldermen and the legislature's approving a home rule petition through an enabling act. After the enabling act was signed into law, 51 Hispanic residents of the school district brought suit. Trial court dismissed in part, but reserved plaintiffs' “as applied” nondelegation claim for trial. This court affirmed, holding that the enabling act did not violate the anti-aid amendment and that the “as-applied” claim was properly held for trial. The court determined that the university was a public agent for the purposes of the anti-aid amendment, because it was an agent fulfilling the public obligation of educating city youth, while subject to the control of a public entity school committee as a principal. Fifty-One Hispanic Residents v. School, 421 Mass. 598, 659 N.E.2d 277, 278, 283.

Mass.1993. Cit. in ftn. Defendant appealed his cocaine trafficking conviction on the ground, inter alia, that the trial court erred in refusing to instruct the jury on the defense of entrapment. Reversing and remanding, this court held that defendant produced enough evidence of entrapment to have required submission of the question to the jury. Rejecting the Commonwealth's argument that the actions of the third party who approached defendant to initiate the deal could not have been the basis for the entrapment defense because he was not a government agent, the court noted that it had never required a third party not employed by the government to meet traditional agency requirements; rather, evidence of inducement by a government agent or one acting at his direction was enough to raise the entrapment defense. Com. v. Tracey, 416 Mass. 528, 624 N.E.2d 84, 90.
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Mass. 1992. Subsec. (1) cit. in disc. Department of employment concluded that a company that provided temporary workers was obliged to contribute to the unemployment compensation fund for the workers. The decision was based on a hearing examiner's ruling that the workers were company employees and the company's clients were acting as its agents in supervising the workers. This decision was affirmed by the board of review, and the trial court denied the company's petition for review. Vacating and remanding, this court directed the board of review to reconsider the matter, holding that there was no substantial evidence to support the conclusion that the company's clients were acting as its agents. There was no indication that the clients consented to act on behalf of the company nor was there any indication that the clients were subject to the company's control. Work-A-Day v. Com'r of Employment, 412 Mass. 578, 591 N.E.2d 182, 183.

Mass. 1991. Cit. in disc. A juvenile, placed in the custody of the department of youth services after pleading guilty to delinquency by reason of murder and kidnapping, had his commitment extended by the department. The extension was confirmed by a trial court and by a judge of the appellate division of the juvenile court after a jury trial de novo. The defendant appealed, challenging his extended commitment. Affirming, this court held, inter alia, that the trial judge did not err in allowing a psychotherapist who supervised the defendant's therapist to testify to her opinion of the defendant's mental state. The court refused to extend the statutory psychotherapist-patient privilege to the therapist, as the therapist-psychotherapist relationship did not meet the requirements of an agency relationship and the defendant was told that his conversations with the therapist were not confidential. There was no agency relationship between the therapist and psychotherapist because there was no evidence that the therapist consented to act on behalf of the psychotherapist subject to her control. Com. v. Rosenberg, 410 Mass. 347, 573 N.E.2d 949, 954.

Mass. 1985. Subsec. (1) quot. in sup. The taxpayer was assessed a tax for the sale of meals when the state commissioner of revenue failed to act on the taxpayer's application for abatement within six months. The appellate tax board awarded the taxpayer an abatement. This court affirmed the award, holding that where the taxpayer acted as an agent for the telephone company which employed taxpayer to purchase and prepare food for the company's employees, no taxable event occurred. Harrison Conference Services v. Com'r of Rev., 394 Mass. 21, 474 N.E.2d 160, 162.

Mass. 1985. Quot. in sup. An employee brought an action against an insurance company for long-term disability benefits pursuant to a group insurance contract obtained through the employer. The trial court awarded the insurance company a summary judgment. On appeal, the employee argued that the employer acted as the insurance company's agent when it filled out the employee's certificate of insurance, and therefore the insurance company was bound by an erroneous effective date appearing on the certificate. This court reversed the summary judgment and remanded, holding that there was sufficient evidence to submit the question of agency to the jury. Kirkpatrick v. Boston Mut. Life Ins. Co., 393 Mass. 640, 473 N.E.2d 173, 176.

Mass.App. 2007. Cit. in sup. Landlocked property owners sued developer and its transferee for, in part, breach of contract, alleging that developer's inclusion in a land-sale agreement with transferee of certain subdivision lots, which were to have provided access to plaintiffs' land through land-swap agreements between plaintiffs and developer, violated plaintiffs' agreements with developer, and transferee was obligated to carry out the exchange negotiated by developer. The trial court found that developer was in breach of the land-swap agreements, but that transferee had no obligation to carry out the exchange. Affirming in part, this court held, inter alia, that plaintiffs failed to show that transferee was bound to the terms of the land-swap agreements on a theory of agency between developer and transferee; there was no showing of explicit or implied manifestation of agreement by transferee that developer was to sign the land-swap agreements on its behalf. Normandin v. Eastland Partners, Inc., 68 Mass.App.Ct. 377, 384, 385, 862 N.E.2d 402, 410, 411.

Mass.App. 2000. Quot. in case cit. in disc. Investors who used collection company as their agent in purchasing accounts receivable sued accounting firm retained by company for breach of contract, alleging that firm's improper audit of company
caused company’s bankruptcy. The trial court entered summary judgment for firm. Affirming, this court held, in part, that the agency agreement between investors and company gave investors limited control over company’s conduct, and that the evidence did not support a finding that company was acting on investors’ behalf when it hired firm. *Spencer v. Doyle*, 50 Mass.App.Ct. 6, 733 N.E.2d 1082, 1084.

Mass.App.1995. Cit. in sup. Owner of real property that his daughter, acting under a power of attorney that owner had given her, had conveyed to herself as trustee of an irrevocable trust sued to set aside the conveyance after daughter refused owner's demand for reconveyance. The trial court entered judgment for daughter. This court reversed and remanded on the grounds that daughter’s authority under the power of attorney to act with respect to the property was revoked when she learned of owner's agreement to sell the property to a third party and, under basic principles of agency law, daughter violated her fiduciary duty of loyalty by impairing owner's rights with respect to the property, refusing to honor owner's request for reconveyance, failing to inform owner of the conveyance and its consequences, and engaging in self-dealing. *Gagnon v. Coombs*, 39 Mass.App.Ct. 144, 154, 654 N.E.2d 54, 60.

Mass.App.1974. Cit. in sup. The plaintiff sued the defendants for damages alleging that the defendants' negligence in operating an automobile caused injuries to him while he was operating a motorcycle. The car was being driven by the owner's daughter who, after she began to feel ill, asked her father, who was behind the wheel when the accident occurred, to drive. The court upheld the judgment against the daughter, holding that there was sufficient evidence that an agency relationship came into existence when she requested that her father drive, and that the fact that she may have been unable to exercise control over her father's operation of the car was not decisive. *Anderson v. Osgood*, 307 N.E.2d 860, 861.

Mich.1995. Quot. in diss. op. Defendant was convicted, in part, of possession with intent to deliver over 650 grams of cocaine; the court of appeals affirmed. Affirming, this court held, inter alia, that there was sufficient evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant constructively possessed the cocaine through his agent, who had procured the cocaine for which defendant had already paid. The dissent argued that the requisite authority or control necessary for an agency relationship was lacking. *People v. Konrad*, 449 Mich. 263, 536 N.W.2d 517, 526.

Mich.1985. Subsec. (1) quot. in fn. in diss. op. Defendants, partners interested in constructing a nursing home, asked plaintiff to find them a limited partner willing to invest in the venture. Plaintiff's contract with defendants conditioned the investor's participation in the venture on approval by HUD and stated that if the investor was not approved, plaintiff was to provide a substitute investor. HUD rejected the proposed investor, and although plaintiff was prepared to substitute another investor, defendants rescinded their agreement with plaintiff. The trial court granted plaintiff specific performance of the contract, holding that defendants must accept plaintiff himself as a limited partner. The court of appeals reversed, finding that plaintiff was defendants’ agent and could not profit personally from the relationship without defendants’ assent. This court denied leave to appeal. A dissenting justice argued that plaintiff was not defendants' agent because defendants had no right of control over plaintiff; plaintiff's relationship with defendants was merely contractual. *Goldman v. Cohen*, 422 Mich. 865, 365 N.W.2d 754, 756.

Minn.1992. Quot. in disc. Church sued chemical manufacturer, roofing material manufacturer, and distributor of roofing materials to recover for damages resulting from defective roofing materials installed on church's school and convent, alleging breach of warranty, breach of contract, and negligent misrepresentation. Trial court entered judgment on jury verdict for plaintiff, finding that distributor was an agent of roofing materials manufacturer with a resulting agency relationship between
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distributor and chemicals manufacturer for the purpose of receiving notice of the materials' defect. Affirming, this court held, inter alia, that the record supported jury's finding that an agency relationship existed between chemicals manufacturer and roofing materials manufacturer and roofing materials manufacturer and distributor. Chemicals manufacturer developed the methods used by roofing materials manufacturer to produce the roofing membrane, directly supervised the production at roofing materials manufacturer's facility, and approved and controlled all sales literature. Thus, notice to distributor constituted notice to both roofing materials manufacturer and chemicals manufacturer. Church of the Nativity v. WatPro, 491 N.W.2d 1, 5-6.

Minn. 1985. Cit. in diss. op. The acting commissioner of the state's department of human rights sought to enjoin a sports and health club corporation from engaging in certain practices in violation of the state human rights act. The commissioner alleged that the club owners, “born again” fundamentalist Christians, questioned prospective employees regarding their marital status and religious beliefs, terminated and refused to promote employees because of differences in beliefs, and failed to provide open public accommodations. The commissioner also sought class certification for all persons who had applied for employment with one of the clubs and who were required to furnish information regarding sex, marital status and religion. The club owners alleged protection under the First Amendment and the state constitution. The hearing examiner enjoined continuation of the club's practices, but refused to certify the certain class. Both the commissioner and the club appealed. This court affirmed in part, holding that the state human rights act was facially neutral and did not infringe upon the club's constitutional rights, since the commissioner was not attempting to regulate or single out any particular religion for adverse treatment and therefore the injunction was proper. The court held that interviews of prospective employees and the promotion practices violated the act, and reversed in part, holding that class certification was required for all persons who had applied for employment subject to these violations. A dissenter stated that to some extent, all employees have a fiduciary relationship to their employers, and that those at managerial levels should not have to associate with persons who reject the basic objectives and philosophy of the business. State by McClure v. Sports & Health Club, Inc., 370 N.W.2d 844, 858.

Minn. 1981. Cit. in disc., and com. (b) cit. in sup. The plaintiffs, farmers who had sold their grain to a small grain elevator which had defaulted on the grain contract, brought this suit for the recovery of their losses against the defendant, a corporation which had financed the small grain elevator. The plaintiffs contended that the defendant, by its course of dealing with the small grain elevator, became liable as a principal on contracts made by the small grain elevator. The trial court found for the plaintiffs and the defendant appealed, arguing that s 1 of the Restatement should have been given as a jury instruction. This court affirmed and found, inter alia, that the essence of the jury instruction actually given was the same as the Restatement section. Using this standard, the court held that the defendant's direction to the grain elevator to follow its recommendations was a manifestation of the defendant's consent to an agency relationship, that the grain elevator acted on the defendant's behalf in procuring grain for it, and that the defendant's interference with the internal affairs of the grain elevator constituted de facto control of the elevator. A. Gay Jenson Farms Co. v. Cargill Inc., 309 N.W.2d 285, 290, 293-294.

Minn. 1978. Quot. in part in sup., com. (b) quot. in part in sup. Plaintiff, a prospective purchaser of several buildings, brought an action against three partners as individuals, their partnership, and a corporation alleging breach of a fiduciary duty by an agent, fraud, and the interference with contractual relations. An individual defendant, who was a partner in the defendant partnership and an officer and real estate agent of the defendant corporation, and who was acting as negotiator between the prospective seller and plaintiff concerning the sale of the buildings which were purchased instead by the defendant partnership, was alleged to owe plaintiff a fiduciary duty of full disclosure because of an agreement between plaintiff and the individual that if plaintiff bought the property the individual could manage and resell it for plaintiff. The trial court found, inter alia, that it was impermissible as a matter of law for the individual defendant to act as an agent for both the seller and plaintiff, and granted defendants' motion for a directed verdict. This court reversed, and found that a dual agency was not per se against public policy, and that the trial court erred in concluding otherwise. The court also found that the trial court erred in directing a verdict against plaintiff for its failure to present a prima facie case of agency. The court held that agency is a legal concept which the law imputes to the factual relation between the parties, and that ample evidence was introduced from which the jury could have concluded that the
individual defendant agreed to manage and resell the buildings for plaintiff, thereby becoming its agent and requiring him to make full disclosure. The case was remanded for trial. PMH Properties v. Nichols, 263 N.W.2d 799, 802, 803.

Minn. 1976. Subsec. (1) quot. in sup., com. (b) quot. in part in sup. A farmer trucker brought an action against another farmer for alleged breaches of contracts to sell corn. The jury found the plaintiff to be an agent of defendant in the transactions, but the court held, inter alia, that, where defendant agreed to sell, and plaintiff agreed to buy, specific quantities of corn at specified prices, where there were no discussions about resale or the involvement of any third parties when the agreements were made, where plaintiff resold under his own name to an elevator, where plaintiff did not act as a mere conduit between defendant and the elevator, and where defendant had no right of control over plaintiff in the resale of the corn, there existed no agency relationship, but a sale of goods. Jurek v. Thompson, 241 N.W.2d 788, 791.

Minn. 1975. Cit. An employee brought an action against a health insurer and the insurer sought indemnification from the employer when the employee completed the insurance forms, but the employer, due to an oversight, did not forward them to the insurer. Later plaintiff's child was injured, and the insurer refused to pay for the medical expenses, since the forms had not been received in time. The trial court entered judgment for plaintiff against the insurer, and dismissed the insurer's claim against the employer. From this the insurer appealed. In affirming, the court stated that the employer was the insurer's agent for the purpose of forwarding the insurance forms; that the employee could recover from the insurer where lack of coverage was due to the employer's negligence in not forwarding the forms; that the insurer was not entitled to indemnification, since it suffered no actual loss, except the lost premiums; and that there was no evidence that the employer and the employee colluded adversely to the insurer. Norby v. Bankers Life Co., 231 N.W.2d 665, 669.

Minn. 1969. Cit. in sup. This was a certiorari petition to review an order of the state tax court reversing orders of the commissioner of taxation and granting the corporation's claims for refunds on its income tax. The court held that the evidence supported the finding that the New York sales representative of the Minnesota corporation was an agent or employee of the Minnesota corporation rather than an independent contractor, and that the corporation was carrying on business partly within and partly without the state within the meaning of the income tax apportionment statute. Tonka Corporation v. Commission of Taxation, 284 Minn. 185, 169 N.W.2d 589, 593.

Minn.App. 2005. Quot. in disc., adopted in case cit. in disc. After a drunk driver killed a mother and injured her children in a car accident, the father and his three children sued a national war veterans association, its regional department, and its local post for negligence in illegally selling alcohol to the drunk driver. Trial court granted defendants summary judgment. This court affirmed, holding that the national association and its regional department were not vicariously liable for the local post's illegal alcohol sale under the doctrine of respondeat superior, because there was insufficient evidence that the association or the department had a right to control the physical undertakings of the local post's daily activities. Urban ex rel. Urban v. American Legion Post 184, 695 N.W.2d 153, 160, affirmed on other grounds 723 N.W.2d 1 (Minn.2006).

Minn.App. 1998. Quot. in case quot. in disc. A national charity sued a bank for conversion and negligence, arguing that the bank was liable for accepting unendorsed stolen checks. The charity's national director had designed a scheme to embezzle money from the charity, and asked a volunteer and fundraiser for the charity to set up a bank account for a proposed local chapter of the charity. The trial court granted the bank summary judgment. This court affirmed, holding, inter alia, that, by asking the volunteer to open an account for the charity, the director, though acting with criminal intent, knowingly gave the volunteer actual authority on the charity's behalf to deposit the stolen checks in that account. Thus, the director, who was empowered to do so, made the volunteer an agent of the charity with express authority to open the charity's account and to conduct transactions through it. APDA v. First Nat. Bank of Northfield, 584 N.W.2d 437, 440.
Minn.App. 1995. Cit. in headnote, cit. in disc. Independent insurance agent whose customer sued him for negligent advice brought third-party indemnification, contribution and request defense action against insurer, claiming that he was an agent of the insurer. Affirming the trial court's grant of summary judgment for insurer, this court held that insurance agent acted more in the capacity of a broker, accountable to his customer, than an agent, accountable to the insurer. Referring first to the terms of the agreement that controlled the parties' relationship, the court explained that it expressly provided that insurance agent was not an employee of insurer. Moreover, it was plain to the court that insurance agent acted outside the scope of his duties in counseling insured and that insurer never ratified or approved insurance agent's conduct. Frank v. Winter, 528 N.W.2d 910, 911, 914.

Minn.App. 1995. Com. (b) cit. in case cit. in disc. and cit. in conc. and diss. op. After his son died of juvenile diabetes following three days of Christian Science care, a father sued his former wife and the child's stepfather for wrongful death. Trial court entered judgment on jury verdict for plaintiff. This court affirmed in part and reversed in part, holding, inter alia, that a nonprofit corporation that operated a Christian Science nursing facility accredited by the First Church did not assume a duty toward child, because there was no agency relationship between nursing facility and Christian Science nurse who cared for child by reading hymnals. There was no evidence either that nursing facility made a manifestation that nurse was acting on its behalf or that facility had right to control nurse's actions or conduct. Concurring and dissenting opinion argued that First Church had control over Christian Science nurses and had power to remove them from the Journal list for failure to follow church tenets. Lundman v. McKown, 530 N.W.2d 807, 825, 834, cert. denied 516 U.S. 1092, 116 S.Ct. 814, 133 L.Ed.2d 759 (1996).

Minn.App. 1994. Quot. in case quot. in sup. Trustee for the next of kin of a child killed when a grave monument fell on him in a cemetery brought a wrongful death action against the diocese, among others, asserting that the diocese was vicariously liable for the allegedly wrongful acts and omissions of the parish and its cemetery committee in maintaining the cemetery. The trial court directed a verdict for the diocese, and this court affirmed, holding, inter alia, that, since the bishop had nothing to do with the operation of the parish itself other than hiring and firing priests and deciding whether to open or close parishes, no agency relationship that could support a vicarious liability claim existed. Plate v. St. Mary's Help of Christians Church, 520 N.W.2d 17, 20.

Minn.App. 1985. Quot. in sup. The plaintiff fuel tank owner brought suit against an excavation contractor for negligent removal of an underground tank. The trial court entered a judgment for the plaintiff. On appeal, the contractor argued that the trial court erred in finding that a third-party bulldozer operator was an agent of the contractor. This court affirmed the trial court, holding that where the contractor supervised the removal of the tank and where the bulldozer operator testified that he was supervised by an unnamed party at the site of the excavation, a jury finding that the bulldozer operator acted under the control of the contractor was not perverse or contrary to the evidence. High Forest Truck Stop v. LaCrosse Petroleum, 364 N.W.2d 810, 812.

Miss. 2001. Cit. and quot. in disc. Trial court ordered that surety was liable for defendant's bail bond when defendant failed to appear on his indictment for grand larceny, notwithstanding surety's argument that it was only under contract to produce defendant to justice court for defendant's preliminary hearing. This court affirmed, holding that surety's agent, who signed bond on surety's behalf, was acting for surety when she approved the bond's return to both justice court and trial court and modified it during the preliminary hearing before the justice court to reflect such approval. Agent's action effectively bound surety to liability for defendant's failure to appear before trial court on the required date. State v. Brooks, 781 So.2d 929, 934.

Miss. 1991. Cit. in diss. op. An investor who lost substantial sums of money trading commodities brought an action in federal district court for negligence and breach of fiduciary duty, inter alia, against the brokerage firm with which he maintained a nondiscretionary account. The district court granted the defendant summary judgment, and the appeals court certified state law
questions to this court. This court stated, inter alia, that since the plaintiff had a nondiscretionary account, the defendant's duty did not extend beyond carrying out the plaintiff's orders. The dissent argued that the defendant, as the plaintiff's agent, owed the plaintiff a fiduciary duty and a duty of ordinary care; moreover, the defendant's duty, even in a nondiscretionary account, should extend beyond carrying out instructions and should include financial consulting and a regular assessment of the plaintiff's resources. Puckett v. Rufenacht, Bromagen & Hertz, 587 So.2d 273, 283.

Miss.App.

Miss.App. 2003. Cit. in case quot. in sup. Landowner brought action to quiet title to two parcels of land allegedly encroached upon by neighboring landowners. Trial court held that defendant landowners adversely possessed two parcels, but later entered supplemental judgment reducing award to one parcel. Affirming, this court held, inter alia, that defendants' emancipated children, who used land for own benefit, were not defendants' agents for purposes of establishing adverse possession where children were not subject to defendants' control and were not acting on defendants' behalf. Norris v. Cox, 860 So.2d 319, 322.

Mo.

Mo. 2008. Cit. in disc. After nephew, who was driving his aunt's car, rear-ended a fire truck that was attending to a previous accident, aunt, who was a passenger in the car, sued nephew and fire-protection district, alleging that defendants' negligence caused her injuries. After aunt settled her suit against nephew, the trial court entered judgment on a jury verdict against district that apportioned 15% of the fault to district and 85% of the fault to aunt. This court affirmed, holding that an agency relationship was established between aunt and nephew that made aunt responsible for nephew's negligence, because, despite aunt's inability to drive, and her lack of a license, she had the right to control, and did control, her nephew's actions in driving her to her club date as he had been expressly authorized and directed to do by her. Bach v. Winfield-Foley Fire Protection Dist., 257 S.W.3d 605, 608.

Mo. 2002. Quot. in disc. Car manufacturer that was a defendant in products-liability lawsuits moved to transfer venue and sought writ of prohibition to prevent plaintiffs from proceeding. Plaintiffs had predicated venue on allegation that manufacturer's subsidiary credit company had an office in the county and was manufacturer's agent. This court made absolute the trial court's preliminary order in prohibition, and it ordered trial court to transfer cases to proper venue. It held that subsidiary did not act as manufacturer's agent, because it had no power to alter legal relations between manufacturer and third parties. Manufacturer was not a party to subsidiary's financing contracts, and subsidiary was not subject to agreement with manufacturer restricting its ability to finance dealer floorplans or customer purchases. State ex rel. Ford Motor Co. v. Bacon, 63 S.W.3d 641, 642.

Mo. 1993. Subsec. (1) quot. in ftn. Plaintiff in a products liability action sought a writ of mandamus to review the trial court's order dismissing plaintiff's petition for improper venue. This court made peremptory its alternative writ previously issued, holding that boat motor dealer was not agent of manufacturer for purposes of establishing venue in the county where dealer was located. The court stated that dealer was independent of manufacturer, sold competing products, and sold manufacturer's products for its own profit, not for manufacturer's benefit. State ex rel. Bunting v. Koehr, 865 S.W.2d 351, 353.

Mo. 1993. Quot. in part in sup., com. (e) quot. in part in diss. op. (Cit. as com. on subsec. (3).) An airline passenger who sued the airline for injuries sustained in a fall at a ticket counter petitioned for a writ of mandamus to reinstate the action after it was dismissed for lack of venue and transferred to another court. This court, making the writ permanent, held, inter alia, that independent travel agents who sold tickets for the airline in a particular city were "agents" of the airline for purposes of Missouri's corporate venue statute, so that venue in the original court, with jurisdiction in that city, was proper. The court stated that the lack of an ongoing relationship between the airline and the agents referred to the scope of the agency, not its existence. A
dissent argued that the appointment of a travel agent to promote and sell airline tickets was not the sort of agency the legislature intended to support venue. State ex rel. Elson v. Koehr, 856 S.W.2d 57, 60.

Mo.1981. Cit. in diss. op. The defendant was convicted of capital murder, sentenced to death and appealed. On appeal he argued, inter alia, that the evidence was insufficient to support the jury's determination that aggravated circumstances existed in this case. This court found that the defendant, as the agent or employee of another and at that other's direction, murdered the victim, that such murder involved depravity of mind and was therefore outrageously or wantonly vile and inhuman. The dissent argued, inter alia, that there was insufficient evidence to support a finding that the defendant had acted as the agent or employee of another. The dissent argued that there was no evidence that the defendant had been employed by another so a determination that the defendant had committed capital murder as an agent or employee of another must have been based upon an agency relationship. This dissent argued that there was no evidence to show that the other individual had any authority or control over the defendant and that merely because the other individual told the defendant to kill the victim, and the defendant did so, did not establish a cause and effect relationship. The dissent argued that the jury may not have given the defendant the death penalty if the agent or employee aggravating circumstance had not been submitted. Therefore the dissent felt that such a case should not have been affirmed on the basis of conjecture. State v. Mercer, 618 S.W.2d 1, 18, certiorari denied 454 U.S. 933, 102 S.Ct. 432, 70 L.Ed.2d 240 (1981).

Mo.App.

Mo.App. 2013. Cit. in sup. Minor children of parents who were killed in a head-on collision with a log truck sued, among others, wood products company for which driver was operating the log truck, arguing that defendant was liable for driver's negligence. The trial court entered judgment on a jury verdict for defendant. Reversing and remanding, this court held, inter alia, that the trial court committed prejudicial error by instructing the jury that driver had to be defendant's "employee" in order for defendant to be liable, and in refusing to give plaintiffs' proposed modification that driver had to be defendant's "agent." The court reasoned that the trial court's instructions erroneously allowed the jury to find for plaintiffs only if it found that driver was an employee of defendant, when it was well settled that an "employer" was also liable for damages attributable to the conduct of an "agent" acting within the course and scope of agency; here, defendant's potential liability was not based on driver being an employee of defendant, but rather an agent. Blunkall v. Heavy and Specialized Haulers, Inc., 398 S.W.3d 534, 541.

Mo.App. 2010. Quot. in case quot. in disc. After bounty hunters employed by bail-bond company to apprehend individual for failure to appear for a municipal traffic ticket suffocated and killed individual's brother, parents of decedent brought a wrongful-death action against bail-bond company and company's surety, alleging that an agency relationship existed between surety and company. The trial court granted summary judgment for surety and partial summary judgment for company. Reversing and remanding, this court held that a genuine issue of material fact existed as to whether company was an agent of surety regarding the property bail bond in question. The court noted that the primary controversy involved surety's right to control company's business. West v. Sharp Bonding Agency, Inc., 327 S.W.3d 7, 12.

Mo.App. 2007. Quot. in case quot. in disc. After insured contractor's concrete forms were stolen and its insurance claim was denied based on exclusionary language in an endorsement to the policy, contractor sued managing general insurance agency for negligently failing to attach the proper documentation to the policy and failing to issue the policy agreed upon by the parties. The trial court entered judgment on a jury verdict for plaintiff. Reversing, this court held that defendant was not an agent of plaintiff or plaintiff's insurance agency, since the record clearly showed that plaintiff initially contacted its insurance agency, which acted as plaintiff's insurance agent by contacting defendant; likewise, there was no evidence that the insurance agency had the authority to act as an agent for defendant. Hardcore Concrete, LLC v. Fortner Ins. Services, Inc., 220 S.W.3d 350, 354, 355.
Mo.App.2006. Quot. in disc. Customer sued independent insurance agent for negligence in failing to procure insurance on customer's portable concrete plant, after the plant was destroyed in a windstorm. On remand, the trial court granted partial summary judgment for plaintiff on liability, and entered judgment on a jury verdict awarding plaintiff damages. Affirming, this court held, inter alia, that summary judgment was properly granted for plaintiff on liability because defendant had neither actual authority under its agreement with insurer, nor apparent authority manifested by insurer to plaintiff, to bind insurer for more than three days to the insurance coverage defendant orally promised plaintiff; thus, defendant's failure to notify insurer of the intended policy, either within the three-day binder period or at any time in the month prior to the plant's destruction, was negligence. Parshall v. Buetzer, 195 S.W.3d 515, 519.

Mo.App.2000. Quot. in disc. Automobile passengers who were injured in collision sued manufacturer of automobile, among others, under theories of negligence and strict products liability. Defendant moved to dismiss for improper venue or inconvenience. The trial court denied the motion, but this court issued a preliminary order in prohibition. Quashing the order, the court held, in part, that defendant, a Delaware corporation, had failed to satisfy its burden of showing that its credit company and wholly owned subsidiary, a Missouri corporation, was not its agent, such that venue in that state was improper. State ex rel. Ford Motor Co. v. Westbrooke, 12 S.W.3d 386, 390.

Mo.App.1998. Cit. in case quot. in disc. After the Missouri Consolidated Health Care Plan (MCHCP), a state agency that contracted with various managed-care companies for the provision of medical services to plan members, denied a state employee's application for reimbursement of her attorney's fees and expenses incurred in obtaining coverage from her managed-care company for gastroplasty surgery, the state employee petitioned for judicial review. Affirming the trial court's dismissal of the petition, this court held that the state employee's managed-care company was not an agent of MCHCP so as to entitle the employee to attorney's fees and expenses under Missouri law for prevailing in an agency proceeding brought against the state. The court said that MCHCP did not exert control over the services, location, or selection of medical staff provided by the managed-care company; moreover, the managed-care company neither held itself out as an agent for MCHCP, nor did MCHCP ever state that the managed-care company was its agent. Rogers v. Board of Trustees Consol. Health, 972 S.W.2d 591, 593.

Mo.App.1997. Quot. in disc., subsec. (1) cit. in ftn. to diss. op. Motorists who were involved in two separate vehicular collisions with pizza deliverymen in Missouri brought personal injury actions against deliverymen's employers, franchisees of pizza restaurant chain, and franchiser, a Michigan corporation. Venue in St. Louis was premised on the presence in that city of a third franchisee with no connection to the underlying litigation. After the trial court denied franchiser's motion to transfer the consolidated cases to a county in which venue would be proper, franchiser petitioned this court for writs of mandamus. Issuing permanent writs of mandate, this court held that third franchisee was not franchiser's agent for purposes of venue, because third franchisee did not have the power to alter the legal relations between franchiser and third parties and was not franchiser's fiduciary. Dissent criticized the court for its failure to address franchiser's right to control third franchisee's actions, which dissent called the “touchstone” of a vicarious relationship. State ex rel. Domino's Pizza, Inc. v. Dowd, 941 S.W.2d 663, 665, 667.

Mo.App.1996. Cit. in headnote, cit. in disc. Refinancing mortgagor sued mortgagee to recover the statutory penalty owed as a result of mortgagee's failure to deliver a release of a deed of trust within 30 days of second mortgagee's request. The trial court granted defendant's motion for summary judgment on the ground that plaintiff did not tender the statutory costs to release the deed of trust. Affirming, this court held, in part, that plaintiff's payment of the fees to second mortgagee did not satisfy the tender requirement, since second mortgagee was not acting as the agent of either plaintiff or defendant. Murray v. Fleet Mortgage Corp., 936 S.W.2d 212, 213, 217.

Mo.App.1992. Cit. in sup., cit. generally in sup. An electrical power company sought an injunction to prohibit another power supplier from providing electric service to two school districts that previously had been served by the plaintiff. The trial court denied the plaintiff's request. Affirming, this court held that a statute that restricted a power supplier from furnishing power to persons served by another supplier did not prohibit the defendant from supplying power to the school districts, because they
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were not “agencies” as that term was used within the definition of “persons” under the statute. St. Joseph Light v. Nodaway Worth Elec., 822 S.W.2d 574, 576.

Mo.App. 1991. Cit. in case cit. in disc. A city council created a nonprofit development corporation to facilitate the issuance of tax-exempt bonds and thus assist the city in funding projects. An individual sued the city, the mayor, and the city council, seeking a declaration that, by acting through the corporation, the defendants violated the city charter requiring city council to submit for voter approval any proposal to issue general obligation bonds, and that the city, as principal, could not authorize its agent, the corporation, to do something that it could not do as principal. The trial court granted the defendants summary judgment, concluding that no agency relationship existed between the corporation and the city. This court affirmed, holding that, although the plaintiff proved that the corporation worked on behalf of and solely for the city's benefit, the evidence conflicted with the plaintiff's assertion that the corporation was subject to the city's control. Jennings v. City of Kansas City, 812 S.W.2d 724, 733.

Mo.App. 1991. Com. (b) cit. in ftn. Two couples requested that a travel agency arrange airline and hotel accommodations for their vacation. The travel agency made the arrangements, but during the trip the airline they engaged went bankrupt, causing the couples to incur extra hotel and transportation costs. The couples sued the travel agency, alleging breach of contract and seeking to recover the additional expenses incurred. The trial court entered judgment for plaintiffs for only $654.80, which represented the 10% commission credited to the travel agency. Affirming, this court held that the travel agency was plaintiffs' agent and that the agency did not neglect its duty of ordinary care. The court also stated that the travel agency was not an agent of the airline with whom it did business, notwithstanding a customer-disclosure notice in which the travel agency declared itself to be the agent of the travel suppliers. Markland v. Travel Travel Southfield, 810 S.W.2d 81, 82.

Mo.App. 1991. Cit. in disc. After a contractor on a project involving the construction of a public transportation facility failed to pay a supplier the full amount owed it for the building materials it supplied, the supplier sued a bi-state development agency and its commissioners, which were given the responsibility by the state of Missouri for building the facility, for damages for their failure to require the contractor to furnish a contractor's bond pursuant to a Missouri statute, inter alia. The trial court ruled for the defendants. Reversing in part and remanding, this court held that the defendants were agents of their principal, the state of Missouri, for the project, insofar as the application of the statutory bond requirement for public works projects was concerned, and imposed liability on the defendants for their failure to comply with the statute. The court also held that the duality of the defendants' activity for two principals, Missouri and Illinois, did not prevent them from being agents of Missouri subject to the Missouri statutory bond requirement. Redbird Engineering v. Bi-State Dev., 806 S.W.2d 695, 700.

Mo.App. 1990. Cit. in disc. A man traded in his car to a dealer, signing over the title to a bank, which was to retain title until the dealer paid the bank the remaining amount due on the car. The dealer sold the automobile to a company without providing the title, as it never paid the bank and never acquired title. The original owner instituted an action for replevin against the dealer, and the purchaser filed a third-party action against the original owner. The trial court awarded the purchaser actual and punitive damages pursuant to a jury verdict. Reversing, this court held that the dealer who fraudulently sold the car to the purchaser was an independent contractor and was not acting as the agent for the original owner, and, thus, the original owner was not liable for the dealer's fraud. The court stated that an agency relationship did not exist because the original owner did not retain any right to control the dealer's subsequent conduct and the original owner left all the details regarding the disposition of the car to the dealer. Lange Co. v. Cleaning by House Beautiful, 793 S.W.2d 869, 871.

Mo.App. 1987. Quot. in disc., com. (e) cit. in disc. On his client's behalf, an attorney ordered the transcripts of several hearings from a court reporter. When the last of the transcripts was completed, the attorney notified the client that another payment was due to the court reporter but the client failed to pay. The attorney notified the reporter that his firm had withdrawn from the case and the reporter sued the attorney to recover the balance due on the transcripts. The trial court found for the plaintiff. This court affirmed, holding that the attorney's authority in conducting the details of litigation effectively made him an independent
contractor and thus liable for the court-related services he had requested, even though the reporter knew the attorney was working on behalf of his client. Ingram v. Lupo, 726 S.W.2d 791, 794.

Mo.App. 1987. Cit. in disc. A contractor sued a city in a dispute over its obligation to install a waste water system. That dispute was settled, and the contractor released the city and its agents from all further claims. When the contractor then sued the city's engineering firm, the trial court granted the defendant's motion for summary judgment. Affirming, this court held that the defendant was the agent of the city in its dealings with the contractor and was included within the terms of the release. The court said that agency was a fiduciary relationship that resulted from the consent by one person, the principal, to another, the agent, for the agent to act on the principal's behalf and subject to the principal's control. The court said that, although the engineering firm was an independent contractor to the extent it supplied professional engineering services, since it had a fiduciary obligation to the city, an agency was established. Tri-City Const. v. A.C. Kirkwood & Assoc., 738 S.W.2d 925, 931.

Mo.App. 1968. Cit. and cit. com. (b) in ftn. and cit. com. (c) in sup. This was a suit brought to enjoin foreclosure under a deed of trust, which was executed by plaintiffs to secure payment of $1,500 on a promissory note. Defendant, who was plaintiff's second cousin and voluntarily undertook to “find a place” for plaintiff, secretly purchased a farm for $2,500 and resold it to plaintiff for $3,500. In reversing the Circuit Court, the Court of Appeals held for the plaintiff, stating the defendant had no right to secretly purchase the farm, and that upon discovery of the breach of fiduciary duty, plaintiff had only to repay $500 of the $1,500 it had borrowed from the other party to make up the $3,500 which defendant had told plaintiff was needed to effect the purchase. Groh v. Shelton, 428 S.W.2d 911, 916, 917.

Mont. 1991. Quot. in case quot. in disc. Vendors sued purchasers and investors for failure to perform a contract for the sale of property. The vendors alleged that the investors were vicariously liable on the contract of sale as undisclosed partners, undisclosed joint venturers, or undisclosed principals. The trial court granted summary judgment for the investors on the ground that they were not personally liable to the vendor on the contract for deed. This court affirmed, holding that the land sale contract was between the vendors and the buyers and that the investors were not general partners, joint venturers, or principals of the buyers. Although the investors supplied capital to the buyers, the court determined that an agency relationship did not exist because the buyers were not subject to the investors' control and did not represent the investors in dealing with the sellers. Weingart v. C & W Taylor Partnership, 248 Mont. 76, 809 P.2d 576, 579.

Mont. 1990. Quot. in sup., cit. generally in sup. Employees sued a county, a park, and the park board for wrongful termination. The trial court granted summary judgment to the defendants, holding them immune from suit pursuant to a statute that provided immunity from suit for legislative acts and omissions. Reversing and remanding, this court held that the park board was not a legislative body of the county nor was it an agent of the board of county commissioners with respect to the employment of the plaintiffs; therefore, it was not immune from suit under the relevant statute as an agent of a legislative body. It reasoned that there was no specific statutory grant of power to the county board giving it the right to control the park board as to the employment of personnel. Koch v. Yellowstone County, 243 Mont. 447, 795 P.2d 454, 458-459.

Mont. 1989. Com. (e) cit. in disc. A girl who was injured on an icy stairway at school was granted leave by the trial court to amend her complaint for negligence to add the school janitors as defendants. The trial court denied the janitors’ motion for dismissal of the amended complaint on immunity and statute of limitations grounds. The janitors filed an application for relief via supervisory control from the trial court's order granting the plaintiff leave to belatedly amend. Granting the writ and remanding, this court held that by statute the janitors were agents of the school district, as manifested by their agency with the district's governing school board, and were immune from prosecution. The court stated that, since any failures by the school district to provide sufficient funding for maintenance of the sidewalk and employment of additional custodians were omissions
by its legislative body, the school board, then the omissions of the janitors occurred during the lawful discharge of duties associated with the omissions by the school board. Eccleston v. Third Judicial Dist. Court, 240 Mont. 44, 783 P.2d 363, 368.

Mont. 1989. Quot. in disc. A truck driver who was injured when he lost control of his truck on an unsigned curve on a county road sued the county for negligence in construction, maintenance, and signing of the road. The trial court granted the defendant's motion for summary judgment. Affirming, this court held that the county was statutorily immune from suit for any act or omission of its board of commissioners, members of the board, and agents of the board regarding road construction and maintenance. Miller v. Fallon County, 240 Mont. 241, 783 P.2d 419, 421.

Neb.

Neb. 1988. Cit. in disc. A man injured in a collision sued the driver of the other vehicle, the driver's parents, who owned the vehicle, and the driver's uncle, for whom the driver was hauling grain. The trial court entered judgment against the driver alone and later granted judgment n.o.v. against the uncle on the basis of an agency relationship with the driver. This court affirmed in part and reversed in part. The court held that the existence of an agency relationship between the driver and his uncle depended upon the degree to which the driver was subject to his uncle's control, and this was a proper matter for the jury, which had found that the uncle was not vicariously liable. Dunn v. Hemberger, 230 Neb. 171, 430 N.W.2d 516, 522.

Neb. 1976. Quot. in part in sup. Plaintiff brought suit for an accounting of an alleged surplus arising out of the repossession sale of a truck which plaintiff had purchased under an installment contract, and in which defendant financing company held a security interest as assignee of the sales contract. The trial court granted plaintiff's motion for summary judgment, but the appeals court reversed and granted defendant's motion for summary judgment and dismissed the complaint. Reversed and remanded, the Supreme Court holding, inter alia, that material issues of fact were presented as to the nature of the relationship between the seller of the truck and the financing company, and as to whether an agency relationship was in effect when the repossessed property was sold, precluding summary judgment on the ground that the financing company was not responsible for the surplus arising out of the sale of the repossessed truck. Reeves v. Assoc. Financial Services Co., Inc., 197 Neb. 107, 247 N.W.2d 434, 438.

Neb. 1975. Cit. in sup. A land purchaser brought an action to recover the purchase price when a real estate broker, retained by the plaintiff, told him that a plot contained 215 acres, while in reality it contained less. The trial court entered judgment for the defendant seller, and plaintiff appealed. In affirming, the court stated that the defendant never authorized the broker to sell the property, and that the broker was not an agent of the exclusive listing firm hired by the defendant to sell the property, since the firm had no control over the broker and had not given its consent for him to act in its behalf. Donahoo v. Home of Good Shepherd, Inc., 193 Neb. 586, 228 N.W.2d 287, 293.

Neb. 1970. Quot. in sup. This was an action by administratrix of the estate of decedent who was fatally injured when an automobile in which he was a passenger collided with a milk tank truck. As to the issue of the agency between the milk truck driver and his alleged employer the court held, inter alia, that whether the driver was in fact an independent contractor or an employee of a cooperative creamery association was properly submitted to the jury, in view of the fact that the cooperative maintained control over the driver's methods of carrying out the contract and that he had no more independence than employees in general enjoy. Sandrock v. Taylor, 185 Neb. 106, 174 N.W.2d 186, 192.

N.H.

N.H. 2002. Com. (b) cit. in disc. Former corrections officer who suffered personal injuries while receiving police baton training from a certified instructor of training council sued training council for, in part, negligent supervision and training of agent
instructor. The trial court entered judgment on special jury verdicts for plaintiff. Affirming, this court held that an agency relationship existed between defendant and instructor pursuant to actual authority. **Herman v. Monadnock PR-24 Training Council, Inc., 147 N.H. 754, 758, 802 A.2d 1187, 1191.**

**N.H.1995.** Quot. in case quot. in disc. Roofing company employee was injured when he fell through an opening in a roof to a concrete floor 16 feet below. He received workers' compensation from employer and sued the corporation that was set up by employer's president to employ the supervisory workers at the job site. Trial court granted corporation summary judgment, holding that the exclusive remedy precluded suit and that corporation was carrying out employer's duty. This court reversed and remanded, holding that plaintiff's suit was not precluded because he alleged that corporation breached its independently undertaken duty to provide plaintiff with a safe workplace. It also held that plaintiff's claim was not barred by the workers' compensation statute's coemployee bar, since corporation was not employer's agent as there was no indication that employer had any right to control corporation. **Singh v. Therrien Management Corp., 140 N.H. 355, 666 A.2d 1341, 1341, 1343.**

**N.H.1987.** Com. (e) cit. in sup. A seller that entered into an exclusive listing agreement with a real estate brokerage firm complained to the state's real estate commission, alleging that the broker had violated the state's regulations governing the conduct of real estate brokers during the course of negotiations by representing the buyer in the sales transaction. The commission dismissed the seller's complaint, holding that the broker was not guilty of any unlawful conduct as prohibited by the state's regulations. Reversing, this court held that the broker's failure to obtain the seller's consent in writing to his dual agency was a patent infraction of the state's regulations, reasoning that a principal-agent relationship existed between the seller and broker after the exclusive listing agreement expired, evidenced both by an agreement and by the conduct of the parties; and that the broker's intent to acquire a financial interest in the buyer's enterprise presented a clear conflict of interest between the broker's obligations to the seller and his own anticipated interest in the purchase of the property. **Petition of Contoocook Valley Paper Co., 129 N.H. 528, 529 A.2d 1388, 1390.**

**N.J.1993.** Cit. in disc. Following the theft by buyer's closing attorney of moneys earmarked for payment of a preexisting mortgage on the purchased property, the holder of the preexisting mortgage brought a foreclosure action and buyer filed a third-party complaint against title insurer, among others. The trial court entered judgment for buyer, and the intermediate appellate court reversed. Reversing, this court held, inter alia, that the closing attorney was the agent of title insurer in its dealings with buyer and, therefore, title insurer was liable for the attorney's misconduct under the law of agency. **Sears Mortg. Corp. v. Rose, 134 N.J. 326, 634 A.2d 74, 79.**

**N.J.Super.2004.** Com. (b) cit. in disc. Passenger, who was paralyzed when vehicle in which he was riding was struck by other vehicle whose driver failed to stop at stop sign, sued multiple tortfeasors, including father whose child the driver was transporting, on agency theory of liability. After plaintiff settled with some tortfeasors, including driver, hearing was held to determine liability of father, a nonsettling tortfeasor who was sued in capacity of driver's principal. Trial court entered judgment in father's favor, finding that settlement release between plaintiff and driver extinguished any liability on part of father, as principal. Reversing and remanding, this court held, inter alia, that unless a release of claims so provided or a plaintiff had fully recovered for damages incurred, settlement with one tortfeasor did not extinguish liability as to remaining tortfeasors, regardless of whether liability was independent or derivative. **Newman v. Isuzu Motors of America, Inc., 367 N.J.Super. 141, 147, 842 A.2d 255, 258.**
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N.J.Super.2000. Coms. (a) and (b) quot. in disc. Insured sued automobile insurer for personal injury protection (PIP) benefits for expenses she incurred after falling and striking car as she reached for door handle. Denying defendant summary judgment, this court held that insured made physical contact with intent to enter her car through a valet, who acted at the request of and as an agent for insured, thus triggering her right to recover PIP benefits. Salamone v. Regency Palace, 337 N.J.Super. 374, 766 A.2d 1231, 1234.

N.J.Super.1986. Cit. in sup. The next-of-kin of a murder victim sued the author and publishers of a book recounting the events of the murder for, inter alia, violation of the “Son of Sam” law, which was designed to prevent certain persons from profiting from the description of criminal events. The trial court ordered all proceeds of the book to be placed in an account for the ultimate benefit of the victim's relatives. This court reversed on this claim and held that the legislature's intent was to prevent perpetrators of sensational crimes from profiting by their criminal acts, and because the author and publishers of the book were neither fiduciaries of the criminal nor his agents they would not be denied profits as the legislature's intent was not to restrict the publication of books on criminal behavior. Fasching v. Kallinger, 211 N.J.Super. 26, 510 A.2d 694, 703.

N.J.Super.1977. Ct. in sup. and com. (a) cit. in sup. In seven products liability cases, the plaintiffs were present or former employees of a can manufacturer who worked at various New Jersey locations between 1969 and 1975. They named as defendants various manufacturers and suppliers of chemicals delivered to their employer for use in its manufacturing operation and also named a company engaged in standardizing labeling requirements for chemicals intended for industrial use. The complaints were based on negligence, strict liability, and breach of warranty. The plaintiffs alleged that they were exposed to poisonous fumes and vapors which caused severe personal injuries or death for which they sought damages. The defendants filed a third-party complaint against the employer seeking indemnification and contribution and contending, inter alia, that the employer breached a duty owed them to use the chemicals in accordance with the warnings and instructions supplied to it, that the employer mixed and combined the chemicals in a manner not reasonably foreseeable by the defendants, and that it delayed the implementation of health and safety measures. The defendants further rely upon the existence of a “special legal relationship” to claim indemnification. The employer moved to dismiss the third-party complaints. The court held that the defendants were not entitled to contribution from the employer, even if negligent, in view of the exclusive liability of the employer under workers' compensation laws. The court also concluded that the defendants did not stand in that type of special legal relationship to the employer so as to entitled them to indemnification. The court found that the defendants owed to the plaintiff employees a duty to take reasonable measures to warn them of any latent defects in the products, that any liability on the defendants' part would depend on whether they breached their duty and whether any such breach was a proximate cause of the plaintiffs' injuries, and that the defendants would not be held accountable for anything the employer did or did not do. Therefore, the court held, inter alia, that the defendants were not entitled to contribution or indemnity from the employer. Arcell v. Ashland Chemical Co., Inc., 152 N.J.Super. 471, 378 A.2d 53, 65.

N.M.

N.M.2007. Cit. in sup. (general cite), quot. in sup. Successor of mineral lessee sued successor of mineral sublessee, seeking to quiet title to certain water rights allegedly associated with plaintiff's mining claims. The trial court decreed title in the subject water rights quieted in plaintiff's name against any and all adverse claims, and the court of appeals affirmed, finding that defendant's predecessor developed the water rights as agent of plaintiff's predecessor. Reversing, this court held, inter alia, that the court of appeals incorrectly applied agency principles to the mining lease. The court pointed out that mineral leases generally did not create a fiduciary relationship between lessor and lessee; rather, mineral-lease relationships were purely contractual in nature. Hydro Resources Corp. v. Gray, 2007-NMSC-061, 143 N.M. 142, 173 P.3d 749, 759, 760.

N.M.1995. Com. (e) quot. in disc. A Texas-based borrower corporation, its New Mexico-based parent, and New Mexico-based shareholders of the parent sued a Texas bank, alleging breach of contract to assist the borrower in the restructuring of
its financial obligations. Trial court granted bank partial summary judgment, dismissed the Texas corporation's claim on the basis of forum non conveniens, and sanctioned plaintiffs for intimidating witnesses from appearing at scheduled depositions. Plaintiffs alleged that the sanctions were unjust because the court found that they and their attorneys had acted ethically and that the intimidation was caused by the renegade acts of their attorney's agent. This court affirmed in part, holding, inter alia, that sanctions were justified, because a principal is liable for the wrongful acts of his subagent committed within the scope of the agency relationship. Marchman v. NCNB Texas Nat. Bank, 120 N.M. 74, 898 P.2d 709, 727.

N.M. 1962. Sec. cit. and com. (e) quot. in part in sup. In a suit for damages from negligent operation of auto by defendant agent, defendant principal is not liable for the agent's actions where agent was paid on a commission basis, chose his hours and place of work, used his own car, was given $5.00 expense money for each night on the road, occasionally took orders for other companies besides principal, and where principal could have terminated employment at any time. Romero v. Shelton, 70 N.M. 425, 374 P.2d 301, 303, 304.

N.M.App. 2001. Quot. in sup. Resident plaintiff corporation sued nonresident defendant corporation, alleging civil conspiracy and tortious interference with a business opportunity. The trial court denied defendant's motion to dismiss for lack of personal jurisdiction. Affirming, this court held, inter alia, that shareholder who was sent by defendants to New Mexico for negotiations was considered defendant's agent for personal-jurisdiction purposes. Santa Fe Technologies, Inc. v. Argus Networks, Inc., 131 N.M. 772, 42 P.3d 1221, 1231.

N.M.App. 1995. Cit. in disc. Personal representative of estate of woman who died following three same-day visits to hospital emergency room sued hospital, alleging that it was vicariously liable for the treating physician's negligence. Plaintiff argued that under the doctrine of apparent authority the physician was defendant's agent, even though he was provided to defendant by a separate entity and labeled an independent contractor. Reversing the trial court's grant of summary judgment for defendant and remanding, this court held that despite the absence of an express agency agreement between defendant and the physician, decedent's view of defendant as the full-service emergency facility it held itself out to be justified her belief that defendant, not a specific doctor, was responsible for her care. Houghland v. Grant, 119 N.M. 422, 891 P.2d 563, 568.

N.Y. 2003. Quot. in case quot. in sup. Plaintiff sued city school construction authority and contractor to recover damages for injuries he allegedly sustained when piece of concrete fell from classroom wall during school-renovation project. Denying contractor summary judgment, the court held that fact issues existed as to whether contractor was an independent contractor or an agent entitled to benefit of one-year statute of limitations for proceedings against authority's agents. Marmolejo v. New York School Construction Authority, 195 Misc.2d 708, 711, 761 N.Y.S.2d 772, 774.

N.Y. 1979. Cit. in diss. op. Plaintiff, a real estate broker brought an action to recover a commission, and attempted to commence an action against the defendant buyer by serving a copy of the summons upon a corporation, one of the joint venturers. The lower court denied a motion to dismiss the defense of lack of personal jurisdiction, and thereupon dismissed the complaint against the defendant. On appeal, the court reversed, holding that where service of the summons was made upon the secretary-receptionist of the joint venture, who told the process server that she was authorized to accept it, service was proper, notwithstanding the claim that service was not in accordance with a statute providing that service shall be made upon a corporation by delivering a summons to an officer, director, cashier, or any agent authorized by appointment or by law to receive service. The dissent would affirm the lower court, holding that because plaintiff chose to obtain jurisdiction over the defendant joint venture by serving one of the corporate joint venturers, it was required to effectuate service upon that corporation pursuant to the service
requirements of the state statute, and that service upon the secretary-receptionist was improper. The secretary-receptionist was not an officer, director, cashier, or assistant cashier of the joint venture, nor was she either a general or managing agent or any other agent authorized by appointment to receive service. She was a receptionist and typist whose job it was to answer the telephone and perform secretarial services for persons employed in the office of the corporation. There was no showing that she had the power to act on behalf of the corporation in its business dealings or that she was clocked with discretion to act on behalf of the corporation, which is the hallmark of an agent. The dissent also noted that the corporation did not acquiesce in the unauthorized receipt of process or ratify the acceptance of the summons. “In fact respondent has specifically moved to dismiss upon the grounds that her receipt of the summons was unauthorized.” Sullivan Rlty. Organ. v. Syart Trading Corp., 68 A.D.2d 756, 417 N.Y.S.2d 976, 980.

N.Y. 1978. Cit. in disc. Appeal by defendant, who was convicted of the illegal possession of cocaine, charging that the agency instruction, given as to a sale count, was equally applicable to the possession count. Defendant was a barmaid who, at the request for some cocaine by an undercover police officer, took the officer's $175, left the bar, returned with the cocaine in a clear plastic bag, and after handing the cocaine to the officer asked him for some compensation for her part in the transaction. He handed her $20. The court affirmed the lower court's conviction, holding that the crime of unauthorized possession of contraband is a crime per se, and that a statutory health law that exempts employees as agents of persons lawfully in possession of contraband, or persons whose possession is for the purpose of aiding public officers in performing their official duties was inapplicable to defendant as she had no knowledge of the agent's status or the nature of his activity. People v. Sierra, 45 N.Y.2d 56, 407 N.Y.S.2d 669, 673, 379 N.E.2d 196.

N.Y.Sup.Ct.App.Div. 2007. Cit. in sup. Consultant sued client to enforce payment of a fee allegedly due pursuant to a consulting-services agreement involving the management of corporations in which client was the majority shareholder. The trial court, inter alia, denied plaintiff's summary-judgment motion to dismiss defendant's faithless-agent defenses and counterclaims that were based on plaintiff's alleged defrauding of the corporations. Affirming this portion of the trial court's order, this court held that, although the consulting agreement that gave rise to the agency here was between plaintiff and defendant, and not between plaintiff and the corporations, plaintiff's alleged lack of a duty to defendant was not dispositive; it could not be determined as a matter of law that it was not the parties' intent that consulting services be provided to the corporations as well as to client and, consequently, that plaintiff's alleged faithlessness was not to its principal. G.K. Alan Assoc., Inc. v. Lazzari, 44 A.D.3d 95, 101, 116, 749 N.Y.S.2d 216, 223, affirmed 10 N.Y.3d 941, 862 N.Y.S.2d 855, 893 N.E.2d 133 (2008).

N.Y.Sup.Ct.App.Div. 2002. Subsec. (1) cit. in disc. Investors sued investment company for fraud, alleging that they were defrauded by defendant's agent, beginning while agent was employed by defendant and continuing after defendant terminated him. The trial court dismissed the complaint. Affirming as modified, this court held, inter alia, that defendant could be held liable on a theory of apparent authority for tortious and even criminal acts agent perpetrated solely for his own benefit. Parlato v. Equitable Life Assur. Soc. of U.S., 299 A.D.2d 108, 113, 749 N.Y.S.2d 216, 221, 223.

N.Y.Sup.Ct.App.Div. 1997. Cit. in disc. Importer of telephones sued its former partner and distributor of the phones, among others, for breach of contract and breach of fiduciary duty in connection with defendant's failure to comply with the terms of certain sales agreements. The trial court entered judgment on a jury verdict for defendant. Vacating the judgment, reversing, and remanding, this court held, in part, that defendant was plaintiff's agent for purposes of selling the phones on a commission basis, that plaintiff was also an intended third-party beneficiary of agreements between defendant and its buyer, and that the lower court erred by refusing to submit to the jury the issue of whether defendant and buyer conspired to defraud plaintiff by reducing the purchase price of the phones. Pensee Associates v. Quon Industries, 241 A.D.2d 354, 660 N.Y.S.2d 563, 567.
N.Y.Sup.Ct.App.Div. 1993. Cit. in disc. A passenger in a rented van and his father sued the driver, who was also the father's son, and others for personal injuries sustained when the driver stopped suddenly; the defendants counterclaimed against the father for contribution and indemnity. This court, modifying the trial court's order dismissing the counterclaims and affirming, held that, as the father had asked the driver/son to rent the van to move the father's furniture and had given him a credit card to rent the van, the driver/son was the father's agent and could counterclaim for contribution and indemnity. Maurillo v. Park Slope U-Haul, 194 A.D.2d 142, 146, 606 N.Y.S.2d 243, 246.

N.Y.Sup.Ct.App.Div. 1992. Subsec. (1) cit. in sup. An investor purchased shares of stock in a thoroughbred breeding corporation, and after refusing to purchase more shares and demanding the sale of his previously purchased stock, investor received confirmation of his purchase of additional sales from his brokerage firm. Investor sued the brokerage firm, the individual broker, and the breeding corporation and its chairperson, alleging breach of contract, conversion, and fraud. Trial court partially dismissed, rejecting plaintiff's breach of contract claim. Affirming in part, this court held, inter alia, that there was no evidence of any contractual relationship between plaintiff and the breeding corporation. The court reasoned that liability could not be imputed to the breeding corporation based upon its alleged agency relationship with brokerage firm because there was no evidence that brokerage firm was acting for the breeding corporation and subject to its control when making the alleged unauthorized sales. Halford v. First Jersey Securities, 182 A.D.2d 1003, 583 N.Y.S.2d 527, 529.

N.Y.Sup.Ct.App.Div. 1987. Cit. in disc. A seller sued homeowners and a renovator to recover the balance due on goods sold to the renovator and delivered to the homeowners' residence. The trial court severed the actions and granted summary judgment to the plaintiff against the renovator. Affirming, this court held that the renovator was liable for the balance due on the merchandise delivered to the homeowners' residence because according to the terms of the contract entered into by the defendants, the renovator was acting as an independent contractor rather than as the homeowners' agent when it purchased the goods from the plaintiff. E.B.A. Wholesale v. S.B. Mechanical Corp., 127 A.D.2d 737, 512 N.Y.S.2d 130, 131.

N.Y.Sup.Ct.App.Div. 1987. Cit. in sup. A wholly owned subsidiary of a television transmitting company sued a distributor of a pay television channel, claiming that the defendant distributor breached a contract with the plaintiff by failing to notify the plaintiff in the requisite period of the termination of an alleged contract. The trial court awarded damages to the plaintiff and dismissed the defendant's counterclaim and third-party complaint against the plaintiff's owner. This court reversed and remitted, stating that the defendant delivered an effective notice of termination to the plaintiff's authorized or apparent agent, precluding any claim of liability against the defendant. Empire Communications Consultants, Inc. v. Pay TV, 126 A.D.2d 598, 510 N.Y.S.2d 893, 895, appeal dismissed 69 N.Y.2d 1037, 517 N.Y.S.2d 1030, 511 N.E.2d 89 (1987).

N.Y.Sup.Ct.App.Div. 1981. Cit. in disc. Former wife brought action against her former husband seeking to set aside, upon grounds of fraud, an agreement which had the effect of modifying the child support and alimony provisions of an Illinois divorce decree. The lower court entered an order which denied the husband's motion to dismiss the wife's complaint upon the grounds of lack of personal jurisdiction and the bar of the statute of limitations, and the husband appealed. The appellate court held, inter alia, that the husband, who was under a duty to disclose to his attorney his true income and who did not disclose to his attorney his true income, was liable for the misrepresentation of his attorney to the wife, with respect to his income, regardless of whether the attorney made the misrepresentations innocently. The court found that the attorney was the husband's agent and not an independent contractor and that, as the master, the husband may be liable for the misrepresentation of his servant under the theory enunciated in Section 256 of the Restatement (Second) of Agency. Accordingly, the lower court's judgment was affirmed. Abbate v. Abbate, 82 A.D.2d 368, 441 N.Y.S.2d 506, 515.

N.Y.Sup.Ct.App.Div. 1979. Com. on subsec. (1) cit. in diss. op. in sup. Plaintiff brought this action to recover alleged commissions earned as a real estate broker, and was awarded such commissions by the trial court. Defendant vendor appealed, conceding that although there was a provision in the contract of sale between defendant vendor and the buyer, acknowledging the broker's services and exonerating the buyer from paying the commissions, there was no actual contact between defendant and buyer.
vendor and plaintiff broker. The court rejected defendant's argument and held that there was sufficient credible evidence in the record to support the finding that the plaintiff was the procuring cause of the sale, and that the seller was under an obligation to check the contract of sale before accepting an offer from a potential buyer. The dissent argued that such holding was erroneous and maintained that the only ways in which the owner could have been liable to the broker was if the owner had employed him, the owner had an authorized agent who employed him, or the owner had clothed another with apparent authority to employ him sufficient to bind the owner. Since all parties conceded that the owner did not employ the broker, and the record was devoid of any proof that an agency relationship existed between the owner and any party with whom the broker had dealt, neither of the first two exceptions was applicable. Lastly, in order for the defense of apparent authority to be applicable, the true principal must have adopted the transaction or claimed its fruits. Clearly, the vendor never adopted the transaction herein. Therefore, in the dissent's view, the trial court's award of a judgment to the plaintiff was an error of law and should have been reversed. Greene v. Hellman, 73 A.D.2d 826, 423 N.Y.S.2d 754, 756, order reversed 51 N.Y.2d 197, 433 N.Y.S.2d 75, 412 N.E.2d 1301 (1980).

N.Y.Sup.Ct.App.Div. 1979. Cit. in disc. Suit was brought against a title insurance company to recover damages under the policy and for negligence. Plaintiff entered into a contract with another to purchase a certain warehouse property. After title closed and defendant issued its policy to the plaintiff, it was discovered that the defendant's title search had failed to reveal that two of the three streets, which provided access to the property, had been condemned by the township years earlier. The defendant responded that plaintiff's agent had pre-closing knowledge of the town's condemnation action which it failed to disclose. The plaintiff corporation was formed when a group of investors associated with an attorney, who had knowledge of the town's condemnation, incorporated while the attorney was negotiating to purchase the property in question. On appeal from the trial court's dismissal of their complaint, the plaintiff argued that it cannot be held to have suppressed any material knowledge because the attorney was merely a minority stockholder and not an officer of the corporation at closing, and his knowledge was not imputable to it. The court held that the attorney was the plaintiff's agent, and his knowledge must be imputed to it. The court remarked that agency is a fiduciary relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf. The court stated that an agent holds the power to alter legal relationships between his principal and third parties. L. Smirlock Realty v. Title Guaranty Co., 70 A.D.2d 455, 421 N.Y.S.2d 232, 238.

N.Y.Sup.Ct. 1977. Quot. in sup. Plaintiff, an independent insurance agent, determined that it could no longer handle certain automobile insurance policy renewals for brokers and their insureds. The plaintiff informed the defendant of its intention and was advised that a section of the New York Insurance Law prohibited the contemplated action and mandated that the independent agent renew the automobile insurance policies or be subject to the penalties set forth. The plaintiff sought a judgment declaring that such section of the New York Insurance Law allows an independent insurance agent to refuse to handle the renewal of automobile insurance policies for brokers and insureds, and that such section does not require an independent agent to handle renewals of automobile insurance. The court held that an independent insurance agent, acting as agent for insurers pursuant to contract, was bound by the authority and statutory duties imposed upon its principals as long as it maintained its contractual relationship, and that, under a statute prohibiting insurers from refusing to renew certain insurance policies except for reasons not at issue, an independent insurance agent could not stand in a more favorable position than its principals and was bound by such statute. The court also found that insurance carriers and their agents were required by statute and regulation to act in the interest of the public and to accept the good with the bad and that neither insurers nor their agents could pick and choose the lines of insurance they wished to pursue. Andrew J. Corsa & Son, Inc. v. Harnett, 92 Misc.2d 569, 400 N.Y.S.2d 1009, 1012.

N.Y.Surr. 1960. Cit. in sup. In discovery proceeding by executors of decedent's estate, instituted for the purpose of recovering two items of jewelry of substantial value, evidence established that decedent made a valid inter vivos gift of the jewelry to her
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sister, her sole surviving blood relative, even though the jewelry at the time of the gift was in possession of a third party who received instructions given by decedent through A to transfer possession to decedent's sister, and even though such transfer did not occur before decedent's death, because the gift was completed through the agency of A, who acted as an agent of both the donor and the donee. In re Wilson's Estate, 26 Misc.2d 839, 206 N.Y.S.2d 323, 327.

N.Y.Dist.Ct.

N.Y.Dist.Ct. 1968. Com. (e) quot. in part in sup. Plaintiffs, the owner and the driver of an automobile proceeding behind that of the defendant, sued the latter in negligence for damages to their auto occurring when a rear wheel and tire suddenly became detached from the defendant's auto, rolled into the path of the plaintiff's auto, and were struck by it. The plaintiffs based their action on the theory of res ipsa loquitur. The court held that, even if the wheel's and tire's detachment were due to negligent installation and not negligent maintenance, the seller of the tire, who installed the tire, was under the control of the defendant for that operation, was hence his agent for that operation. Although he could be sued on a third-party complaint if he were at fault, the defendant was responsible for his negligence vis-a-vis the plaintiffs. Thus, judgment was rendered for the plaintiffs. Spica v. Connor, 56 Misc.2d 364, 288 N.Y.S.2d 719, 723.

N.C.App.

N.C.App. 1987. Cit. in case quot. in disc. A motel guest who was assaulted on the motel premises sued the franchisor, alleging that the defendant was liable for the negligent failure to provide adequate security on the motel premises. The defendant presented evidence that the motel was operated by a franchisee that was merely licensed to use the franchisor's name and independently controlled the security on the premises. The trial court granted the defendant's motion for summary judgment. Affirming, this court held that there was no evidence establishing the defendant as having any control over the daily operation of the motel, and thus no principal-agent relationship existed between the defendant and the licensee. The court stated that there was no showing that the defendant consented to the licensee acting on its behalf and subject to its control. Hayman v. Ramada Inn, Inc., 86 N.C.App. 274, 357 S.E.2d 394, 397.

N.C.App. 1984. Cit. in sup. Car rental agency brought declaratory judgment action to determine its insurer's liability relative to an automobile accident involving the daughter of plaintiff's licensee. Trial court found for plaintiff, and defendant appealed. This court affirmed, holding that in driving the vehicle to lessee's place of employment, the daughter was acting on his behalf and subject to his control. Since the daughter was the lessee's agent, plaintiff's coverage extended to her. American Tours, Inc. v. Liberty Mut. Ins. Co., 68 N.C.App. 668, 316 S.E.2d 105, 107.

N.C.App. 1983. Subsec. (1) quot. in part in disc. The plaintiff brought this action seeking workers' compensation benefits from both his proprietorship and from a corporation. The state workers' compensation board rejected the plaintiff's claims, the plaintiff appealed, and this court found that, because of the length of the business relationship and the control exerted, the plaintiff was an employee covered under the defendant corporation's insurance. This court rejected, however, the plaintiff's contention that the proprietorship's accountant was an agent of the proprietorship's insurer. By establishing such an agency the plaintiff sought to prove insurance coverage for himself on the basis of his instructions to his accountant, the purported agent, to obtain the coverage. This court found no evidence that the accountant acted on the insurer's behalf or was subject to its control. The accountant was instead an agent of the plaintiff under these tests. Carter v. Frank Shelton, Inc., 62 N.C.App. 378, 303 S.E.2d 184, 189, review denied 310 N.C. 476, 312 S.E.2d 883 (1984).

N.C.App. 1983. Subsec. (1) quot. in disc. The plaintiffs brought an action to recover a deposit made on an unsuccessful loan commitment application. The trial court entered judgment n.o.v. for the defendant and the plaintiffs appealed. The court of appeals reversed and remanded. Evidence was sufficient to support a finding that an agency relationship existed between the
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plaintiffs and the defendant so that the defendant agent was liable to the plaintiffs for the acts of its subagent. Because the defendant was the plaintiffs’ agent, it was liable either for the entire amount of the deposit on the loan application or not at all, and the trial court erred in instructing amount other than the amount of 39. the deposit. Colony Associates v. Fred L. Clapp & Co., 300 S.E.2d 37, the jury that they could find in an

N.D.

N.D. 1992. Cit. in disc. A real estate broker sued the former owner of a building for a sale commission. This court, affirming judgment for the broker, held that the broker's agreement gave the broker a right to commission for sale of property to lessees procured by the broker even though the property was sold first to a third party who then sold the property to the lessees. Coldwell Banker First Realty, Inc. v. Kane, 491 N.W.2d 716, 720.

Ohio

Ohio, 1986. Cit. in sup., com. (b) quot. in conc. op. During an intercollegiate game, a student athlete was injured by a player of the opposing team. The student sued the opponent's university under the doctrine of respondeat superior. The trial court awarded the university summary judgment, holding that no agency relationship existed between the opposing player and the university. The intermediate appellate court reversed, holding that genuine issues of fact existed on the question of agency. Reversing, this court held that there was no agency relationship between the player who inflicted the injury and the university, because the elements of control, contract, and economic benefit were absent. The concurring opinion argued that the majority's holding was too narrow because, generally, when student athletes played for schools, there was no contractual relationship and thus no principal-servant relationship. Hanson v. Kynast, 24 Ohio St.3d 171, 494 N.E.2d 1091, 1094, 1097, 1098.

Ohio, 1979. Cit. in sup. and cons. (a) and (b) cit. in sup. The plaintiffs instituted an action against a savings and loan association for the defendant's failure to disclose the presence of termites on property being purchased by the plaintiffs. The plaintiffs claimed that this constituted deceit and a wanton and reckless disregard for the plaintiffs' rights. The trial court entered judgment on the verdict for the plaintiffs. This court affirmed in part and reversed in part and held that the defendant has assumed the role of the plaintiffs' agent with respect to the termite inspection and from that relationship the defendant had a duty to inform the plaintiffs of the results of the inspection. The defendant breached that duty and was therefore liable for the damages which resulted. Miles v. Perpetual Sav. & Loan, 58 Ohio St.2d 93, 388 N.E.2d 1364, 1366, 12 O.O.3d 106.

Ohio App.

Ohio App. 1999. Quot. in disc. After falling from his wheelchair while being helped down the steps of a community-access television channel's building, a former channel employee sued the city, the channel, and others for handicap discrimination, among other claims. Trial court granted city summary judgment and granted channel a new trial after a jury found for plaintiff on his handicap-discrimination claim. This court affirmed in part, holding, inter alia, that trial court properly granted city summary judgment because the channel was not city's agent and city was not plaintiff's employer. City had no control over the manner in which the channel performed services or over channel's employees, and the channel's board of trustees had ultimate responsibility for its programs and staff actions. Berge v. Columbus Community Cable Access, 136 Ohio App.3d 281, 736 N.E.2d 517, 531.

Ohio App. 1997. Cit. in disc. The real estate commission suspended a broker's real estate license for a period of six months, finding the broker guilty of misconduct. The trial court affirmed the suspension. This court reversed, holding that the administrative regulation pertaining to agency disclosure did not prohibit the conduct that formed the basis of the charge against
the broker. Even though the broker was a licensed broker, he was not acting as agent for the purchaser when he presented his offer to the sellers. Since the broker was acting as the purchaser, not an agent for the purchaser, he was not obligated to present an agency disclosure form to himself. Lewis v. Ohio Real Estate Comm., 121 Ohio App.3d 23, 698 N.E.2d 1023, 1025.

Ohio Com.Pl.

Ohio Com.Pl.1985. Subsec. (1) cit. in disc. A misdiagnosis of an injury to a patient's arm resulted in permanent injury. The patient sued the hospital and her personal physician for malpractice when they failed to notify her of the misdiagnosis, alleging that a principal-agent relationship arose between the defendants when the hospital entrusted its responsibility for correcting its misdiagnosis to the personal physician. This court denied the plaintiff's motion for summary judgment, holding that the issue of the hospital's liability for the physician's alleged negligence must await testimony about the hospital's duty of care under the circumstances because it was a factual issue. The court stated that the relationship of agent to principal was a fiduciary one in which the agent consented to act on behalf and under the control of the principal when the principal had engaged him to do so. Brinson v. Bethesda Hosp., Inc., 29 Ohio Misc.2d 8, 504 N.E.2d 496, 500.

Ohio Prob.

Ohio Prob.1965. Sec. quot. and com. (e) cit. in sup. Testator a manufacturer's representative, willed his business to his wife and daughter. His business, an agency, terminated upon his death and was therefore not subject to transfer. Therefore, the physical assets of his business passed solely to his wife under the remainder clause of his will. Bowman v. Bowman, 3 Ohio Misc. 161, 32 Ohio Ops.2d 473, 210 N.E.2d 920, 923.

Okl.

Okl.2004. Quot. in ftn. to diss. op. After third-party administrator for self-funded county health-insurance program denied insured's claim for emergency medical treatment and tonsillectomy, insured sued administrator for breach of contract and breach of tort duty of good faith and fair dealing. Trial court entered judgment for administrator, holding that administrator was not in privity with insured. Appeals court affirmed. This court vacated appeals court and affirmed trial court, holding that administrator did not owe insured a duty of good faith and fair dealing, since it did not act sufficiently like an insurer. Dissent argued that trial court should conduct fact-based inquiry to determine whether administrator functioned as county's nonemployee agent or as independent contractor. If agency relationship existed between administrator and county, administrator could be liable for bad-faith tort. Wathor v. Mutual Assur. Adm'r's, Inc., 2004 OK 2, 87 P.3d 559, 566-567.

Okl.2003. Quot. in ftn. in sup. Sole named insured under homeowner's policy, as cotenant and owner of undivided fractional interest in home, filed claim with insurer for policy's coverage limits after fire destroyed home. Insurer refused to pay insured more than the value of her legal estate in the property, invoking insurable-interest requirement. Insured brought suit alleging breach of contract and breach of implied duty of good faith and fair dealing. District court judge certified question of how Oklahoma law would quantify insured's insurable interest in the home. This court held that insurable interest of cotenant in common could exceed the value of her legal interest in property where cotenant acted as managing agent for joint owners, five of whom were minors. Delk v. Markel American Ins. Co., 81 P.3d 629, 639.

Okl.1998. Cit. in disc. Employer sued its insurance broker for, in part, breach of fiduciary duty in connection with defendant's procurement for plaintiff of a stop-loss medical insurance policy. Affirming the trial court's entry of judgment for plaintiff, this court held, inter alia, that the claim of defendant that no fiduciary relationship existed between it and plaintiff was without merit,
since, as plaintiff's agent, defendant owed plaintiff a fiduciary duty with respect to procuring an insurance policy according to plaintiff's wishes. A.G. Edwards & Sons, Inc. v. Drew, 978 S.W.2d 386, 394.

Okl. 1998. Com. (f) quot. in ftn. After out-of-possession purchaser of real property acquired at a tax resale brought an action for quiet title and ejectment, spousal possessors counterclaimed to cancel the resale tax deed and to quiet their title in the land, based on county treasurer's alleged failure to comply with statutory presale notice requirements. The trial court granted summary judgment for purchaser, and the court of appeals affirmed. Vacating the opinion of the court of appeals and affirming in part, reversing in part, and remanding the judgment of the trial court, this court held, inter alia, that service of statutory presale notice on wife-possessor by delivery to her husband satisfied the fundamental law's due process standards. The court noted that wife's challenge to service was not governed by agency principles but by constitutional norms. Shamblin v. Beasley, 967 P.2d 1200, 1208.

Okl. 1995. Quot. in ftn. Named insured and owner of real property that was destroyed by fire sued insurer for bad-faith refusal to pay their claim and brought a negligence claim against insurance agent for procuring the policy in insured's name only. The trial court granted summary judgment for defendants, and the court of appeals affirmed in part, reversed in part, and remanded. Modifying in part, reversing in part, and remanding, this court held, inter alia, that a genuine issue of material fact precluding summary judgment on the issue of real property owner's standing to sue existed as to whether named insured was owner's agent or an officious volunteer when she purchased coverage for the property. The court said that if owner was named insured's disclosed or undisclosed principal and named insured was authorized to secure fire coverage for the premises on owner's behalf, any injury to the property or harm from the agent's (named insured's) transaction could be redressed ex delicto. Gray v. Holman, 909 P.2d 776, 779.

Okl. 1989. Cit. in ftn., com. on subsec. (1) cit. in ftn. After a camera store employee was questioned about a theft he reported to the local police department, a police detective telephoned the employee's bank and spoke with an employee who gave the officer access to the employee's account. An embezzlement charge against the employee was dismissed after the trial court determined that the detective had engaged in an illegal search under the Financial Privacy Act. The employee then sued the bank and its employee, alleging they had willfully, recklessly, and wantonly disregarded his right to financial privacy under the Act. The trial court granted the defendants' motion for summary judgment, and the intermediate appellate court affirmed. This court vacated the intermediate appellate court's judgment and reversed and remanded the decision of the trial court, holding that a police officer is a "government authority" under the Act, and that the release of information by the bank employee violated the Act because financial institutions cannot disclose financial records to a government authority unless the customer has given written consent. The court stated that police officers who directly exercise the power of the state are government agents. Haworth v. Central Nat. Bank, 769 P.2d 740, 743.

Okl. 1988. Quot. in case cit. in ftn. A state tax commission held that a non-Indian corporation operating bingo games on an Indian tribe's reservation was a vendor liable for the collection and remittance of the sales tax from the bingo operation. Affirming, this court held that the corporation was not an agent of the tribe and was not immune from liability for collecting and remitting the sales tax. The court said that no agency relationship existed because the corporation held itself out as the operator of the bingo games and the tribe lacked control over the corporation. Enterprise Mgmt. Consul. v. Tax Com'n, 768 P.2d 359, 362.


Okl.App. 1991. Subsec. (1) cit. in disc. Travelers sued their travel agent to recover money they paid for a trip to Hawaii after the company sponsoring the trip went bankrupt. The trial court entered judgment for the plaintiffs. Affirming, this court stated that the defendant was the plaintiffs' agent and, as such, had a duty to make reasonable efforts to give the plaintiffs relevant information about the trip and to use due diligence in making reasonable inquiry into the financial stability of the company.
sponsoring the trip. The court said that, if the defendant knew or with the use of reasonable inquiry could have known that the company was on the verge of bankruptcy, she had a duty to disclose this information to the plaintiffs when they made their tour selection or at least before they paid for the trip. The court held that the trial court properly found that the plaintiffs made out a prima facie case of liability based on the defendant's failure to fulfill her duties to the plaintiffs. Douglas v. Steele, 816 P.2d 586, 589.

Okl.App.1983. Cit. in sup. A patient who allegedly suffered permanent injuries as a result of an emergency room misdiagnosis brought an action against the hospital at which he had been treated. The trial court granted summary judgment to the hospital, but on appeal this court reversed and remanded. The court ruled that the corporation engaged by the hospital to provide emergency room staffing was not an independent contractor, but was instead an agent of the hospital, since it acted for the benefit of the hospital and was subject to the hospital's control. Smith v. St. Francis Hosp., Inc., 676 P.2d 279, 281.

Okl.Crim.App.1990. Quot. in disc. A concessionaire's contract with a city to collect fees and issue camping and fishing permits specified that the concessionaire was an independent contractor and not an employee. When fees collected were not turned over to the city as required, the concessionaire was charged with embezzlement under a statute that did not expressly include independent contractors but included agents, defined to the jury as one who is given the authority to act for, and in the name of, another. She was convicted by the jury. This court affirmed the conviction, holding that the concessionaire was both an independent contractor and an agent of the city within the meaning of the statute. The court noted that the city had assumed the right to control the concessionaire's conduct, and in performing a municipal function, the concessionaire owed the city loyalty and obedience. Morrison v. State, 792 P.2d 1189, 1191.

Or.2009. Quot. in sup., com. (f) quot. in sup. Passenger who was injured while riding an airport shuttle bus brought negligence action against bus driver and driver's employer, which provided shuttle-bus service under a contract with airport. The trial court granted summary judgment for defendants. The court of appeals affirmed. Reversing and remanding, this court held that defendants failed to demonstrate that plaintiff's only permissible tort action was against airport because they were airport's agents within the meaning of the state tort claims act; the contract did not provide that airport had the right to control the physical manner in which the drivers carried out their driving duties, and thus did not support the conclusion that employer or its employees, including driver, were acting as airport's agents for purposes of imposing vicarious liability on airport for their alleged negligence. Vaughn v. First Transit, Inc., 346 Or. 128, 135, 140, 206 P.3d 181, 186, 188.

Or.App.2009. Cit. in case quot. in disc. Motorcyclist brought a negligence action against pizza delivery driver, pizza franchisee that employed driver, and franchisor, alleging that he was injured when his motorcycle collided with a vehicle operated by driver. The trial court granted franchisor's motion for summary judgment, and entered a limited judgment for franchisor. Affirming, this court held that the facts were insufficient to establish franchisor's vicarious liability for the negligent driving of franchisee's employee. The court reasoned that franchisee was, at most, a nonemployee agent of franchisor, and that, under the franchise agreement, franchisor did not have the right to control the physical details of the conduct that injured plaintiff—namely, the manner in which driver carried out his driving duties for franchisee. Viado v. Domino's Pizza, LLC, 230 Or.App. 531, 533, 217 P.3d 199, 201.
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Or.App. 2007. Quot. in case quot. in sup. Buyer of baling machine sued seller for breach of an express warranty, based on a telephone conversation in which an unidentified representative of seller's allegedly represented to buyer's principal officer that the machine was suitable for outdoor operation. The trial court granted summary judgment for seller. Affirming, this court held, inter alia, that because plaintiff failed to provide any evidence as to the identity or job responsibilities of the unidentified representative of seller, or as to how and in what context buyer's principal officer communicated with the representative, it could not be inferred circumstantially that the representative had actual or apparent authority, or acted within the scope of his authority in making the alleged representation; thus, representative's statements were inadmissible hearsay. East County Recycling, Inc. v. Pneumatic Const., Inc., 214 Or.App. 573, 583, 167 P.3d 464, 470.

Or.App. 2005. Quot. in case quot. in disc. Guardian for his disabled brother sued church congregation and church elder and his wife for infliction of emotional distress, wrongful use of civil proceedings, and vicarious liability, alleging that elder and wife, while acting under congregation's direction and control, coerced brother to bring guardianship action to have plaintiff removed as guardian by convincing him that plaintiff stole money from him, abused him, and was Satan's instrument. On remand, trial court granted defendants summary judgment. This court affirmed in part, holding that vicarious-liability claim failed, since there was no evidence that elder and wife acted as agents under congregation's direction and control. There was no discussion of efforts to pursue guardianship action at any congregation meeting. Checkley v. Boyd, 198 Or.App. 110, 107 P.3d 651, 665.


Or.App. 2001. Quot. in case quot. in disc. After biological father initiated filiation proceedings, adoptive parents filed an adoption petition. After consolidating the two suits, trial court granted adoptive parents a directed verdict, which resulted in entry of an adoption judgment. Vacating the adoption judgment and remanding, this court held, inter alia, that because an international adoption services agency acted as agent for adoptive parents in placing the child with them for adoption, the agency's fraudulent acts toward father were attributable to adoptive parents for purposes of the Oregon adoption statute. Agency's actions were subject to adoptive parents' control, as they had the choice of whether to proceed with any placement or adoption facilitated by agency. Gruett v. Nesbitt, 172 Or.App. 113, 129, 17 P.3d 1090, 1098.

Or.App. 1994. Subsec. (1) quot. generally in case quot. in sup. Buyer of trailer equipped with hydraulic loading system sued the system's manufacturer for rescission of the trailer purchase agreement on theory that seller was manufacturer's agent, inter alia. Affirming the trial court's entry of summary judgment for defendant, this court held that evidence that seller sold manufacturer's product, that it received manufacturer's samples and price sheets, and that its representatives toured manufacturer's plant had nothing to do with manufacturer's right to consent to an agency relationship or its right to control seller, and permitted no reasonable inferences concerning either of those essential elements of an agency relationship. Larrison v. Moving Floors, Inc., 127 Or.App. 720, 873 P.2d 1092, 1094.

Or.App. 1991. Quot. in disc. A lumber broker agreed with a manufacturer that it would purchase raw materials for the manufacturer's plant and that the manufacturer's general manager would place the orders for lumber with a lumber mill operator. After the manufacturer exceeded the broker's credit limit, the broker decided it would not buy any more lumber for the plant. The manufacturer's general manager, however, placed seven more orders with the mill without telling the mill operators that the broker would no longer pay. The mill operators subsequently sued the broker to recover payment due for four of those seven orders. The trial court directed a verdict for the defendant, finding no evidence to indicate that the manufacturer's general manager had actual or apparent authority to bind the defendant. Reversing and remanding, this court held, inter alia, that a
reasonable jury could find that the manufacturer's general manager had actual authority. Citing evidence that the defendant allowed him to place orders for lumber for which the defendant intended to be bound for payment, the court said that the jury could find manifestations of consent from the defendant that the manufacturer's general manager act for it in buying the lumber. Rough & Ready Lumber v. Blue Sky F. Prod., 105 Or.App. 227, 804 P.2d 498, 500.

Or.App. 1990. Com. (f) cit. in case quot. in sup. A doctor at an emergency room of a public hospital treated a minor for an injury to his groin. Three years later, the former patient sued the doctor and the hospital for malpractice, claiming that the doctor's misdiagnosis resulted in the removal of a testicle. The trial court dismissed the case on the ground that the doctor, as the ostensible, if not actual, agent of the public hospital was entitled to immunity under the Oregon Tort Claims Act. Reversing, this court held that the statute's purpose was consistent with extending the statute's immunity to agents of a public hospital. The court stated that only actual agents could receive the benefits of the statute and remanded for a determination of whether the doctor was an actual agent and subject to the control of the hospital. Giese v. Bay Area Health Dist., 101 Or.App. 410, 790 P.2d 1198, 1199, review denied 310 Or. 281, 796 P.2d 1206 (1990).

Or.App. 1982. Cit. in sup. The plaintiff, a former member of a religious organization, brought this action against the religious organization and others to recover for intentional infliction of emotional harm and for fraud. The plaintiff's cause of action for outrageous conduct alleged a scheme to gain control of her mind and to force her into a life of service to the defendants, and a course of retaliatory conduct after the plaintiff disassociated herself from the defendant. The plaintiff's fraud cause of action alleged 14 misrepresentations which induced her to pay some $3,000 to the defendants. The jury awarded the plaintiff compensatory and punitive damages on both causes of action. On appeal, the individual defendants argued, inter alia, that none of the statements alleged by the plaintiff were made by any of their agents or employees. This court concluded that the motion of the defendant Church of Scientology of Portland for a directed verdict should have been granted, because the plaintiff had not shown that the other defendants acted as the agents of the Portland organization; it reversed the trial court's judgment on this issue. The court held that the motion of the defendant Mission of Davis and its president for a directed verdict was properly denied, because there was evidence in the record from which a jury could have found that these defendants had made some of the representations or had knowledge of them; it remanded this issue for a new trial. As to the defendant Delphian Foundation, this court reversed the trial court's decision, holding that it could not be held liable for any misrepresentation made by the Mission of Davis, because there was nothing in the record to support an inference that the Delphian Foundation had any right to control the actions of the Mission, despite the fact that both co-existed on the same property and had a common president. On the plaintiff's cause of action for outrageous conduct, this court reversed, holding that there was nothing in the record which constituted conduct beyond the limits of social toleration. Christofferson v. Church of Scientology, Etc., 57 Or.App. 203, 644 P.2d 577, 596, certiorari denied 459 U.S. 1206, 103 S.Ct. 1196, 75 L.Ed.2d 439.

Or.App. 1981. Cit. in disc. The plaintiffs' truck and log loader were insured against casualty loss by the defendant insurer. They were damaged as a result of an accident. The plaintiffs brought an action against the insurer after the insurer refused to settle the plaintiffs' claim, alleging breach of the casualty insurance contract and breach of fiduciary duty. The trial court entered judgment on a jury verdict for the plaintiffs on the breach of fiduciary duty count. The defendant appealed, contending, inter alia, that the trial court erred in denying the defendant's motion to strike the plaintiffs' count for breach of fiduciary duty. The court noted that the plaintiffs' complaint alleged an agency relationship. The court stated that an agreement to act on behalf a principal makes an agent a fiduciary and, if the agent does something wrongful, either knowing it to be wrong, or acting negligently, the principal may recover in an action in tort or in an action in contract. Accordingly, the court held, inter alia, that the trial judge was correct in denying the defendant's motion to strike the claim of breach of a fiduciary duty, and the judgment of the trial court was affirmed. Reeves v. National Hydraulics Co., 53 Or.App. 639, 632 P.2d 1306, 1309.

Or.App. 1980. Quot. in sup. illus. 3 cit. in ftn. in sup. The plaintiff filed an action, seeking to recover damages for personal injuries alleged to have been suffered by her at a social party held at a fraternity house owned by the defendant corporation. The lower court entered judgment of involuntary nonsuit in favor of the defendant, and the plaintiff appealed. On appeal, the
court had to find whether there was sufficient evidence from which the jury could have found that the defendant corporation was liable for the acts of the members of the local fraternity or for its failure to supervise those members. The court noted that the plaintiff had to prove not only that an agency relationship existed between the defendant and the members of the fraternity, but also that the defendant had a right to control the physical details of the members' actions as in the relationship of master and servant. The court held, inter alia, that the evidence, and the inferences to be drawn therefrom, did not show that the defendant had a right to control the actions of the officers and members of the fraternity and, therefore, the defendant could not be held vicariously liable for the negligent acts of the fraternity members. The judgment of the lower court was affirmed. Stein v. Beta Rho Alumni Ass'n, Inc., 49 Or.App. 965, 621 P.2d 632, 636, 637.

Or.App. 1979. Subsec. (1) quot. in disc. An apartment complex resident manager brought an action against mini-warehouse partners, a resident warehouse manager, and her husband for injuries sustained when the husband closed the car door on the apartment manager's head after she had gone to the warehouse to discuss the warehouse manager's son's vandalism at the apartment complex. The lower court granted the warehouse partner's motion for summary judgment, and the apartment manager appealed. On appeal, the court reversed, holding that substantial fact issues, precluding summary judgment, existed as to whether the warehouse manager's husband was the agent of the warehouse partners at the time of the incident and whether, in closing the car door on the apartment manager's head, he was acting within the scope of his authority. Jones v. Herr, 39 Or.App. 937, 594 P.2d 410, 412.

Pa. 2003. Com. (e) quot. in sup. Newspaper owner appealed refusal by county housing authority to disclose a confidential settlement agreement between a former employee and the housing authority's liability insurer in a federal civil-rights action. The trial court found that the agreement was a public record subject to disclosure, and the commonwealth court affirmed. Affirming, this court rejected housing authority's argument that insurer was an independent entity for purposes of the disclosure requirements of the Right-to-Know Act, holding that housing authority and insurer were in an agency relationship, and that a settlement agreement negotiated on behalf of an agency by its agent was a public document. Tribune-Review Pub. Co. v. Westmoreland County Housing Authority, 574 Pa. 661, 833 A.2d 112, 120.

Pa. 2000. Subsec. (1) cit. in case quot. in diss. op., com. (b) quot. in diss. op. and quot. in case quot. in disc. Customers sued tax preparer for, in part, breach of fiduciary duty, alleging that defendant failed to disclose nature of its “Rapid Refund” program as one offering refund anticipation loans (RALs), and that defendant shared fees with bank that provided the RALs. The trial court granted summary judgment for defendant, and the superior court reversed in part. Vacating and remanding, this court held, inter alia, that defendant was not acting as plaintiffs' agent in the RAL transactions, and thus had no fiduciary duty to disclose that it profited from the RALs. A dissent argued that defendant was plaintiffs' agent in facilitating the RALs, and thus had a duty of disclosure. Basile v. H & R Block, Inc., 563 Pa. 359, 761 A.2d 1115, 1120, 1123, on remand 777 A.2d 95 (2001).

Pa. 1989. Subsec. (1) cit. in disc. In one of two unrelated criminal cases where defendants challenged the authority of the attorney general to prosecute, claiming that the requirements of the Attorney's Act were not satisfied, the trial court denied the defendant's motion that challenged the attorney general's power. The intermediate appellate court reversed, and this court affirmed, holding, inter alia, that, where the defendant had not withdrawn his objection to the attorney general's signature on the information, no presumption of the information's validity existed, and that, where the legislature prohibited the attorney general from exercising authority, in the absence of a valid request flowing from a district attorney's lack of resources, either to investigate or to prosecute, or from a potential conflict of interest, the district attorney had no inherent authority to delegate power to the attorney general, who was not a subordinate. Com. v. Khorey, 521 Pa. 1, 555 A.2d 100, 110.
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Pa. 1983. Subsec. (1) cit. in disc. and cit. in diss. op. A man injured in an automobile accident brought garnishment proceedings against the reinsurer of the other driver's insurance company. In affirming an intermediate appellate court ruling for the reinsurer, this court ruled that the reinsurer could not be held liable under agency theory for the bad-faith refusal of the primary insurer to settle, and also ruled that lack of privity barred a direct action against the reinsurer. A dissent argued that the reinsurer should be held liable as the principal of the primary insurer because it had a contractual right to consent to settlements reached by the primary, and had remained silent after learning of a settlement offer by the plaintiff. Reid v. Ruffin, 503 Pa. 458, 469 A.2d 1030, 1033, 1036.

Pa. 1980. Com. (b) cit in disc. The plaintiff wanted to purchase some land so he met with the defendant real estate developer and they agreed that the developer would act on behalf of the plaintiff to purchase some land. The developer was to receive a fifty per cent interest in the motel which was to be built on the property and would receive a lease to operate a restaurant on a portion of the property. The vendor agreed to the sale so that the defendant sent a joint venture agreement to the plaintiff but it did not reflect the agreement as originally agreed. The plaintiff refused to sign the agreement. After further negotiations, a deed from the seller to the defendant limited partnership was recorded. The limited partnership mortgaged the property but the mortgage was eventually foreclosed and the property was sold to persons not parties to this action. The plaintiff sued in order to have a constructive trust imposed on the land and alleged that the developer had breached his agency relationship with the plaintiff. The trial court granted a compulsory nonsuit as to each defendant on the ground that the plaintiff had failed to produce evidence supporting a contract between the plaintiff and the defendant developer. This court found however, that a jury question existed as to the existence of an agency relationship because there was a manifestation by the principal that the agent shall act for him, an acceptance of the undertaking by the agent and an understanding that the principal would be in control. This relationship was breached when the opportunity to purchase the land was offered to the partnership rather than to the plaintiff. The case was therefore remanded for a new trial. Scott v. Purcell, 490 Pa. 169, 415 A.2d 56, 60.

Pa. 1974. Subsec. (1) quot. in part in sup. The plaintiff mortgagors brought a class action against the defendant lending institutions seeking to impose upon them the duty to segregate from their other funds the mortgagors' monthly tax and insurance payments and to pay interest thereon. The plaintiffs also sought a refund of all extra “interest” the defendants had improperly collected through their failure to apply these monthly payments to reduce mortgage principals, and charged a violation of the Truth In Lending Act. The trial court sustained the defendants' demurrer. In reversing, the Supreme Court held that no particular words were necessary to create a trust, that the issue was whether the plaintiffs intended to impose equitable duties upon the defendants, and that on remand the plaintiffs should be given the opportunity to prove that the money was paid to the defendants for the specific purpose of satisfying certain obligations and that a trust was thereby created, the Court noting that the fact that interest was not paid on these payments held in escrow could be evidence of a trustee-beneficiary relationship. The Court also held that the plaintiffs stated an alternative cause of action in their argument that the defendants' earnings on the payments should be impressed with a constructive trust, ruling that existence of fraud is not a necessary prerequisite of this equitable remedy and that whether confidential relationships existed between the individual mortgagor-mortgagee pairs was an issue of fact. In addition, the Court held that the constructive trust remedy could follow if the plaintiffs proved that the defendants agreed to act as agents on the plaintiffs' behalf. Furthermore, the court held that the plaintiffs should be given the opportunity to prove that under a proper interpretation of their mortgages, some of the defendants violated their agreements to treat all payments as a unit. However, the court also held that the plaintiffs failed to state a cause of action for a violation of the Truth In Lending Act. Buchanan v. Brentwood Federal Sav. & Loan Asso., 320 A.2d 117, 128.

Pa. 1970. Subsec. (1) cit. in sup., cons. (a) and (b) cit. in sup. In an auto collision case the court partially repudiated the imputed contributory negligence doctrine (which charged the owner-passenger with contributory negligence of the driver), and affirmed a jury verdict for the plaintiff. The concurring opinion argued that the court did not go far enough, noting that the court followed the Restatement which retained the doctrine in the areas of master servant relationships and joint enterprise. Smalich v. Westfall, 440 Pa. 409, 269 A.2d 476, 480.

Pa.Super.2003. Com. (b) quot. in case quot. in sup. Upon refusal of member of asbestos-claims-handling facility to pay its share of settlement amount under agreement reached by facility and plaintiffs, plaintiffs sought to enforce settlement. Trial court granted motion to enforce settlement against member, but denied motion as to facility, a nonparty. Affirming, this court held, inter alia, that member was directly liable to plaintiffs for apportioned share of settlement where facility, as agent for a disclosed principal, had both express and apparent authority to settle claims and apportion liability among members. Casey v. GAF Corp., 2003 PA Super 222, 828 A.2d 362, 367.


Pa.Super.1993. Com. (b) quot. in sup. Female disc jockey who was sexually assaulted in a hotel's ladies' room brought a negligence action against the hotel and a nonprofit corporation with which the hotel had a marketing agreement that allowed it to use the corporation's trade name. Affirming the trial court's granting of summary judgment for defendant nonprofit corporation, this court held, inter alia, that since the corporation did not have the day-to-day control over the hotel's operations necessary to establish the existence of a master-servant relationship, the corporation could not be held vicariously liable under an actual agency theory for the hotel's alleged negligence in failing to provide adequate security. Myszkowski v. Penn Stroud Hotel, Inc., 430 Pa.Super. 315, 634 A.2d 622, 626.

Pa.Super.1992. Com. (a) cit. in case quot. in disc. After a grantor of a tract of land hired an attorney to prepare and record a corrective deed reducing the size of the tract conveyed to the grantee by an earlier deed, the grantee commenced this action to have the corrective deed declared a nullity. The trial court found for the plaintiff, holding that the attorney did not have the authority to bind the plaintiff to accept a smaller tract. Affirming, this court held that evidence showing that the attorney was retained by and acted solely on behalf of the defendant and was paid only by the defendant, and that the plaintiff did not authorize the attorney to accept the corrective deed, was sufficient to support the trial court's finding that the defendant failed to show the attorney's express authority to accept the deed for the plaintiff. Volunteer Fire Co. v. Hilltop Oil Co., 412 Pa.Super. 140, 602 A.2d 1348, 1351.

Pa.Super.1988. Com. (b) quot. in case quot. in sup. A shoplifter sued a department store for injuries he sustained while being pursued and apprehended by an employee of another store. The trial court granted summary judgment to the store on the ground that it could not be liable because it was not the employer of the person who chased the plaintiff. Affirming, this court held that the store would have been liable only if a master-servant relationship had existed between itself and the other store's employee. The court reasoned that there was no such relationship in this case because the store had not agreed to let the apprehender act for it and had had no control over his conduct. Mapp v. Gimbels Dept. Store, 373 Pa.Super. 210, 540 A.2d 941, 943.

Pa.Super.1986. Subsec. (1) and coms. (a) and (b) cit. in disc. Two union members and a security guard who were shot by other union members during picketing activities sued their international and local unions for personal injuries, claiming that the shootings were a result of the unions' negligence in failing to control the picket line. The trial court entered judgment for the three injured plaintiffs, awarded damages, and denied post-verdict motions for a new trial or judgment n.o.v. The unions appealed, contending that the plaintiffs' right to recovery was delimited by the provisions of the Pennsylvania Labor Anti-Injunction Act and that the shooting was unforeseeable and beyond the ambit of the unions' responsibility. This court reversed and entered judgment n.o.v., noting that the purpose of the statute was to shield unions and their membership from liability.
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for unlawful and unauthorized acts of persons associated with the union. The court also dismissed the plaintiffs' argument that the unions were liable on the agency theory of apparent authority, since the plaintiffs could not be said to have relied on the apparent authority of the culpable union members acting as agents of the union to avoid being the victims of the shooting incident. Gajkowski v. Intern. Broth. of Teamsters, Etc., 350 Pa.Super. 285, 504 A.2d 840, 848, 849, order affirmed in part, reversed in part 515 Pa. 516, 530 A.2d 853 (1987).

Pa.Super.1984. Com. (b) cit. in disc. The defendant husband entered into a joint venture with other individuals. Each brought to the partnership assets which he personally owned, including real estate owned by the husband and his wife as tenants by the entireties. Husband hired the plaintiff contractor to install a new roof on the property just before the partnership dissolved. Husband took responsibility for the payments on the roof installation, but failed to pay, and plaintiff sued the husband and wife. Although the defendants argued that the wife was improperly made a defendant, the court held that she authorized her husband to act as her agent and was therefore liable for the improvements made by the plaintiff. This agency relationship was found on the facts, not by virtue of the marital relationship. Bradley v. Sakelson, 325 Pa.Super. 519, 473 A.2d 189, 191.

Pa.Super.1983. Quot. in disc. in diss. op. The plaintiff brought this garnishment action against an individual defendant, the defendant's insurer, and a reinsurer to recover damages for a bad-faith refusal to settle an insurance claim. The insurer had reinsured a part of its risk under a policy which gave the reinsurer no right to control settlement negotiations. The suit attributed the insurer's bad faith to the reinsurer under agency principles. The plaintiff prevailed against the reinsurer, the reinsurer appealed, and this court reversed, ruling that there was never an agency relationship because the reinsurer could not contractually control the insurer's actions. A dissenting opinion reasoned that the reinsurer was directly liable to the insurer, and hence the plaintiff, because of its shouldering a part of the risk. Further, the dissent quoted the Restatement in defining and finding an agency relationship between the insurer and reinsurer. The dissent found the reinsurer's notice requirements and option to defend provision to be sufficient evidence of control to support the reinsurer's liability. Reid v. Ruffin, 314 Pa.Super. 46, 460 A.2d 757, 763, affirmed 503 Pa. 458, 469 A.2d 1030 (1983). See above case.

Pa.Super.1979. Com. (b) quot. in part in disc. The plaintiff and the defendant had entered into an agreement whereby the defendant was to purchase some land for the plaintiff. The defendant, however, purchased land for himself and the plaintiff sued in order to impose a constructive trust on the property. The lower court entered a judgment of nonsuit and the plaintiff appealed. This court found that the defendant, by agreeing to purchase the land for the plaintiff, was thereby acting as an agent for the plaintiff. The plaintiff never acquiesced to the defendant's actions, which were inconsistent with the original agreement, nor was there any modification or termination of the agency relationship. The court stated that a constructive trust was the proper remedy against a defendant who had been unjustly enriched and therefore, if a jury determined that the defendant had received a benefit, the retention of which would be unconscionable, then the constructive trust sought by the plaintiff would have to be imposed. Judgment reversed and the case remanded. Scott v. Purcell, 264 Pa.Super. 354, 399 A.2d 1088, 1093, aff'd 490 Pa. 109, 415 A.2d 56 (1980). See above case.

Pa.Super.1961. Quot. in sup. Where land company was not subject to regulatory powers of commissions because it owned waterwork facilities and leased it to water company which was regulated by the commission, the commission had no jurisdiction over land company and could not continue proceedings against it. Sayre Land Co. v. Pennsylvania Public Utility Com., 196 Pa.Super. 417, 175 A.2d 307, 318, affirmed 409 Pa. 356, 185 A.2d 325.


Pa.Cmwlth.1992. Com. (b) cit. in disc. County retained a realtor to appraise certain private properties and to approach their respective owners to determine their willingness to sell. Realtor informed plaintiff in writing that county was interested in acquiring his properties, and realtor later advised plaintiff not to relet or renovate certain properties. Afterwards, county informed
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plaintiff that county was no longer interested in acquiring his properties. Plaintiff sued county, asserting that county's conduct constituted a de facto taking of his rental properties. Trial court sustained the county's preliminary objections and dismissed the petition. Affirming, this court held that realtor was acting as county's agent and not as an independent contractor because the realtor was subject to the county's control. Nevertheless, there was no de facto taking of the properties because, in Pennsylvania, a de facto taking cannot result from the actions of the condemning entity's agents. Darlington v. County of Chester, 147 Pa.Cmwlth. 177, 607 A.2d 315, 320.

R.I.

R.I.2001. Subsec. (1) quot. in case quot. in disc. Part-time funeral-home employee who received workers' compensation for injuries he sustained when retired founder of funeral home caused vehicle accident at a cemetery brought third-party action against founder. Trial court entered judgment as a matter of law for founder. Affirming, this court held that founder was an agent of the funeral home; therefore, employee's exclusive remedy was workers' compensation. Norton v. Boyle, 767 A.2d 668, 672.

R.I.1995. Com. (b) cit. in case cit. in sup. and cit. in headnote. A man whose grand jury indictments for murder and armed robbery were dismissed was notified to appear for a deposition in connection with indictments against two individuals charged with the same crimes. The man sought an injunction against his former high school wrestling coach, who had volunteered to assist the man's attorney in interviewing witnesses and assisting a private investigator, to prevent him from disclosing privileged information. Trial court enjoined coach from divulging privileged communications, finding that coach acted as attorney's agent. This court affirmed, holding, inter alia, that an agency relationship existed between the coach and the attorney, because the attorney had authorized the coach to interview witnesses, perform investigative work, and review documents. Further, the coach fully accepted his role as attorney's agent, and there was an implicit agreement between attorney and coach that coach was in control of the undertaking. Rosati v. Kuzman, 660 A.2d 263, 265.

R.I.1987. Subsec. (1) quot. in sup., com. (b) cit. in sup. A young man was killed when the car in which he was an occupant collided with a car whose driver had been served beer at a tavern. His parents sued the beer distributor and the brewer, in addition to the tavern, on an agency theory. The trial court granted summary judgment to the distributor and the brewer. Affirming, this court held that the plaintiffs made no specific allegations relevant to the existence of an agency relationship between the tavern and the other defendants. The court reasoned that agency was a relationship that resulted from the manifestation of consent by one person to another that the other would act on his behalf and subject to his control and from consent by the other so to act. Lawrence v. Anheuser-Busch, Inc., 523 A.2d 864, 867.

R.I.1978. Cit. in disc. Sister of deceased brought action to compel deceased's children to convey to her the legal title to certain real estate that sister conveyed to deceased upon his representation that there were certain liens that needed to be attended to. Deceased assured sister that her interest was protected and that the real estate was still hers. The trial court found that the facts warranted the imposition of both a resulting and constructive trust on the property. On appeal, the court affirmed and ruled that an agency relationship had been created between the sister and the deceased when she allowed the deceased to act in her behalf in clearing up liens, and that the deceased had breached his fiduciary obligation as agent. Cahill v. Antonelli, __ R.I. __, 390 A.2d 936, 939.

S.C.

S.C.1997. Cit. in headnote, cit. but dist. In federal court action involving the alleged negligence of a guardian ad litem appointed during private custody proceedings, the district court certified to this court the following questions: Whether a court-appointed guardian ad litem in a private custody dispute was a state employee within the meaning of the South Carolina Tort Claims Act, and whether such person was entitled to immunity for acts performed within the scope of her appointment. Answering the
first question in the negative and the second question in the affirmative, the court held that a guardian ad litem was not a state employee for purposes of the Act, nor was she an agent of the court, since she did not act on behalf of the court and could not effect legal relationships between the court and third parties; however, guardians ad litem were entitled to absolute quasi-judicial immunity for acts performed within the scope of their appointment. Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751, 752, 753.

S.C.App.

S.C.App.1992. Cit. in sup. Construction lender, who had partnership interest in borrower before selling it to partnership developer, sought foreclosure against junior mortgagees and other defendants. Junior mortgagee counterclaimed, asserting that lender was liable to it for the debt secured by its mortgage under, inter alia, a principal-agent theory of lender liability for debts of its borrower. The trial court found for lender and ordered mortgage held by lender foreclosed as a first lien. Affirming, this court held that since lender did not make any operational recommendations or suggestions to partnership on construction and development matters after lender had sold its partnership interest, and since lenders' actions in making financing accommodations for partnership after it had sold its interest were taken primarily to protect its collateral, lender did not exercise degree of control necessary to hold it liable under a principal/agent theory of lender liability. Peoples Fed. S & L v. Myrtle Beach Golf, 310 S.C. 132, 425 S.E.2d 764, 773, writ dismissed 314 S.C. 53, 443 S.E.2d 807 (1994).

S.C.App.1991. Cit. in disc. After a client canceled an insurance policy sold to it by an insurance agency that obtained it from an insurance broker, the insurance carrier that issued the policy credited the broker with the unearned premium and the agency refunded the client. The agency then sued the broker and the carrier for reimbursement of the refund. The trial court granted summary judgment for the defendant carrier, finding that, because the carrier had credited the broker with the refund, it did not have to reimburse the plaintiff. Reversing and remanding, this court held that an issue of fact existed as to whether the broker was the carrier's agent. The court stated that this was an essential inquiry since one could not satisfy a debt owed another by paying his or her own agent. Palmer & Cay v. Condo./Apt. Serv., 306 S.C. 1, 409 S.E.2d 806, 808.

S.C.App.1990. Subsec. (1) cit. but dist. While traveling by car to visit relatives, a foster mother hit a culvert, resulting in her death and in severe injury to her foster child. This action was brought on behalf of the child against the estate of the foster mother and the department of social services (DSS), seeking a declaration on whether the foster mother was covered under a liability insurance policy issued to DSS covering DSS and its employees. The trial judge ruled that the foster mother was not covered. This court reversed and remanded for trial, holding, inter alia, that the foster mother was an employee of the state who, at the time of the accident, was using her car in a manner incidental to her duties as a foster mother; moreover, even if the foster mother were not an employee but an independent contractor, she was an agent of DSS within the meaning of the policy and was therefore covered. The court noted that since the terms of an insurance policy were to be liberally construed, it was required to define the word “agency” broadly, unlike the term's more restricted sense in the law of principal and agent. Simmons v. Robinson, 303 S.C. 201, 399 S.E.2d 605, 611, reversed 305 S.C. 428, 409 S.E.2d 381 (1991).

S.D.

S.D.1960. Subsec. (1) quot. in sup. In action against grocery wholesaler, who had lent money to retailer, by creditors of retailer on grounds that wholesaler was liable as undisclosed principal of retailer for merchandise sold and delivered to retailer by creditors, clear preponderance of evidence was against finding of an implied mutual agreement that retailer would act under control of wholesaler in purchase of merchandise. Buck v. Nash-Finch Co., 78 S.D. 334, 102 N.W.2d 84, 89.

Tenn.
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Tenn. 1972. Cit. in sup. Plaintiff was injured in an auto accident with defendant. Upon attempted service of process on defendant, within the statutory one year limit of the Tenn. “long-arm” provision, the process was returned showing defendant to be a nonresident. No attempt to serve the process on the commissioner, as per the statute, was made during the year. After the year had expired, the “long-arm” statute was revised to be congruent with the statute of limitations on the claim itself. Plaintiff then attempted service on the Commissioner, claiming that the amended statute recreated the Commissioner's expired agency. The court held that the relationship between defendant and the Commissioner had been substantial rather than procedural, and thus quasi-contractual, and could not have been recreated by an amendment which was not expressly retroactive. Henderson v. Ford, 488 S.W.2d 720, 722.

Tenn. 1968. Quot. in sup. Plaintiff agreed orally with his stockholder that, when notified, the stockbroker would sell certain securities owned by plaintiff. Plaintiff telephoned the broker who denied he ever agreed to sell them. The broker ultimately sold the stock, and plaintiff sued for the difference in the profits he could have made and those actually made. The lower court sustained a demurrer holding the Statute of Frauds applied because the contract was for the sale of a chose in action, and it was not in writing. On appeal the court reversed. The court held that the contract was not for the sale of securities as no title passed between plaintiff and defendant, but rather the broker was plaintiff's agent and no title vested in him. Since the contract was not for a sale, it does not come within the Statute of Frauds, and there is no necessity to prove a written instrument. The court based its finding on the practical impossibility of obtaining a written instrument each time a broker is ordered to buy or sell securities. Lindsey v. Stein Brothers & Boyce Inc., 433 S.W.2d 669, 671.

Tex. 1987. Cit. in diss. op. A truck being driven by a hired driver struck another truck broadside, severely injuring the other driver and damaging the other truck. The insurance policy of the owner of the truck that caused the accident gave the insurer complete and exclusive control over the litigation. During trial, the insurer refused an offer to settle within policy limits for a release of the owner and a waiver of collection of judgment against the hired driver, but neither the owner nor the hired driver was told of the offer. After the jury rendered a verdict against the owner and the driver that vastly exceeded policy limits, the owner and the driver sued the insurer for negligence. The trial court found for the plaintiffs and the intermediate appellate court affirmed. This court affirmed, holding that the insurer was the agent of the insured for the full range of the agency relationship and its duty was not limited to accepting only offers of unconditional settlement within policy limits. The dissent argued that the insurer's duty should be limited because the insured had contracted away his right to control the litigation. Ranger County Mut. Ins. Co. v. Guin, 723 S.W.2d 656, 663.

Tex.App. 2010. Cit. in sup. Corporate real-estate broker sued corporate and individual real-estate developers; individual developer counterclaimed for, inter alia, breach of fiduciary duty. The trial court entered judgment on a jury verdict awarding individual developer damages on his breach-of-fiduciary-duty counterclaim. Affirming as to that counterclaim, this court held, inter alia, that the jury reasonably inferred that a fiduciary relationship existed between developer and broker as principal and agent. The court explained that, although the record did not contain a contract expressly providing that broker owed a fiduciary duty to developer, such a duty could be inferred from the conduct of the parties; thus, according to developer's testimony, broker's principals had agreed to be his broker on a particular project, as they had done on a prior project, and he had shared confidential pricing and contractual information with them. SJW Property Commerce, Inc. v. Southwest Pinnacle Properties, Inc., 328 S.W.3d 121, 155.

Tex.App. 2009. Com. (e) quot. in sup. As part of a wider action arising from owner's construction of a low-income apartment complex, subcontractors that had not been paid for their work sued owner's lender, alleging, among other things, that lender
served as an agent of owner and, as owner’s agent, violated a statutory duty to withhold retainage in the construction account. After a bench trial, the trial court ruled in favor of subcontractors on their claim against lender. Reversing, this court held, inter alia, that lender did not act as owner's agent with regard to the duty to withhold retainage; while lender agreed to act on behalf of owner in withholding retainage, there was no evidence that lender was subject to owner's control in accomplishing the task. J.P. Morgan Chase Bank, N.A. v. Texas Contract Carpet, Inc., 302 S.W.3d 515, 525.

**Tex.App.** 2001. Cit. in disc. Texas mortgage company that bought debt instruments sued 17 defendants for negligence, among other claims, arising out of the transactions. Trial court dismissed eight Mississippi defendants, including company formed to take ownership of assets bought by Mississippi company that sold instruments to plaintiff, holding that jurisdiction over seller and its alleged independent contractor could not be imputed to the eight defendants. This court reversed in part, holding, inter alia, that seller and alleged contractor acted as agent for the defendant company formed to take ownership of assets purchased by seller. Because seller had authority to negotiate and enter into contracts and did so on defendant company's behalf, it was acting as agent and fiduciary, similar to a broker. Royal Mortg. Corp. v. Montague, 41 S.W.3d 721, 732.

**Tex.App.** 1996. Cit. in disc. Customer that had retained a loan broker to act as its exclusive agent to procure investment grade loans for it to buy sued the broker for breach of contract or fiduciary duty, after the loans it received turned out to be of inferior quality. Affirming the trial court's entry of judgment for plaintiff, this court held that defendant was plaintiff's agent and broker, rather than a middleman, had a duty to disclose material facts to plaintiff, its principal, and knowingly breached that duty to disclose and that the breach proximately caused plaintiff damages. Rauscher Pierce Refsnes v. GSW, 923 S.W.2d 112, 115.

**Tex.App.** 1995. Cit. in diss. op. Insured sued insurer for Insurance Code (Code) violations when insurer denied its claim for contractual liability coverage. Insurer brought third-party complaint against local insurance agency that wrote the policy, alleging breach of fiduciary duty and agency agreement. When local agency testified at trial that coverage was erroneously denied because of a clerical mixup, the trial court entered judgment on a jury verdict awarding insured $1.8 million for insurer's unknowing Code violations but finding no breach by local agency. Modifying and affirming, this court held, inter alia, that agency's knowledge of the clerical error was imputed to insurer as principal and, therefore, for purposes of the Code, insurer denied coverage knowingly. Punitive damages were found appropriate as authorized by statute. Dissent believed that the Code clearly defined the relationship between insurer and local agency, there was no reason to refer to the common law of agency for further clarification, insurer could not be held liable on an imputed knowledge theory where local agency was not a servant but an independent contractor, and punitive damages were improper. Md. Ins. v. Head Indus. Coatings, 906 S.W.2d 218, 246.

**Tex.App.** 1994. Cit. in headnote, cit. in disc. Investor sued securities brokerage firm and stock broker for negligence, inter alia, for failing to purchase oil option contracts as allegedly requested by plaintiff through her father. Affirming the trial court's grant of summary judgment for defendants, this court held, in part, that, because defendant broker refused to accept the order to purchase the options, for whatever reason, no agency relationship arose between the parties and neither defendant had any duty to plaintiff to purchase the options or take the necessary steps to purchase them. The court said that, since plaintiff had a nondiscretionary account with defendants, there was no ongoing agency relationship; thus, each time plaintiff placed an order, broker had to decide whether to accept the agency, i.e., accept the order, before any relationship, and any duties from that relationship, arose. Hand v. Dean Witter Reynolds Inc., 889 S.W.2d 483, 485, 493.

**Tex/App.** 1990. Cit. in disc. An owner of several affiliated insurance companies sued his former general agent for, inter alia, breach of fiduciary relationship in participating in a coinsurance arrangement involving the companies and then terminating his agency agreements with the companies. The agent moved for summary judgment on the ground that his agency contract with the companies characterized his status as an independent contractor. The trial court awarded the defendant summary judgment. Reversing, this court held that the defendant did not prove, as a matter of law, that there was no confidential or fiduciary relationship between the parties. The court explained that since the contract clearly stated that the defendant was an agent of the plaintiff, the reference to independent contractor status could be read as merely precluding any employer-employee relationship.
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without negating the duty of confidentiality inherent in the parties' agency relationship. Republic Bankers Life Ins. Co. v. Wood, 792 S.W.2d 768, 778.

**Tex.App.**1982. Quot. in sup. The plaintiff sued the defendant for fraud in the sale of a car, alleging that the defendant's agent had led her to believe that he was the original owner of the car she bought. Only when she received her title did she learn that the car had been wrecked and sold as salvage, and that the defendant was the transferor. The trial court found that the seller was not the defendant's agent. This court held as a matter of law that the seller was the defendant's agent. The evidence showed that, pursuant to a verbal agreement, the seller purchased cars in the defendant's name with drafts drawn on the defendant's company and sold the vehicles pursuant to the defendant's instructions. Where the defendant manifested consent to the seller that the seller should act on the defendant's behalf and subject to the defendant's control, and the seller consented so to act, the seller was the defendant's agent. Therefore, the defendant was liable for the seller's fraud even if the defendant had no knowledge of the fraud and received no benefit from it. This court reversed the judgment and rendered judgment for the plaintiff. Campbell v. Hamilton, 632 S.W.2d 633, 634.

**Tex.Civ.App.**

**Tex.Civ.App.**1981. Cit. in sup. The plaintiffs owned certain realty and entered into an exclusive listing agreement with the defendant to sell the property. The exclusive listing agreement was terminated in 1976, but in 1977 the defendant was contacted by a prospective purchaser. The defendant contacted the plaintiffs and agreed to assist in bringing the parties together. In the meantime, the plaintiffs were negotiating with a third party and the defendant wrote to the third party, stating, inter alia, that the tentative purchase price was excessive. The plaintiffs alleged that the defendant's contacts with the third party resulted in its decision not to purchase the property. The plaintiff sued, alleging, inter alia, that the defendant had breached his fiduciary duties and failed to disclose certain information, resulting in fraud. The defendant moved for summary judgment, allegedly because he was not, at the relevant times, the plaintiffs' agent, and therefore he did not owe a duty to them. The defendant's motion was granted. On appeal, this court stated that a fact issue existed as to whether the defendant was the plaintiffs' agent and whether he owed them fiduciary duties. The evidence indicated that the defendant was acting on behalf of the plaintiffs and with their consent; therefore the defendant was the plaintiffs' agent and owed them a duty of loyalty. The court held that the defendant had not, as a matter of law, negated one or more of the essential elements of the plaintiffs' cause of action and was not entitled to summary judgment. Reversed and remanded. West v. Touchstone, 620 S.W.2d 687, 690.

**Tex.Civ.App.**1979. Quot. in disc. Plaintiffs, two intermediate sellers and the final purchaser of allegedly defective goods, brought this action for breach of express warranty. Plaintiffs had a jury verdict in their favor in the lower court from which judgment was entered; the defendant original seller appealed. On appeal, plaintiffs argued that the intermediate sellers were acting as agents for the final purchaser and that, therefore, the express warranty made to the first seller ran through both intermediate sellers to the final purchaser and all were entitled to recover damages. The court found no evidence of an exercise of control by one party over the other, or manifestation of consent by one party to another that the other shall act on his behalf, as is necessary for an agency relationship. Accordingly, the judgment of the lower court was reversed, and judgment was rendered that all plaintiffs were to receive no damages. Texas Processed Plastics, Inc. v. Gray Enterprises, Inc., 592 S.W.2d 412, 416.

**Tex.Civ.App.**1974. Cit. in sup. Plaintiff, a licensed stockbroker, sought to recover for stock purchased for defendant on oral orders. Defendant asserted the statute of frauds as a defense. The court held that the status of a stockbroker was that of an agent, and that the purchase of shares pursuant to a telephone request is not a “sale” and is not subject to the statute of frauds. Hutton v. Zaferson, 509 S.W.2d 950, 952, error refused no reversible error.

**Tex.Civ.App.**1974. Cit. in sup. Plaintiff seller sought recovery on an unpaid account for certain feed ingredients allegedly sold by plaintiff to the defendant farmer. From judgment for plaintiff, defendant appealed. Held: Judgment affirmed. In the law of
agency it is recognized that apparent authority is based on estoppel, and this arises from two sources: first, the principal may knowingly permit an agent to hold himself out as having authority, and, in this way, the principal becomes estopped to claim that his agent does not have authority; and second, the principal may knowingly, or by want of care, so clothe the agent with indicia of authority as to lead a reasonably prudent person to believe that the agent actually has such authority. The court found that the person who placed orders with the seller was defendant's purchasing agent. The farmer was held liable for the price of the feed. The general rule for such situations is that the acts of an agent within the apparent scope of his authority done after the revocation of his authority are binding on the principal as against one who had formerly dealt with him through the agent and had no notice of the revocation. Sorenson v. Shupe Bros. Co., 517 S.W.2d 861, 864.

Utah

Utah, 2010. Subsec. (1) quot. in case quot. in sup. City and others sued neighboring city, economic development corporation, and redevelopment agency, alleging, among other things, that defendants breached their contractual and fiduciary obligations to develop property formerly belonging to a federal military installation or to share the profits from the sale of the property. The trial court granted summary judgment for defendants. Affirming as to plaintiffs’ claim for breach of fiduciary duty, this court held that no fiduciary relationship was formed, because there was no evidence that defendants consented to act as plaintiffs’ agent, and defendants’ consent to a fiduciary relationship could not be inferred from the factual situation. City of Grantsville v. Redevelopment Agency of Tooele City, 2010 UT 38, 233 P.3d 461, 473.

Utah, 2010. Com. (a) cit. in sup. After driver/employee of a rodeo organization company caused an accident that killed passenger/employee of a general engineering and general contracting company that had common ownership with the rodeo company, decedent's heirs filed a wrongful-death action against driver. The trial court granted summary judgment for defendant. Reversing, this court held that the Act did not require a determination as to whether driver and passenger were fellow servants, but instead as to whether driver, as the injuring party, was an officer, agent, or employee of the injured party's (passenger's) employer at the time of the injury. Citing the relevant Restatement Second factors, the court explained that whether an agency relationship existed between defendant and decedent's employer was a question of fact to be determined on remand. Stamper v. Johnson, 2010 UT 26, 232 P.3d 514, 518.

Utah, 1998. Cit. in headnote, quot. in disc. Judgment debtors sued title company, among others, for, inter alia, breach of fiduciary duty based on defendant's role in foreclosure proceedings initiated by judgment creditor against plaintiffs’ real property. The trial court entered summary judgment for defendant. Affirming, this court held, in part, that defendant's agreement to prepare a title report in connection with its commitment for title insurance and a deed conveying record title from the property owner to the third party from whom plaintiffs bought the parcel did not make defendant plaintiffs' agent. Gildea v. Guardian Title Co. of Utah, 970 P.2d 1265, 1266, 1269.

Utah, 1973. Cit. but dist. in ftn. Firm providing origin and destination services as an agent for van lines brought action against carrier to recover for services rendered under a written contract. Defendant carrier was involved in a bankruptcy proceeding and stipulated that judgment might be rendered against it. Plaintiff then sought to hold liable a codefendant under whose ICC operating rights the carrier had operated, on the theory that the carrier was the agent of the ICC-licensed codefendant. The trial court rendered a judgment of no cause of action in favor of the codefendant. On appeal, plaintiff did not rely on traditional agency concepts of a fiduciary relationship between the defendants, but sought to proceed on the theory that until the ICC had approved the transfer of operating rights between the defendants, the ICC-licensed codefendant remained responsible for all operations conducted on its rights, hence that the attempted transfer created an agency relationship between the defendants as a matter of law. The court affirmed judgment for defendant, holding that where there was no other manifestation of an agency
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relationship between the defendants, the attempted transfer of operating rights in violation of ICC regulations did not create such a relationship. Mountain States Mov. & Stor. Co. v. Suhr Transp., Inc., 29 Utah 2d 295, 508 P.2d 812, 814.

Utah, 1963. Quot. in sup. Existence of an agency relationship did not require or depend upon payment of a wage or fee by the principal to the agent and it did not require or depend upon a continuous activity on part of the agent for principal. Continental Bank and Trust Company v. Taylor, 14 Utah 2d 370, 384 P.2d 796, 800.

Utah App.

Utah App. 2004. Quot. in case quot. in disc. Employee of Utah Department of Health sued the state, the department, and individual state legislators, alleging violation of Utah Protection of Public Employees Act (UPPEA). Trial court dismissed, holding that legislative defendants were immune from suit under speech-and-debate clause of state constitution. This court affirmed, holding that, since legislative defendants were not plaintiff's employer or agents of his employer, UPPEA did not provide legal basis for suit against legislative defendants. The court rejected plaintiff's argument that legislative defendants acted as agents of his employer, and therefore should be considered an employer for purposes of UPPEA. Legislative defendants, in their positions as legislators, did not act on department's behalf, nor were they subject to department's control. Ivie v. Hickman, 2004 UT App 469, 105 P.3d 946, 948.

Utah App. 1998. Subsec. (1) quot. and cit. in disc., com. (b) cit. in disc. Real estate broker sued vendor to recover commission allegedly due under the parties' purchase agreement. Vendor had withheld the commission on the ground that broker had breached various fiduciary duties. The trial court entered partial summary judgment for broker, concluding that broker was merely vendor's “finder” and that, since broker was not an agent, he owed vendor no fiduciary duty. Following trial, broker was awarded his commission. Affirming, this court held, in part, that vendor failed to establish that he consented to or created an agency relationship with broker, particularly where, among other things, vendor twice clearly disclaimed in writing that broker was acting as his agent. Wardley Corp. v. Welsh, 962 P.2d 86, 89, 90.

Utah App. 1990. Cit. in disc. In a legal malpractice suit arising out of a contract for the sale of equipment, the selling corporation sued the law firm for negligence in failing to perfect a security interest in the buyer's accounts receivable and failing to inform it that its right to repossess the equipment on the buyer's default was subject to prior bank liens. After finding the law firm only 50% negligent on the security interest issue and not negligent regarding the repossession rights, the trial court denied the law firm's application for indemnification from the corporation for costs and fees under the Utah Business Corporation Act on the ground that the law firm was not an agent within the meaning of the Act. This court affirmed, rejecting the law firm's offered evidence of agency, and holding that the statute was intended to apply to corporate personnel who exercised management discretion and had authority to bind the corporation. W. Fiberglass v. Kirton, McConkie, etc., 789 P.2d 34, 36.

Vt.

Vt. 2001. Quot. in disc. Owners of commercial hydroelectric facilities sued former employees of state public service board's purchasing agent, alleging that defendants in their individual capacities negligently administered a power-purchase agreement, as a result of which plaintiffs incurred shared economic damages. Affirming the trial court's grant of summary judgment for defendants, this court rejected plaintiffs' argument that defendants acted as their agents and, as such, owed plaintiffs a duty of care. Because purchasing agent maintained responsibilities to all parties, the state, ratepayers, and power producers, the assertion that its employees worked as plaintiffs' agents had no merit, and nothing in the power-purchase agreements between purchasing agent and plaintiffs contemplated services to be specifically provided by individual employees or defendants in particular. Springfield Hydroelectric Co. v. Copp, 172 Vt. 311, 779 A.2d 67, 72.
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Vt. 1995. Subsec. (1) quot. in disc. A teacher who unsuccessfully attempted to obtain a teaching job in an elementary school after leaving a similar position in another district's elementary school sued school district, the two school boards, and the principals of the two schools, alleging that adverse comments made by the former principal of her former school to the principal of the school to which she applied resulted in her not receiving the job. Trial court granted summary judgment to all defendants except the former principal of plaintiff's former school. This court affirmed in part and reversed in part, holding, inter alia, that there was insufficient manifestation of control to create a principal and agent relationship between the school district and the former principal. The presence of a contractual provision requiring former principal to refer employment inquiries to the school superintendent did not create a right of control. Breslauer v. Fayston School Dist., 659 A.2d 1129, 1134.

Va. 1983. Quot. in case cit. in disc. Defendant, proprietor of an “escort service,” appealed his conviction for pandering. Arguing that the evidence was insufficient to support a guilty verdict, defendant contended that there was no proof that he had received the fee collected by an undercover policewoman posing as a prostitute. However, the court found evidence to show that the officer was defendant's agent, inasmuch as defendant had consented to her acting in his behalf and subject to his control. Defendant's liability for the criminal act of his agent was not altered by the policewoman's role as an undercover officer. Judgment affirmed. Collins v. Commonwealth, 226 Va. 223, 307 S.E.2d 884, 890.

Va. 1975. Subsec. (1) quot. in sup. and com. (b) quot. in part in sup. The plaintiff motel guest brought an action against the defendant licensor to recover for an injury which he sustained when he slipped and fell. The defendant filed a motion for summary judgment on the ground that there was no principal-agent relationship between the defendant and the operator of the premises. The trial court granted the motion, and the plaintiff appealed. The state supreme court held that whether the power to regulate, granted by a franchise contract, constitutes sufficient control to establish an agency relationship depends on the nature and extent of the power defined in the contract. The court noted that the license agreement at issue here contained the features of a typical franchise agreement which were extended to achieve system-wide standardization of business identity, uniformity of commercial service, and optimum public good will. The licensor was empowered to regulate the architectural style of the building and the type and style of furnishings and equipment. The licensor was not given the power, however, to control the daily maintenance of the premises or to regulate other managerial tasks, and for that reason the court concluded that a principal-agent relationship had not been created. Murphy v. Holiday Inns, Inc., 219 S.E.2d 874, 876.

Wash. 2002. Cit. in case cit. in diss. op., com. (b) quot. in case quot. in diss. op. Temporary-help service applied to city for refund of municipal business and occupation taxes. Trial court ordered a partial refund, holding that the service was a mere agent of its clients, and therefore wages paid to its workers were deductible as a “pass through” expense. This court reversed, holding that the service functioned as actual employer of its temporary workers, and was thus liable for the tax. Dissent argued that trial court correctly found that clients' control over temporary workers was so pervasive that the service should be deemed their agent and paymaster. Although service was the employer of record, the ultimate decision on hiring and firing with respect to a client was made by client, not the service. City of Tacoma v. William Rogers Company, Inc., 148 Wash.2d 169, 188, 190, 60 P.3d 79, 89, 90.

Wash. 1993. Cit. in sup., com. (b) quot. in sup. Corporation created to finance its parent corporation's accounts receivable appealed the trial court's ruling that it could not apportion its income among various states in which parent conducted business for purposes of calculating state business and occupation tax. Affirming, this court held, inter alia, that the factual findings of the trial court that corporation did not control any of parent's business activities precluded a conclusion that parent acted as
corporation's agent, and that, thereby, corporation conducted business within the states in which parent conducted its business. Nordstrom Credit v. Dept. of Revenue, 120 Wash.2d 935, 845 P.2d 1331, 1335.

Wash.1989. Com. (b) cit. in case quot. in disc. A temporary employment service protested the state department of revenue's inclusion of the temporary employees' wages in the service's gross income for purposes of business and occupation taxes. The board of tax appeals affirmed. The intermediate appellate court reversed and remanded, and the department petitioned for review. This court remanded to the board of tax appeals to determine, applying traditional agency principles, whether the plaintiff was the employer of the temporary personnel, in which case the plaintiff was liable for paying the workers and thus subject to the tax liability, or whether the clients were the employers and the plaintiff was no more than the clients' paymaster agent in compensating the personnel. Rho Co., Inc. v. Department of Revenue, 113 Wash.2d 561, 782 P.2d 986, 991.

Wash.1977. Cit. in sup. in diss. op., subsec. (1) cit. in disc. in diss. op., coms. (a) and (b) cit. in sup. in diss. op. A vendee brought suit for reformation of a contract for the purchase of land. The trial court granted the vendee reformation. The Court of Appeals reversed, holding that reformation was not an appropriate remedy, but remanding the case to permit the vendee to elect rescission or damages. On the vendor's appeal, the Supreme Court affirmed the trial court's judgment, holding that reformation was not the proper remedy for the alleged misrepresentation of the vendor's agent as to acreage, and that since the vendee's original complaint sought both damages and reformation, and the reformation asked for was abatement of the purchase price, and thus abatement of the purchase price and contract payments based upon a deficiency in the acreage was the appropriate remedy. The dissent argued that the vendee's right to rely upon the representations of the vendor's agent was not established by clear, cogent, and convincing evidence, and thus the vendee was not entitled to the requested relief. Alexander Myers & Co., Inc. v. Hopke, 88 Wash.2d 449, 565 P.2d 80, 85, 86.

Wash.1969. Cit. in sup. Action by purported principals against alleged agent and parties to whom agent had assigned real estate purchase option for recovery of sum they allegedly would have obtained had option been assigned to them. From an order dismissing the action on the ground that the alleged agent was not the principals' agent in procuring the option, plaintiffs appealed. Held: judgment affirmed. The agency relationship, if any, was for the limited purpose of presenting the purported principals' original offer for an option on the subject property to its owners. The rejection of such offer by the owners terminated the agency, and the alleged agent was not therefore liable to the purported principals for any profits arising from subsequent dealings with such property on the theory of breach of a fiduciary relationship. Moss v. Vadman, 77 Wash.2d 396, 463 P.2d 159, 164.

Wash.1968. Cit. in sup. This was an action for damages by a buyer for the delivery of beans of the wrong variety. A third party, who had discovered the defendant-seller had beans available, had acted as an intermediary between the plaintiff and defendant, obtaining knowledge of the beans and making germination tests. The court held that the defendant-sellers could not be liable for the damages resulting from the activities of the intermediary in requesting and delivering the wrong kind of beans and that said party was not an “agent.” Matsumura v. Eliert, 74 Wash.2d 369, 444 P.2d 806, 810.

Wash.1964. Com. (b) quot. in sup. In a foreclosure suit the defendant raised the defense of usury. The court ruled that since the broker who placed the mortgage acted as an agent for the plaintiff-lender, and since the plaintiff, as principal, is charged with knowledge of his agent-broker, the interest paid to both may be combined. The combined interest, being in excess of the legal note, constituted violation of the usury statute. Busk v. Hoard, 65 Wash.2d 126, 396 P.2d 171, 172.

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in the police department's motorcycle unit out of animus over his union activities. In affirming Commission's decision, this court held, inter alia, that Commission could not have imposed, under the subordinate-bias theory, personal liability on police chief for the biased actions of assistant chief, whose vote determined the denial of the position to guild's president. The court concluded that, because the subordinate-bias theory rested on agency principles, the lack of an agency relationship between police chief and assistant chief prevented the imposition of liability on police chief, noting that, according to the definitions of "agency," "principal," and "agent" set forth in Restatement Second of Agency § 1, city, not police chief, was assistant chief's principal. City of Vancouver v. State Public Employment Relations Com., 325 P.3d 213, 223.

Wash.App. 2007. Cit. in sup. Chiropractor's former employer sued chiropractor, clinic that employed chiropractor, and clinic owner for, in part, trade-secret misappropriation under the Uniform Trade Secrets Act and tortious interference with business expectancy, alleging that chiropractor stole plaintiff's confidential client list and used it to solicit plaintiff's clients for clinic. The trial court entered judgment on a jury verdict finding clinic vicariously liable. Reversing and remanding, this court held that the fact that chiropractor was not yet formally employed by clinic when she solicited plaintiff's clients did not shield clinic from vicarious liability based on agency principles; however, plaintiff did not prove that chiropractor was clinic's agent when she committed her tortious acts, since there was no evidence that clinic controlled or had a right to control chiropractor's client solicitations or had any concurrent knowledge of her wrongful actions. Thola v. Henschell, 140 Wash.App. 70, 164 P.3d 524, 532.

Wash.App. 2006. Cit. in sup. Member of limited-liability company that bought and sold specialty wood products sued another member and the seller of company's products on an Internet auction website, alleging, among other things, that defendants breached a contract of sale between seller and a private detective hired by plaintiff to surreptitiously investigate the loss of wood billets from company. Reversing the trial court's dismissal of the suit and remanding, this court held that plaintiff, as an undisclosed principal, could sue to enforce the contract entered into by detective, as plaintiff's agent. Dana v. Boren, 133 Wash.App. 307, 135 P.3d 963, 965.

Wash.App. 2002. Cit. in ftn. Insurance agency sued corporate competitor for tortious interference and civil conspiracy after competitor hired agency's former employee, with whom agency had noncompete agreement, and obtained customers with information provided by employee. The trial court granted agency summary judgment. Affirming, this court held, inter alia, that employee was acting as competitor's agent; thus, competitor was vicariously liable for employee's conduct. Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc., 114 Wash.App. 151, 158, 52 P.3d 30, 34.

Wash.App. 2001. Cit. in ftn. in sup., com. (b) quot. in ftn. in sup. Subdivision's building-review-committee representative who had rejected lot owner's home-construction plans sued owner, alleging that defendant's construction of home violated restrictive residential covenants. The trial court granted plaintiff partial summary judgment and ordered house razed. Affirming, this court held that plaintiff had authority under the covenants to review defendant's plans. The court rejected defendant's argument that plaintiff lacked authority because he was merely an agent of the committee and that the agency relationship terminated when the committee member who had designated him resigned from the committee, stating that plaintiff was acting, not as former member's agent, but as a committee representative. Heath v. Uraga, 106 Wash.App. 506, 514, 24 P.3d 413, 418.

Wash.App. 1997. Cit. in ftn. A seller of real estate sued a real estate company, the seller's agent, and the purchaser's agent for breach of contract, breach of fiduciary duty, and violation of the Consumer Protection Act in connection with the sale of the property. The seller alleged that the real estate company was acting as a dual agent (as agent for both buyer and seller), and it breached its duty to seller by failing to disclose its dual agency. The trial court granted the real estate company summary judgment. This court reversed and remanded, holding, inter alia, that a fact issue existed as to whether the real estate company and the purchaser had an agency relationship, because the listing agent testified that the selling agent was working for the buyer. As the listing agent and a member of the same office as the selling agent, the listing agent was in a position to observe the selling agent's conduct with respect to the transaction at issue. The listing agent's testimony was corroborated to some extent
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by the selling agent's prior acquaintance with the buyer, the selling agent's obtaining survey bids and timber bids at the buyer's request, and the selling agent's not informing the seller about the timber bids. Holst v. Fireside Realty, Inc., 89 Wash.App. 245, 948 P.2d 858, 863.

Wash.App. 1995. Subsec. (1) cit. in sup. Accountant who was suspended and sanctioned after investing a client's funds questionably challenged the state Board of Accountancy's findings of negligence arguing, inter alia, that the evidence was insufficient to support its conclusions. Affirming the Board's decision but reversing as to one of the conditions of reinstatement, the court held that when accountent accepted a loan from his client for his nearly bankrupt corporation and loaned $6,000 of that client's savings, unsecured, to a friend who had recently been through bankruptcy for the friend's rabbit-raising business, accountant behaved negligently. Moreover, because accountant held his client's power of attorney and was his fiduciary, he was obligated to act exclusively in her interests. Keene v. Bd. of Accountancy, 77 Wash.App. 849, 894 P.2d 582, 587.

Wash.App. 1991. Com. (b) cit. in ftn. A builder brought this action against a glass supply company for reimbursement of damages it paid a building owner after the exterior glass wall the plaintiff installed began to leak. The trial court entered judgment for the plaintiff. Reversing, this court held that the defendant's employee with whom the plaintiff dealt never had the defendant's actual or apparent authority to sell products to the plaintiff and that the defendant never did any positive act to ratify the employee's conduct. Smith v. Hansen, Hansen & Johnson, 63 Wash.App. 355, 818 P.2d 1127, 1132.

Wash.App. 1990. Cit. generally in disc., com. (e) cit. in disc. A man sued an attorney, the attorney's law firm, and the attorney's client for defamation and violation of the Consumer Protection Act (CPA) after the attorney, in a statement made in a hallway outside a courtroom, falsely accused the plaintiff of being a convicted perjurer. The trial court granted the defendants' motion to dismiss. Affirming in part, reversing in part, and remanding, this court held, inter alia, that the attorney's statement was not absolutely privileged, that the plaintiff need not prove damages when establishment of malice was a question for a jury, and that the client could not be held liable for the attorney's statement. The court stated that a client's liability for his or her attorney's defamatory statements is limited to situations in which the attorney acted within the scope of employment, and with the client's knowledge and consent. Here, the record contained no evidence that the client authorized his attorney to accuse the plaintiff of being convicted of perjury or concurred in the alleged accusation. Demopolis v. Peoples Nat. Bank, 59 Wash.App. 105, 796 P.2d 426, 433, 434.

Wash.App. 1983. Com. (b) quot. in sup. A broker inadvertently recorded on a multiple listing form incorrect information about the house she had contracted to sell. Another realtor purchased the house for personal use after the broker had agreed to split its commission with the purchasing realtor. A year later the purchaser discovered the errors made on the multiple listing form and brought suit for negligent misrepresentation against both the broker and the seller. The trial court entered judgment for the plaintiff. This court affirmed, holding that the purchasing realtor was neither an agent nor a subagent of the seller. The court stated that the purchaser was not a member of the multiple listing service and therefore was not subject to any control or direction by the seller; the plaintiff could only act in the capacity of a purchaser. Moreover, the plaintiff had no power to alter the relations between himself and the seller, or between the seller and third persons, other than by accepting the seller's offer. Zoda v. Eckert, Inc., 36 Wash.App. 292, 674 P.2d 195, 198.

Wash.App. 1980. Com. (e) cit. in disc. A safe was purchased at an auction for a small sum. A locksmith opened the safe and found a large amount of cash. The locksmith, not a party hereto, turned the money into the municipal police department. The city commenced this interpleader action to determine, as between the purchaser at auction and the estate from which the safe was sold, who was entitled to the money. The purchaser argued that he was entitled to the money because the estate, through its agent, the auctioneer, had sold the safe to him in the ordinary course of business. The court stated that the auctioneer might have been a special agent for the estate but more importantly there was a question whether the sale of a safe included the contents. The court relied upon the objective theory of contracts and found that only the safe itself was sold at the auction. Therefore the

Wash.App. 1980. Cit. in sup. The plaintiff farmer entered into a contract with the defendant, a commission merchant, whereby the defendant was to sell the farmer's apples for a certain price. The plaintiff later sued the defendant alleging that the defendant had sold the apples for less than the stipulated price. The jury awarded the plaintiff damages which were calculated as the difference between the price specified in the contract and the actual selling price. The defendant appealed arguing that the proper measure of damages was limited to actual damages, the difference between the market value and the price at which the apples were sold. This court found that an agency relationship existed between the plaintiff and the defendant, because the defendant agreed to sell the apples at a certain price. The court stated that the damages which the principal may recover, when his agent violates his instructions, are the actual damages sustained by reason of the agent's disobedience. The court held that the defendant disobeyed the plaintiff's instruction and was liable only for actual damages. Therefore, the lower court's decision was reversed. Mueller v. Staples & Sons Fruit Co., Inc., 26 Wash.App. 166, 611 P.2d 801, 803.

Wash.App. 1972. Cit. in disc. Plaintiff, injured in an automobile accident, sought to establish vicarious liability on defendant for the negligent actions of an alleged employee. The alleged employee had applied for a job at defendant's sawmill. He was told to go to a clinic for a physical examination. No transportation was provided, and no directions were given to the clinic. The accident occurred while the applicant was driving a borrowed car to the clinic. The court held that there was no master-servant relationship between the employer and the applicant, but that there was a principal-agent relationship. However, the employer was not liable for the negligence of this agent because the company neither authorized nor exercised any control over the agent in going to the clinic, and the employer was under no duty to have the act performed with due care. McLean v. St. Regis Paper Company, 6 Wash.App. 727, 496 P.2d 571, 574.

Wash.App. 1970. Quot. in sup, in dictum. Plaintiff real estate vendor sued the real estate agent and the purchaser for the balance of the purchase price, and the purchaser counterclaimed and brought a third party complaint against a building contractor. The earnest money agreement was made contingent upon the absence of dry rot and termites from the home. The purchaser sent a night letter to the real estate agent, directing him to hire a contractor to inspect the house. Apparently the contractor's inspection was quite cursory, and the real estate agent obtained the contractor's signature on a statement that the house was free of dry rot and termites, apparently without having the contractor read the statement. The court remanded the case for further findings of fact, but opined that there was sufficient evidence that the real estate agent was the purchaser's agent for purposes of inspection, so that the real estate agent was under a fiduciary duty to the purchaser. Mayes v. Emery, 3 Wash.App. 315, 475 P.2d 124, 128.

W.Va. 1996. Quot. in disc. Estate of minor who was killed while riding a motorcycle on property owned by homeowners' association brought wrongful death action against association. Association filed third-party complaint against member whose adult child had invited decedent to the recreational area, and moved to implead decedent's parents for negligent supervision. The trial court granted member's motion for summary judgment, denied association's motion to implead decedent's parents, determined that decedent was a business invitee, and entered judgment on a jury verdict for estate. Affirming in part, reversing in part, and remanding, this court held that decedent, who was on association's premises purely for his own enjoyment, was a licensee, not an invitee, and thus association owed him a duty to refrain from the willful or wanton infliction of injury; that member was not liable under agency theories for the negligence of his adult child; and that the doctrine of parental immunity did not prevent association from raising comparative negligence of decedent's parents as a defense. Cole v. Fairchild, 198 W.Va. 736, 482 S.E.2d 913, 923.
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Wis.2006. Subsec. (1) cit. in case cit. in disc Former employees of corporation's subsidiary sued corporation, employees stock trust, and trustees for, in part, breach of fiduciary duty, alleging that defendants negligently failed to inform them of their right to sell back their stock in the trust over a 10-year period if they retired when the subsidiary was sold. The trial court dismissed the claims, except for the fiduciary-duty claim. The court of appeals reversed and remanded with directions to dismiss. Affirming, this court held that trustees' conduct was a breach of their fiduciary duty of loyalty to plaintiffs, and, as such, was an intentional tort barred by the two-year statute of limitations. Zastrow v. Journal Communications, Inc., 291 Wis.2d 426, 718 N.W.2d 51, 60.

Wis.1995. Subsec. (1) cit. in disc., com. (e) cit. in ftn. Law firm, acting as insured's counsel, sued insurer, alleging negligence and breach of contract in the administration and adjustment of workers' compensation claims under the policy contracts between insured and insurer. Insurer moved to disqualify firm on ground that firm previously represented and continued to represent both insured and insurer. Trial court denied the motion, finding no attorney-client relationship between firm and insurer, but the appellate court reversed. This court reversed the appellate court, holding, inter alia, that trial court properly concluded that firm did not intend to create an attorney-client relationship with insurer and that insurer understood firm to be insured's attorney in workers' compensation cases, not its attorney. Marten Transport v. Hartford Specialty, 194 Wis.2d 1, 533 N.W.2d 452, 452, 455.

Wis.1985. Cit. in conc. op. A broker sued an experienced investor to recover money the investor owed on his account. The investor counterclaimed for losses he sustained on soybean futures transactions, alleging that the broker had failed to give him additional information concerning the soybean crop estimate. The investor requested that the case be submitted to the jury on theories of intentional misrepresentation, negligent misrepresentation, strict responsibility for misrepresentation, and breach of fiduciary duty. The trial court granted the broker's motion for judgment n.o.v. on the investor's claim of breach of fiduciary duty, and the intermediate appellate court affirmed. This court reversed and remanded, holding that a broker did not owe a fiduciary duty to an investor who had a nondiscretionary account. The fiduciary duty, the court noted, arose from a formal commitment to act for the benefit of another, and, absent an express agreement to place a greater obligation on the broker, there was no fiduciary duty. However, the court ruled that the negligent misrepresentation claim had not been fully tried, and that the breach of fiduciary duty theory had prejudicially misled the jury. Although the broker did not have an a priori duty to disclose known and relevant information, he did have a duty not to report negligently the information he had volunteered. Arguing that the majority had misconstrued the concepts of fiduciary duty and trust and confidence, the concurring opinion stated that a "nonfiduciary" business relationship between a principal and agent could become a relationship of trust and confidence, imposing on the broker the same duty that a traditional fiduciary relationship might impose. Merrill Lynch, etc. v. Boeck, 127 Wis.2d 127, 377 N.W.2d 605, 613.

Wis.1979. Subsec. (1) cit. in disc. The defendant was employed as the plaintiff's sales agent and was to obtain investors for breeding contracts. The defendant's commission was based upon the total amount of the investments, but the investors were given ten years to pay. The plaintiff was subsequently faced with financial problems and therefore sought refinancing. The defendant objected, but the president indicated that there would be no interference. However, the defendant proceeded to contact the investors and urged them not to go along with the refinancing which caused the plaintiff to default on a loan. This suit was then brought alleging tortious interference with a contract and breach of a fiduciary duty. The trial court overruled the defendant's demurrer and it appealed claiming that because the investment contracts were terminable at will, it could not be held liable for inducing nonperformance. The court found that the contract was valid until terminated and therefore the defendant was not permitted to interfere with it. The overruling of the demurrer was affirmed on this claim. It did not appear that the defendant's agency extended beyond the sale of the securities so that it did not owe the plaintiff a continuing fiduciary duty with regard to the plan to refinance. Therefore, this portion of the order overruling the demurrer was reversed. Charolais Breeding Ranches v. FPC Securities, 90 Wis.2d 97, 279 N.W.2d 493, 498.
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Wis.1978. Quot. in ftn. in disc. This action was brought against the city to recover for the death of a passenger in the crash of a private aircraft being flown as a scheduled part of an Independence Day celebration planned by an alleged agency of the city. Judgment for plaintiff, and city appealed. The court reversed and remanded, holding, inter alia, that the finding of agency was insufficient to establish the city's vicarious liability for the pilot's negligence, absent a further showing that the pilot was the city's servant, i.e., subject to the city's right to control his physical conduct in the performance of his services. Arsand v. City of Franklin, 83 Wis.2d 40, 264 N.W.2d 579, 581.

Wis.1978. Subsec. (1) quot. in case quo. but dist. and com. (a) quot. in part but dist. Plaintiff brought this action to recover funds allegedly entrusted to defendant and for an accounting by defendant. Pursuant to an oral agreement, plaintiff deposited his earning and income with defendant who would deposit and invest them for the plaintiff. When plaintiff terminated the agreement defendant returned certain funds but refused an accounting. Plaintiff appealed after the trial court sustained defendant's demurrer. The Supreme Court reversed and remanded, holding that while the complaint was insufficient to show an agency relationship between the parties by failing to allege plaintiff's control over the actions of the defendant, a cause of action on the theory of a constructive trust could be inferred from the complaint. Gorski v. Gorski, 82 Wis.2d 248, 262 N.W.2d 120, 122-123.

Wis.1977. Subsec. (1) quot. in sup. The plaintiff, a general contractor, contracted with the lessee of an ice arena owned by the defendant city to furnish labor and materials to improve the facility. Upon completion, plaintiff sought to enforce a construction lien against the defendant, alleging that lessee contracted with the plaintiff while acting as an agent of the defendant and thus defendant was an "owner" under the construction lien statute. The court reversed an order which sustained a demurrer to plaintiff's complaint and held that while the complaint was insufficient to meet the demurrer challenge, that the lower court erroneously concluded that lessee's status as an independent contractor was necessarily inconsistent with an allegation of agency and that the plaintiff's allegation that defendant and lessee were engaged in a joint venture stated an additional cause of action. James W. Thomas Const. Co., Inc. v. City of Madison, 79 Wis.2d 345, 255 N.W.2d 551, 554.

Wis.1975. Subsec. (1) quot. in sup. and com. (a) quot. in part in sup. The plaintiff, a licensed driver, was injured while accompanying the defendant beginning driver on the highway. While the defendant was traveling at about fifty miles per hour on the foggy roadway, she suddenly encountered an approaching vehicle. Unable to stop, she collided head-on. The jury apportioned the negligence fifteen percent to the defendant, eighty percent to the driver of the other vehicle, and five percent to the plaintiff. The defendant appealed, claiming that the trial court had erred in not instructing the jury on agency principles. The court held that an agency relationship in the operation of an automobile is established where there is some agreement by the driver to act in the other's behalf or for his benefit, some benefit results to the other party, and the other party retains the right to control the driver and direct him in the accomplishment of his purpose. Concluding that a jury question was presented as to whether there was an agency relationship between the plaintiff and the defendant, as well as to whether the plaintiff had an independent duty to supervise and control the defendant, the court ordered that the defendant be granted a new trial. Hoeft v. Friedel, 70 Wis.2d 1022, 235 N.W.2d 918, 924.

Wis.1975. Quot. and dist. A company brought suit to recover on an express contract for the furnishing of plumbing materials and services on two properties held in a cotenancy. The trial court denied recovery and refused to permit plaintiff at the end of trial to amend its pleadings to allege unjust enrichment. Judgment was affirmed on appeal. Plaintiff contended that defendants were the undisclosed principal of the party who entered into the plumbing contract with plaintiff. The court reasoned that whether the principal is disclosed or undisclosed, no liability exists unless in fact there is an agency relationship between the alleged principal and his alleged agent. Because there was no evidence that the alleged agent was acting for defendant at the time of the contract, the question of an undisclosed principal was irrelevant. Furthermore, absent the essential element that the agent purported initially to act for defendant, ratification by defendant was impossible. The trial court was also correct in concluding that defendant was not a partner with the party who entered into the contract with plaintiff. The joint ownership of property and the sale of the property at a profit do not raise the presumption of a partnership. Defendant also failed to meet the criteria.
of a joint venturer. Finally, the trial judge was correct in concluding that it would be unfair to defendant to permit amendment of the pleadings after trial, because, on the basis of the pleadings, defendant was not obligated to offer any proof to controvert contentions of unjust enrichment. Troy Co. v. Perry, 68 Wis.2d 170, 228 N.W.2d 169, 171.

Wis.1974. Cit. in sup. The plaintiff investor brought an action against an investment counseling firm alleging that the defendant represented to the plaintiff that it had unique information concerning a particular investment which it recommended, but that in fact it did not have such information or, in the alternative, it did not pass that information on to plaintiff. Based on this alternative allegation, plaintiff claimed fiduciary duty. Defendant's demurrer was overruled, and it appealed. Held: Affirmed. The complaint stated facts sufficient to constitute a cause of action on the theory of breach of fiduciary duty. The complaint alleged that defendant's services were obtained for the handling of plaintiff's financial investments. "One whose services are obtained for this purpose owes a fiduciary duty to the one who obtained those services … Where such a fiduciary duty exists, the agent has a duty to disclose all material information in its possession as to the transactions involved.” Schweiger v. Loewi & Co., 65 Wis.2d 56, 221 N.W.2d 882, 888.

Wis.1973. Quot. in part in ftn. in sup. Plaintiffs, a husband and wife, recovered damages for the defendant's breach of a contract to buy the plaintiffs' house. On appeal the defendant claimed that plaintiffs should have been held to a higher standard of conduct than the average person because the wife was a licensed real estate agent, although she had not been active in sales for the past three years. Affirming, the court held that the defendant did not fall within that category of persons who have a right to place trust and confidence in an agent who has assumed to act on their behalf. To hold otherwise would have been to hold that real estate agents enter into fiduciary relationships with whomever they come in contact when dealing with real estate. Gregory v. Selle, 58 Wis.2d 367, 206 N.W.2d 147, 150.

Wis.1970. Cit. in sup. The plaintiff executor brought an action to recover monies of the decedent allegedly wrongfully converted by defendant. The decedent had executed a power of attorney, giving defendant the power, among others, to receive “for (decedent) and in (decedent's) name, place and stead … all sums of money” owed to the decedent. The defendant withdrew money from decedent's bank account without decedent's knowledge, asserting that the power of attorney was tantamount to a gift. The court rejected this “bizarre argument” and held for plaintiff. The reading of the power of attorney makes it clear that the agency was for the benefit of the decedent and not for the defendant, and defendant was under a duty to account to his principal or his principal's representative for all sums which came into his hands. By analogy the fiduciary obligation of an agent and a trustee imposes similar duties. Both agents and trustees are fiduciaries. Alexopoulos v. Dakouras, 48 Wis.2d 32, 179 N.W.2d 836, 840.

Wis.1968. Quot. in sup. but dist. on facts. Defendant was convicted of forgery of checks. The checks belonged to defendant but were executed by another person with defendant's consent. Defendant knew the checks were worthless, and he shared in the proceeds when they were cashed. Defendant appealed claiming that it was not forgery since the person who signed did it with defendant's consent and therefore was defendant's agent, and at the most they were guilty of passing worthless checks. On appeal, the court affirmed. The court held there was no agency since there was no evidence of the one person acting within defendant's control or on his behalf. Since there was no agency relationship the party signing was guilty of forgery, and defendant was also guilty since he had shared in the proceeds. Krueger v. State, 39 Wis.2d 729, 159 N.W.2d 597, 599.

Wis.1966. Subsec. (1) coms. (d) and (e) and subsec. (2) com. (b) cit. in sup. in ftn. The plaintiff sought to compel the repurchase of a $50,000 corporate note and accompanying stock warrant by the defendants, a foreign corporation and brokerage firm. The Supreme Court dismissed the defendants' motion that the trial court lacked jurisdiction over the person of the corporation, finding sufficient evidence to show that the brokerage firm, which conducted the plaintiff's purchase of the note and accompanying stock warrants, was an agent of the defendant-foreign corporation. Pavalon v. Fishman, 30 Wis.2d 228, 140 N.W.2d 263, 266.
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Wis.1964. Cit. in sup. Plaintiff incurred injuries in an automobile accident while being taken from choir practice by another member of the choir. In a suit against the individual driver, the church, and the church’s insurer, the court held that the driver was not an agent of the church; therefore the church and its insurer were not liable. Galvan v. Peters, 22 Wis.2d 598, 126 N.W.2d 590, 595.

Wis.1961. Cit. in sup. Where driver of plaintiffs’ automobile was acting as plaintiff’s agent when the auto was involved in a collision with defendant, if agent was causally negligent, such was imputable to plaintiff and would be a bar to recovery. Strupp v. Farmers Mutual Auto. Ins. Co., 14 Wis.2d 158, 109 N.W.2d 660, 665.

Wis.1958. Cit. in sup. Automobile owner’s 16-year-old nephew who carried pails of water across sidewalk and who assisted in washing automobile without agreement or expectation of reward, if not an employee or servant of automobile owner in strict sense, was owner’s agent in fetching water, and owner was liable to pedestrian who slipped on ice which formed when water spilled from pail onto sidewalk. Heims v. Hanke, 5 Wis.2d 465, 93 N.W.2d 455, 458.

Wis.App.

Wis.App.1999. Subsec. (1) quot. in disc. Disbarred attorney moved to suppress evidence of embezzlement of trust funds, arguing that the evidence was seized in violation of the Fourth Amendment. The trial court denied the motion. Affirming, this court held that the client files that were used as evidence against attorney had been abandoned by him in violation of his fiduciary duty, and therefore he could not claim a reasonable expectation of privacy in their contents. State v. Knight, 232 Wis.2d 305, 606 N.W.2d 291, 295.

Wis.App.1996. Cit. in headnote, cit. in disc. When mortgagee brought foreclosure proceedings against mortgagors, mortgagors filed a counterclaim in which they asserted that mortgagee, which disbursed construction funds to their general contractor without first ensuring that construction was progressing as it should have, was liable for negligent disbursement. The trial court granted mortgagee a money judgment based on the foreclosure action, but found merit in mortgagors’ counterclaim and reduced the judgment accordingly. Affirming, this court held that mortgagee, having undertaken to disburse funds pursuant to a construction contract with mortgagor, was mortgagor’s agent and, as such, owed mortgagor a duty of care to inspect and monitor contractor’s work. First Nat. Bank v. Wernhart, 204 Wis.2d 361, 555 N.W.2d 819, 819, 822-823.

Wis.App.1982. Com. (e) cit. in ftn. The plaintiff auctioneer agreed to conduct an auction sale of certain equipment for the defendant. The defendant later refused to bring the equipment to the auction, and the plaintiff sued for breach of contract. The trial court determined that the defendant was liable to the plaintiff for breach of the auction agreement, but that the plaintiff was not entitled to damages for lost profits and had not proved damages to a reasonable degree of certainty. On appeal, the issues were whether the plaintiff was entitled to recover its lost commissions and whether there was sufficient evidence produced at trial to calculate those commissions. This court stated that, as the auctioneer was the seller’s agent, the rights and liabilities of the auctioneer were governed by general principles of agency law. The court compared the auctioneer’s position to that of a real estate broker and held that the rules governing the termination of real estate listing contracts were applicable here. Under those rules, the plaintiff auctioneer was not entitled to recover its commission per se, because it did not do all that it was required to do under the agreement, nor did it prove bad faith prevention of performance by the defendant. However, the court held that the plaintiff was entitled to recover the profits it lost as a result of the defendant’s breach; these profits were equal to the plaintiff’s lost commission less any expenses saved by virtue of the breach. With regard to proof of damages, where testimony had indicated that the equipment had an auction value ranging from $89,600 to $131,000, this range afforded a legitimate basis upon which to estimate the plaintiff’s lost profits to a reasonable certainty. This court reversed the trial court’s judgment and remanded for a determination of damages. Thorp Sales Corp. v. Gyuro Grading Co., Inc., 319 N.W.2d 879, 882.
Wyo. 1995. Quot. in case quot. in disc. New homeowner who discovered various structural defects sued realtor that sold him the house, alleging, inter alia, that realtor failed to communicate his concerns about the roof and a section of floor to the structural engineer who certified the home as sound. The trial court granted realtor's motion for summary judgment. Affirming, this court rejected homeowner's argument that realtor was acting as his agent for the limited purpose of securing the home inspection, and held that homeowner presented no evidence of an agency agreement, express or implied. To the contrary, homeowner testified that he understood realtors normally worked for sellers and knew that realtor was doing so in this case. Fowler v. Westair Enterprises, Inc., 906 P.2d 1053, 1055.

Wyo. 1988. Subsec. (1) quot. in sup. A physically and mentally handicapped child who was severely burned when a staff member of a residential educational facility left him alone in a bathtub sued the school districts to recover for his injuries. The trial court entered partial summary judgment for the school districts on the issue of vicarious liability. This court affirmed and held that, as the operator of the facility was a governmental entity, its employees were not employees of the school districts; therefore vicarious liability could not be imputed to the defendants. The court explained that the operator was an agency of the school districts because it acted and agreed to act on behalf of the school districts in furnishing educational services to those handicapped children residing in the districts, and the operator was subject to the ultimate control of the districts. Sykes v. Lincoln County School D. 1 & 2, 763 P.2d 1263, 1266.

Wyo. 1987. Quot. in diss. op. A widow brought a wrongful death action against the father of a hunter who killed her husband in a hunting accident. The trial court granted summary judgment to the defendant. Affirming, this court held that the defendant was not vicariously liable for his son's negligence because no master-servant relationship or joint enterprise existed between them as there was no direction or control by the defendant, and that the violation of the hunting statute was not the proximate cause of the death of the plaintiff's husband. The court noted that the prime consideration in deciding whether an agency existed was whether the defendant had control over his son's conduct, and concluded that no agency existed because the son had complete control over when and how to use his rifle. The dissent argued that summary judgment was inappropriate because a jury could reasonably infer some control by the defendant, and that an employee relationship was not the only kind of agency that could be created. Holliday v. Bannister, 741 P.2d 89, 97.

Wyo. 1983. Com. (e) cit. in sup. An attorney signed and filed a lien statement for his client. The lower courts foreclosed the lien and the property owner appealed. This court affirmed. The applicable lien law did not include the attorney-client relationship among the agency relationships it presumed to exist. Nevertheless, this court noted that attorneys, though independent contractors, were agents for their clients whenever they were employed, and held that, in the absence of any specific statement of inapplicability of the attorney-client relationship, an attorney could file a lien statement for his client. Stricker v. Frauendienst, 669 P.2d 520, 522.

Wyo. 1978. Quot. and com. (b) quot. in part in disc. Plaintiff, a property owner, brought an action against a materialman, alleging impairment of title and seeking damages and an order restraining the materialman from foreclosing a purported mechanic's lien. The defendant counterclaimed to establish and foreclose the mechanic's lien and joined a contractor as a third-party defendant claiming the value of materials furnished to the contractor. Plaintiff filed a third-party complaint against the contractor seeking judgment against the contractor for any damages awarded defendant on its counterclaim. Materialman secured judgment against the plaintiff and the contractor and judgment was entered for plaintiff on his third-party complaint. The plaintiff appealed, and the court modified and remanded. It was held, inter alia, that there was insufficient evidence to establish an agency relationship or joint venture between the defendant and the contractor, and that the judgment entered against the plaintiff was void. Defendant materialman was entitled to a personal judgment against only the contractor. If the contractor could not satisfy that judgment,
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the materialman could execute only against the property, not against the plaintiff's other assets. True v. Hi-Plains Elevator Machinery, Inc., 577 P.2d 991, 999.