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Liability of Master to Guest in Salesman's Automobile - Wood v. H. W. Gossard Co.

LIABILITY OF MASTER TO GUEST IN SALESMAN'S AUTOMOBILE

Wood v. H. W. Gossard Co.[1]

This was a personal injury action brought by a guest of the defendant's saleswoman arising out of an automobile collision.

Defendant was a seller of ladies' foundation garments and had participated in a sales meeting, "Corset Market Week", in New York. There the saleswoman and defendant's executives made a concentrated effort to have plaintiff, a buyer for a Richmond Department store, adopt a new line of defendant's merchandise, a light-weight model called "Old Gold". Plaintiff was still uncertain at the end of the week, but she had stayed over an extra day in New York to inspect the new line, at the urgings of the saleswoman, and relinquished airplane accommodations to Baltimore upon the saleswoman's promise to drive plaintiff to Baltimore. The saleswoman, as a regional representative, was required to have a car to cover her territory, for which the company had loaned her the purchase price. It was part of the saleswoman's job to attend Corset Market Week in New

[1] 204 Md. 177, 103 A. 2d 130 (1954).

York, and the following week to be at a sales meeting in Chicago. The trip to Baltimore from New York, on which plaintiff was injured was the first leg of the saleswoman's drive from New York to Chicago. On the day before the return trip the saleswoman, in company with plaintiff, told the Eastern sales manager that plaintiff was staying over and that she was driving the plaintiff part of the way home. He wished them a good trip and said he wished he was going with them. Other executives of defendant were conversant with the arrangement, and with the saleswoman's efforts to make plaintiff a customer for the "Old Gold" line. Moreover, the defendant company was described as one big family in which everyone knew what the other was doing and in which each helped the other. Suit was filed against both the saleswoman and the company and verdict was rendered against both. The trial court however, entered a judgment n. o. v. in favor of the Company from which plaintiff appeals.

In reversing the Court of Appeals found: "that unquestionably there was evidence from which the jury could reasonably find that Miss Brown (the saleswoman) was an employee", "that the trip in which Mrs. Wood was injured was in furtherance of her employer's business", and that "the ultimate question, on which the decision hinges, is . . . did she have express or apparent authority to permit Mrs. Wood (the plaintiff) to ride in the automobile on the occasion in question?".[2]

The court, paraphrasing the *Restatement of Agency*, Sec. 242, comment a., lays down as a general principle that:

> ". . . if a third person enters a vehicle operated by a servant and does so at the invitation of or with the permission of the servant who has no authority or apparent authority to give such invitation or permission, the master is not liable . . ."[3]

But the court also clearly recognized that merely providing a servant with a car to operate in the master's business does not establish the ostensible authority to invite riders, saying:

> "However, a servant operating a motor vehicle is not regarded, by that fact alone, as thereby clothed with even the appearance of authority to invite third persons to ride."[4]

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[2] *Ibid*, 182-3.
[3] *Ibid*, 181-2.
[4] *Ibid*, 182.

Now apparent authority is, generally, that doctrine which binds the principal by an unauthorized act of his agent where the principal has, by his direct act or negligent omission or acquiescence, caused or permitted the person dealing with the agent reasonably to believe that the principal has actually conferred the particular authority, and upon which that person has relied.[5] It is only in rare cases that it has application in the master and servant relationship, as it is primarily applied to the principal-agent relationship, as pointed out in *East Coast Freight Lines v. Mayor and City Council of Baltimore.*[6]

In that case an issue was submitted to the jury as to whether the driver had apparent authority to invite plaintiff's decedent to ride on defendant's tractor-trailer.[7] This was held to be error and the court said the issue should have been whether the driver had expressed or implied authority.[8] It was stated, "As pointed out in the case of *Great A. & P. Co. v. Noppenberger*, 171 Md. 378, 189 A. 434, the doctrine of apparent authority is applicable only where the relation of employer and employee is that of principal agent."[9] And further, in speaking of the difference between an agent and a servant, this reason is given:

> "The distinction is of importance here where the inquiry is directed to the liability of the master for the tortious acts of a servant. In the case of an agent that liability often depends upon the apparent authority of the agent because, since it is his function to create primary obligations giving rise to primary rights, the person with whom he deals representing his principal may justly complain if he is permitted by the principal to display an appearance of authority which has never in fact been granted him. In the case of a servant whose acts do not create, but violate, primary rights, and give rise to secondary obligations and remedial rights, appearances are of less importance because usually the third party is not misled by the master's representations of the servant's authority."[10]

However, Professor Mechem believed that apparent authority may sometimes be applicable to a master-servant relation. He says:

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[5] MECHEM, LAW OF AGENCY (2d ed., 1914), Sec. 729.
[6] 190 Md. 256, 58 A. 2d 290, 2 A. L. R. 2d 386 (1948).
[7] *Ibid*, 283.
[8] *Ibid*, 285.
[9] *Ibid*, 284.
[10] *Ibid*, 284-5.

> "The doctrine of apparent powers, which, as has been seen, plays so important a part in determining an agent's authority in contractual cases, is much less important in this field (liability to third persons). Third persons may readily be induced by appearances of authority to enter into business dealings with an agent, but the cases must be much fewer in which a person is induced by any appearance of authority in a servant to become the victim of the servant's negligence or misconduct. There may be such cases, however, as for example where persons are led by the appearance of authority to obey directions, follow instructions, omit precautions, and the like, and as a consequence are subjected to danger and suffer injury."[11]

Language acknowledging the application of the principle to a master-servant situation can be found in the dicta of several American cases.[12] Typical of these is *Shrimplin v. Simmons Auto Co., Inc.*[13] where it is said:

> "The owner of a motor vehicle operated by a servant is not liable for personal injuries sustained by one invited therein by the servant . . . when the servant is without actual, ostensible or implied authority to extend the invitation . . ."[14]

Two cases arising out of situations similar to the principal case have turned on the application of apparent authority.

In *Cole v. Johnson Motor Co.*[15] an automobile salesman picked up some hitch-hiking Duke girls in a demonstration car. The appellate court set aside a directed verdict for defendant company, saying:

> "These considerations (private instructions to servant) however, do not foreclose recovery in cases where the invitation may be considered within the ostensible scope of authority, where the deviation from actual

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[11] *Op. cit., supra*, n. 5, Sec. 1885; *Cf.* MECHEM, OUTLINES OF THE LAW OF AGENCY (4th ed., 1952, by Philip Mechem), Chs. XII, XIII.

[12] Dyer v. McCorkle, 208 Cal. 216, 280 P. 965, 967 (1929); Barall Food Stores v. Bennett, 194 Okla. 508, 153 P. 2d 106, 108 (1944); Monnet v. Ullman, 129 Or. 44, 276 P. 244, 245 (1929); Giacomuzzi v. Klein, 324 Mass. 689, 88 N. E. 2d 548, 550 (1949); Dearborn v. Fuller, 79 N. H. 217, 107 A. 607, 608 (1919).

[13] 122 W. Va. 248, 9 S. E. 2d 49 (1940).

[14] *Ibid*, 52.

[15] 217 N. C. 756, 9 S. E. 2d 425 (1940).

> authority may be slight or where the invitation and transportation may have some reasonable relation to the furtherance of the employer's business."[16]

Less extreme is the case of *De Parcq v. Liggett & Myers Tobacco Co.*[17] where a directed verdict was also set aside. There was evidence in the case that the salesman had given rides, some of considerable length, to people in the past, and that the practice was known to the district manager. It was said:

> "We also think that these same rides . . . constituted evidence of a holding out by Rosenquist (master) that Thompson (servant) had authority to give such rides; and that such holding out clothed Thompson with apparent authority to take people relying thereon on such rides; and that there was substantial evidence tending to show that plaintiff knew of such holding out and relied upon the same, at the time of taking the trip here in controversy; and that it was therefore for the jury to say whether Thompson had apparent authority to take plaintiff on the trip."[18]

Although there is some out of state authority for applying apparent authority to the master-servant relation, it is submitted that the doctrine need not have been applied in the instant case. If actual authority is "the power of the agent to affect the legal relations of the principal by acts done in accordance with the principal's manifestations of consent to him",[19] it would seem that the acquiescence of the master's executives, taken in the light of the concerted effort of all concerned to sell the plaintiff, and knowing that the drive would afford added opportunity to make the sale, is such a manifestation of consent. In fact the Court itself seems to lose sight of its previous apparent authority discussion by concluding with language equally applicable to actual authority, in this way:

> ". . . and reasonable men could find, that the arrangements for the ride had the full blessings of the company and that she (plaintiff) was its guest as well as (the servant's)."[20]

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[16] *Ibid*, 427.
[17] 81 F. 2d 777 (8th Cir., 1936).
[18] *Ibid*, 780-1.
[19] RESTATEMENT, AGENCY (1933), Sec. 7.
[20] 204 Md. 177, 186, 103 A. 2d 130 (1954).

Moreover, placing the decision on apparent authority grounds leaves the reasoning open to criticism as to whether a guest *really* accepts the invitation because of reliance on the master's assent to the holding out. One editor says:

> "In point of fact it would seem that ordinarily one who gets the servant's permission to ride is quite satisfied therewith; and in most cases it would be remarkable to picture such a person as acting on the permission or invitation only because he understands that it comes from the master."[21]

Whether the decision is categorized as based on apparent or actual authority, it is submitted that it is sound. For the rule protecting a master from liability for injury to unauthorized invitees of the servant is an effort to keep within reasonable bounds the very broad risks incident to the master's sending his servant out on business with an automobile. Yet, where the master has actual knowledge of the invitation in advance, no risk in addition to those contemplated is incurred, and the general rule should apply.

[21] Note, 2 A. L. R. 2d 406, 422. See also dissent in De Parcq v. Liggett & Myers Tobacco Co., *supra*, n. 17, *dis. op.* 781.