

Case v. McConnell & Forrester

Court of Appeal of California, Second Appellate District, Division Two

March 29, 1935, Decided

Civ. No. 8548

Reporter

5 Cal. App. 2d 688 *; 44 P.2d 414 **; 1935 Cal. App. LEXIS 1134 ***

JOHN R. CASE, Jr., et al., Respondents, v.
McCONNELL & FORRESTER

(Copartners) et al., Defendants; BANK OF
AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION (a National
Banking Association) et al., Appellants

Subsequent History: [***1] A Petition by Appellants to have the Cause Heard in the Supreme Court, after Judgment in the District Court of Appeal, was Denied by the Supreme Court on May 27, 1935.

Prior History: APPEAL from a judgment of the Superior Court of Los Angeles County. Caryl M. Sheldon, Judge.

Disposition: Affirmed.

Core Terms

executive committee, commissions, sales

Case Summary

Procedural Posture

Appellant trust beneficiaries challenged the judgment of the Superior Court of Los Angeles County (California), which found in favor of respondent sub-agents in the sub-agents' action to recover commissions earned by them in the sale of property on

behalf of the trust beneficiaries.

Overview

The trial court found in favor of the sub-agents in their action to recover commissions for real estate that they had sold on behalf of the trust beneficiaries after they had been employed by two of the beneficiaries that were agents of the group of trust beneficiaries and that comprised the executive committee. On appeal, the court affirmed. Upon rehearing, the court affirmed and found that the executive committee acted within the scope of its employment to hire the sub-agents and the sub-agents knew that the executive committee was an agent for the beneficiaries under the trust. The court held that by virtue of the trust agreement each trust beneficiary was liable for debts incurred during the period in question. Because the executive committee had the actual authority to employ the sub-agents to sell the land pursuant to [Cal. Civ. Code § 2317](#) and the authority to render the trust beneficiaries liable for the commissions they earned, the court determined that the trust beneficiaries could not accept the benefits of the sales and then seek to avoid payment of the commissions by claiming that the executive committee did not have

the authority to hire the sub-agents.

Outcome

The court affirmed the judgment in favor of the sub-agents in their action to recover commissions from the trust beneficiaries.

LexisNexis® Headnotes

Business & Corporate

Law > ... > Authority to Act > Actual Authority > Express Authority

Business & Corporate Law > Agency Relationships > General Overview

Business & Corporate Law > Agency Relationships > Authority to Act > General Overview

Business & Corporate

Law > ... > Authority to Act > Actual Authority > General Overview

Business & Corporate

Law > ... > Authority to Act > Apparent Authority > General Overview

Business & Corporate

Law > ... > Authority to Act > Apparent Authority > Reliance

Business & Corporate

Law > ... > Establishment > Estoppel, Necessity, & Ostensible Agency > General Overview

[HNI](#)[\[↓\]](#) **Actual Authority, Express Authority**

The question of the authority of the agent must depend, so far as it involves the rights of innocent third persons who have relied thereon, upon the character bestowed and not upon the instructions given. Or in other words, the principal is bound to third persons who have relied thereon in good faith and in ignorance of any limitations or restrictions by the apparent authority he has given to the agent and not by the actual or express authority, and this, too, whether agency be a general or a special one.

Headnotes/Syllabus

Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#)[\[↓\]](#) (1)

Broker's Commissions—Sales—Trusts—Limitation of Liability—Constructive Notice.

--In this action to recover commissions on sales of certain lots held by a bank in trust under a trust agreement, the beneficiaries under said trust, who were principals, could not receive collections on sales made by plaintiffs which exceeded the amount they agreed to pay to plaintiffs, divert such collections toward the payment of other obligations, impair the *corpus* of the trust by permitting it to be subjected, without any sufficient consideration, to an encumbrance superior to their own and then, on the theory of constructive notice of limitation in the trust agreement of the liability to be incurred by their agents, deprive plaintiffs

as sub-agents of their pay for their work.

[CA\(2\)\[↓\]](#) (2)

Id.—Good Faith—Change in Market—Defense.

--In said action, where the transactions of said beneficiaries in diverting collections toward payment of other obligations, and in impairing the *corpus* of the trust by permitting an encumbrance superior to their own, occurred while the real estate market was strong and there was no doubt of the entire good intentions of the beneficiaries, and the venture in all likelihood would have resulted in profits if the market had not turned, such facts, while they might absolve the parties from personal blame, could not affect their legal liabilities.

[CA\(3\)\[↓\]](#) (3)

Id.—Trusts—Limitation of Liability of Beneficiaries—Knowledge—Findings—Evidence.

--In said action, the evidence was sufficient to support a finding that, prior to the filing of the answer, neither plaintiff read nor knew of the provisions in the trust agreement which limited the liability of the beneficiaries to be incurred by their agents to the trust assets only, and that plaintiffs rendered their services believing that said agents had full and unlimited authority to employ them for said beneficiaries.

[CA\(4\)\[↓\]](#) (4)

Id.—Trusts—Agency—Knowledge.

--In said action, it was within the scope of the employment of the agents of said beneficiaries to hire plaintiffs, and the latter knew that said agents were acting as such for the beneficiaries under the trust.

[CA\(5\)\[↓\]](#) (5)

Id.—Trusts—Beneficiaries—Liability of.

--In said action, having entered into their mutual relationship by virtue of the trust agreement, each beneficiary was liable for debts incurred during the period that he occupied such relationship and which were necessarily contracted for the purpose of carrying out the objects for which such trust was formed, except as to persons who dealt with them on the basis of agreement limiting their liability.

[CA\(6\)\[↓\]](#) (6)

Id.—Trusts—Sales—Agency—Retention of Benefits.

--In said action, where plaintiffs were employed by the agents of the beneficiaries, the latter were precluded from asserting, as a defense, the undisclosed limitation on their agents' authority; and where said agents had actual authority to employ plaintiffs to sell the land, and had ostensible authority to render the beneficiaries liable for the commissions thus earned, the latter could not accept the benefits of such sales and then seek to avoid payment of earned commissions by virtue of their undisclosed

agreement with their agents.

[CA\(7\)\[↓\]](#) (7)

Id.—Agency—Scope of Authority.

--The question of the authority of an agent must depend, so far as it involves the rights of innocent persons who have relied thereon, upon the character bestowed and not upon the instructions given; in other words, regardless of whether the agency is a general or a special one, as to third persons who have relied thereon in good faith and in ignorance of any limitations or restrictions, the principal is bound by the apparent authority he has given to the agent and not by the actual or express authority.

[CA\(8\)\[↓\]](#) (8)

Id.—Trusts—Agency—Judgments.

--In said action, where a lot had been sold for cash and the purchase price was in the hands of the bank, which acted as trustee, when it was ordered by the agents of the beneficiaries to pay plaintiffs their commissions as fast as the selling prices on said sales were respectively collected, and the money was held by the bank subject to the order of said agents, it was its duty to pay the money to plaintiffs, and upon its failure to do so the trial court properly held it liable for the commission on the sale of said lot.

Counsel: Freston & Files and Ralph E. Lewis for Appellants.

Janeway, Beach & Hankey for Respondents.

Opinion

[*689] [**414] The facts are stated in the opinion of the court.

THE COURT. -- On rehearing complaint is made that the trial court in its findings and this court in its opinion on appeal failed to give complete consideration to the provisions [*690] of [Civil Code, section 2318](#), relating to constructive notice of the restriction upon the authority of an agent. It is urged that appellants, who were the beneficiaries of the trust, are entitled to the safeguard of the provisions in the trust agreement which limited liability to be incurred by their agents Forrester and McConnell to the trust assets.

The commissions here sued on and for which judgment was recovered amounted to \$ 8,399.22 plus interest for sales to parties named Morris and Jervis. By their answer to plaintiff's amended complaint, [***2] appellants admitted receiving at least \$ 10,000 from Morris on account of these sales and there is evidence that certain other substantial sums were received from Jervis. It further appears that these beneficiaries acquiesced in an arrangement by which the security of certain of the trust property was materially impaired by permitting the purchaser to subject it to a first trust deed payable to an outsider and taking back a second trust deed for the balance of the purchase price.

[CA\(1\)\[↑\]](#) (1) Under the views we have heretofore expressed and the cases we have cited, we are not persuaded that the

appellants would have benefited by a finding or more explicit expression by us on the question of constructive notice. Such beneficiaries, who are principals in this case, cannot receive the fruits of the labor of sub-agents hired on their behalf which exceed the amount they have agreed to pay these sub-agents, divert these collections (as the trial court found they had done) toward payment of other obligations, impair the *corpus* of the trust by permitting it to be subjected, without any sufficient consideration, to an encumbrance superior to their own **[**415]** and then, on the theory of constructive **[***3]** notice, deprive their sub-agents of their pay for their work. [CA\(2\)\[↑\] \(2\)](#) All of this happened while the real estate market was strong and we have no doubt of the entire good intentions of the beneficiaries. Like so many ventures this one would in all likelihood have resulted in profits to all had the market not turned. These facts, however they may absolve the parties from personal blame, cannot affect their legal liabilities.

We here append our opinion and decision, the same being unchanged from that heretofore filed:

Plaintiffs recovered judgment for commissions earned by them in sale of certain lots in a real estate subdivision. Appellant bank held the land in trust for the purpose of assisting **[*691]** the parties in carrying out their project. The other four appellants were among the beneficiaries of the trust. The beneficiaries constituted themselves in effect a voluntary, unincorporated association known as "Monte Mar Vista Syndicate", and under the

trust agreement they had possession of the land for the purpose of improvement and sale. By this same agreement they appointed appellant Forrester and defendant McConnell as selling agents and also as an "executive committee" and granted **[***4]** them an "irrevocable power of attorney to do any and all acts on behalf of the beneficiaries which they themselves could do," with the sole exception that they could not obligate beneficiaries personally but only as to trust assets. The executive committee in turn employed plaintiffs, Case as advertising manager and Brockett as sales manager, to sell the property.

Appellants contend that the judgment against the four who were beneficiaries should not have been against them personally but should be recoverable only out of trust property, by reason of the provisions in the trust agreement.

[CA\(3\)\[↑\] \(3\)](#) (1) The court found that: "Neither of the plaintiffs has ever read said Amended Declaration of Trust of date March 15, 1927 (in which these matters were set out), and neither of plaintiffs, prior to the filing of the answer in this action, knew of any limitation upon the authority of said W. R. McConnell and/or of said Fred W. Forrester, and plaintiffs rendered such services as were rendered by them during their said employment believing that said Fred W. Forrester and W. R. McConnell as such executive committee and exclusive sales agents had full and unlimited authority to employ them respectively **[***5]** as advertising manager and sales manager for said trust and the beneficiaries thereof." The evidence is sufficient to support this

finding.

[CA\(4\)\[↑\]](#) (4) (2) It was admitted at the trial that "all the beneficiaries knew who the executive committee was" and that the latter were acting as their agents. It is apparent that it was within the scope of their employment for this executive committee to hire plaintiffs, and the latter knew that the executive committee were agents for the beneficiaries under the trust. Sales were made by plaintiffs and were accepted by the beneficiaries and the bank. When the sales had been completed but the commissions were not paid, plaintiffs were told about a "pool" that was to be formed by the "syndicate", [*692] i. e., an assessment which was to be levied upon the beneficiaries for the purpose of paying the commissions which had been earned.

[CA\(5\)\[↑\]](#) (5) (3) Having entered into their mutual relationship by virtue of the trust agreement, each beneficiary was liable for debts incurred during the period that he occupied such relationship and which were necessarily contracted for the purpose of carrying out the objects for which such trust was formed, except as to persons who [***6] dealt with them on the basis of agreement limiting their liability. ([Leake v. City of Venice](#), 50 Cal. App. 462 [195 P. 440].)

[CA\(6\)\[↑\]](#) (6) (4) Plaintiffs having been employed by the executive committee acting as agents of the beneficiaries, appellants are precluded from asserting the undisclosed limitation on their agents' authority in defense of this action. Since their agents had actual authority to employ

plaintiffs to sell the land and ostensible authority ([Civ. Code, sec. 2317](#)) to render appellants liable for the commissions they thus earned, appellants cannot accept the benefits of such sales and then seek by virtue of their agreement with the executive committee, which was not disclosed to plaintiffs, to avoid payment of the commissions earned. ([Fairbanks v. Crump etc. Co.](#), 108 Cal. App. 197 [291 P. 629, 292 P. 529].) [CA\(7\)\[↑\]](#) (7) [HNI\[↑\]](#) "The question of the authority of the agent must depend, so far as it involves the rights of innocent third persons who have relied thereon, upon the *character* bestowed and not upon the *instructions* given. Or in other words, the principal is bound to third persons who have relied thereon in good faith and in ignorance of any limitations or restrictions [***7] by the *apparent* authority he has given to the agent and not by the *actual* or *express* authority, and this, too, whether agency be a general or a special one." ([Whitton v. Sullivan](#), 96 Cal. 480, 483 [***416] [31 P. 1115]; [Browning v. McNear](#), 158 Cal. 525 [111 P. 541]; [Thomas v. Fursman](#), 39 Cal. App. 278 [178 P. 870].)

[CA\(8\)\[↑\]](#) (8) (5) Judgment against defendant bank was for the commission on sale of one lot. The lot had been sold for cash and the purchase price was in the hands of the bank when the executive committee ordered it to pay plaintiffs their commissions as fast as the selling prices on said sales were respectively collected. The money was therefore held by the bank, subject to such order of the executive committee, [*693] and it was its duty to

pay it over to plaintiffs. Upon its failure to do so, the trial court properly held it liable to plaintiffs for that amount.

No question is raised on this appeal as to misjoinder of either party or causes of action.

Judgment affirmed.