South Carolina Law Review

Volume 17
Issue 1 *1963-1964 Survey Issue*

Article 6

1964

Agency

Webster Myers Jr.
University of South Carolina School of Law

AGENCY

WEBSTER MYERS, JR.*

Master and Servant

South Carolina Industrial Comm'n v. Progressive Life Ins. Co.[1] involved an action to determine whether an insurance company was subject to the Workmen's Compensation Act. The company claimed that its agents were not employees but independent contractors. The South Carolina Supreme Court held the agents to be employees relying upon the degree of control as being "the essential criterion." Facts the court considered important in finding sufficient control included: a guaranteed weekly wage, company furnished supplies, territories determined by the company, constant supervision, group insurance, use of Form W-2 and, the reservation by the company to fire at will without liability.

In *Hutson v. Herndon*[2] a variation of the borrowed servant doctrine was before the court. The plaintiff and her husband leased trucks to the defendant under a trip-lease agreement. The plaintiff's husband agreed to drive one of the trucks and while doing so negligently injured the plaintiff. The plaintiff prevailed on the theory that her husband became the servant of the defendant. The court properly emphasized that the right to control rather than the actual exercise of control is the crucial test.[3] The trip-lease agreement provided: "that the leased equipment under this agreement is in the exclusive possession, control, and use" of the defendant, he expressly assuming full responsibility in respect to its operation.[4] The court decided that such language was sufficiently broad to give the defendant the right to fully control the truck and its driver.

Principal and Agent

Allen v. Grimsley[5] involved a suit by a purchaser for breach of a general warranty contained in a deed. The property was encumbered by a mortgage, the seller being the mortgagor. The real estate broker handling the transaction informed the pur-

* Associate Professor of Law, University of South Carolina.

1. 242 S.C. 547, 131 S.E.2d 694 (1963).
2. 243 S.C. 257, 133 S.E.2d 753 (1963).
3. See generally MECHEM, AGENCY § 415 (4th ed. 1952).
4. 243 S.C. 257, 260, 133 S.E.2d 753, 755 (1963).
5. 243 S.C. 398, 134 S.E.2d 211 (1964).

chaser that this mortgage would have to be satisfied and received from the purchaser a down payment for that purpose. The broker subsequently defaulted without paying the mortgage. The court affirmed a judgment for the purchaser.

The seller argued that the broker was not his agent. The court limited its inquiry to whether there was ". . . sufficient competent evidence to support the finding of fact . . ." that the broker was an agent of the seller.[6] Several inferences from the evidence weakened the seller's case. First, the seller knew the broker failed to satisfy the mortgage and did not take action. Second, the commission would have been paid by the seller. In addition, the broker had his sign on the seller's property; he had handled other sales for the seller in the past, and the seller was seen occasionally in the broker's office.

A point not discussed was, assuming the agency relationship existed, did the broker have authority to receive the down payment? Usually the broker does receive whatever closing payments are required in real estate transactions. Such payments normally accompany the transaction, and if the broker represents the seller, it is only fair the seller should suffer any risks arising from his own absence and choice of agent.[7]

In *Bost v. Bankers Fire & Marine Ins. Co.*[8] one issue was whether facts known to the agent are imputed to the principal.[9] The evidence supported a finding that the insurance agent received notice outside the course of his agency duties that the insured was moving the property to another location in violation of the policy. The court held that if the knowledge was of the type he should act upon then it is imputed to the principal.[10]

6. *Id.* at 403, 134 S.E.2d at 214.

7. Compare RESTATEMENT (SECOND), AGENCY § 71 (1957):
Unless otherwise agreed, authority to receive payment is inferred from authority to conduct a transaction if the receipt of payment is incidental to such a transaction, usually accompanies it, or is a reasonably necessary means for accomplishing it.

8. 242 S.C. 274, 130 S.E.2d 907 (1963).

9. The case involved several questions of insurance law. For example, the defendant claimed that no agency existed. Without resorting to general agency principles, the court rejected this contention on the basis of S.C. CODE ANN. § 37-233 (1962), which defines agents of insurance companies.

10. Some courts will not impute the knowledge which the agent receives apart from his relationship to the transaction. This view is clearly rejected in South Carolina. See Aiken Petroleum Co. v. National Petroleum Underwriters, 207 S.C. 236, 36 S.E.2d 380 (1945). The South Carolina view is preferable since the agent is under a clear duty to inform the principal of important matters relative to the agency. Compare RESTATEMENT (SECOND), AGENCY § 381 (1957). Innocent third parties should not have to bear the risk of the breach of that duty.

The jury verdict that the principal waived its right and was estopped because of imputed knowledge was reinstated.

The issue of whether a person is an agent for the purpose of service of process was raised in *Lawson v. Jeter*.[11] The court quoted with approval from the circuit court's order:

> There is no contract establishing any agency relationship between them. But from the evidence I find that the corporate defendant has no interest in or control whatever over Mobley L. Jeter's equipment, his employees, or his means and methods of conducting his business. The relationship is simply that of buyer and seller. Mr. Jeter buys dairy products from the corporation and resells them to his customers as an ordinary merchant in the normal course of business. Title to the products pass to him upon delivery to him within this State and he pays the corporation for such products when billed for the same; but when and to whom and on what terms he resells such products are matters within his sole discretion. The mere fact that the brand name "Sealtest" is displayed on Jeter's trucks in connection with his own name as distributor is, in my opinion, entirely insufficient to sustain plaintiff's contentions.[12]

11. 243 S.C. 103, 132 S.E.2d 276 (1963).
12. *Id.* at 105-06, 132 S.E.2d at 276-77.