South Carolina Law Review

Volume 10 | Issue 1 Article 3

Fall 1957

# Agency

James F. Dreher
*Robinson, McFadden & Dreher (Columbia, SC)*

Follow this and additional works at: https://scholarcommons.sc.edu/sclr

Part of the Law Commons

Recommended Citation
James F. Dreher, Agency, 10 S.C.L.R. 3. (1957).

This Article is brought to you by the Law Reviews and Journals at Scholar Commons. It has been accepted for inclusion in South Carolina Law Review by an authorized editor of Scholar Commons. For more information, please contact dillarda@mailbox.sc.edu.

# AGENCY

JAMES F. DREHER*

Whenever collections on an account between a mortgagor and a mortgagee are handled by a third person, he is the agent for one or the other, never for both. Whenever the collector puts collected funds into his pocket, one of two innocent parties must suffer and justice dictates that it should be the one who made it possible for the loss to occur. That person, in these mortgage collection cases, is the one whose agent the defalcating collector was. That is a simple sounding proposition, but in its application the rule can present as perplexing problems as are to be found in any other single type of case. And the sad part is that these cases always come in bunches.

The first of what will likely be a new bunch is *Twitty v. Harrison*[1] in which we once again have the classic case of a trusted lawyer taking a note and real estate mortgage from an innocent borrower, procuring its sale and assignment to an innocent investor, following the practice (apparently at no one's specific suggestion) of making collections of principal and interest from the borrower and remitting them to the lender, and then making some collections which are never remitted. In solving the problem in the *Twitty* case, the court recognized, as it has done in all of such cases in recent years, that no hard and fast rule of law can determine the issue. Principles of agency are, of course, at the heart of the problem, but these cases cannot be decided on legal rules alone. Different aspects of different equities appear in each successive case and there is no way of avoiding the necessity of deciding each case on its own facts and its own equities. In this latest case the Court affirmed the Circuit Judge's finding that the lawyer was the agent of the mortgage assignee. The decision was rested altogether upon the actual authority of the agent rather than his apparent authority, actual authority being found in the established course of

*Member of the firm of Robinson, McFadden & Dreher, Columbia; A.B., 1931, The Citadel; LL.B., 1934, University of South Carolina; part time Instructor, University of South Carolina, School of Law, 1946-54; member Richland County, South Carolina and American Bar Associations.

1. 230 S. C. 174, 94 S. E. 2d 879 (1956).



Published by Scholar Commons, 2020

South Carolina Law Review, Vol. 10, Iss. 1 [2020], Art. 3

dealing which the lawyer had with this investor and in some admissions which she made on the stand. The decision seems sound, but it would probably have seemed just as sound had it gone the other way.

*Taylor v. U. S. Casualty Co.*[2] involved the question of whether a "producer of record" who submits an application for automobile liability insurance through the Assigned Risk Plan becomes the agent of the insurance company to whom the coverage is assigned. The Court held that none of the normal mechanics of the handling of the application can make the local insurance agent who originates the application for assigned risk insurance the agent of the company eventually writing the policy, but that the company can make him its apparent agent by sending him the policy to deliver.

The "producer of record" is the person, usually an insurance agent, who takes an application for liability insurance, to conform with the Motor Vehicle Safety Responsibility Act, from a person who cannot obtain insurance through the normal channels and submits that application with a deposit on the premium to the clearing house of the Assigned Risk Plan for assignment to one of the companies which are required to operate the Plan. The status of "producer of record" is primarily for the purpose of giving the producer a commission on the premium, if and when the policy is placed. The Court held in the *Taylor* case that nothing which occurred up to the time of the delivery of the policy could have made the producer of record the agent of the insurance company which accepted the coverage since throughout the whole of the transaction the identity of that company was unknown. The Court held, however, that the issuing company could have delivered the policy to the insured and collected the premium from him directly rather than through the producer of record; that when it chose to send the policy to the producer for delivery it clothed him with such appearances of authority as permitted a jury to say that he was, to the insured, the company's agent for the collection of the initial premium, and when he collected it and forgot to send it to the company, the company was bound by the payment and was guilty of wrongful cancellation when it cancelled for failure of premium payment. In support of its ruling the Court cites

2. 229 S. C. 230, 92 S. E. 2d 647 (1956).

two South Carolina cases[3] dealing with apparent authority in general. Additionally, American Jurisprudence[4] is authority for the specific rule which was applied here:

> When an insurance company delivers a policy to an agent to be delivered to the insured, it thus clothes such agent with apparent authority to receive payment of at least the first premium.

The Court decided only one other case in the field of Agency which is of any general interest. That was *Norwood v. Parthemos*[5], in which a non-resident challenged the service of process upon him through the Highway Department on account of a claim arising out of the negligent operation of his automobile in South Carolina. A friend of the automobile owner's son, who was also in the car, was driving at the time of the collision and the owner took the position that the driver was not his agent or servant. Judge Brailsford, whose opinion was adopted by the Supreme Court, held that the complaint alleged agency under the South Carolina family purpose doctrine and that constructive service upon a non-resident automobile owner on that basis was valid. Judge Brailsford pointed out that the family purpose doctrine applied although "the actual operation of the automobile was by a companion of the son for whom it was maintained and to whom it was furnished by the defendant."

3. Moore v. Hardaway Contracting Co., 193 S. C. 299, 8 S. E. 2d 511 (1940), and City of Greenville v. Washington American League Baseball Club, 205 S. C. 495, 32 S. E. 2d 777 (1945).

4. 29 Am. Jur. 357, Insurance, Section 426.

5. 230 S. C. 207, 95 S. E. 2d 168 (1956).