Kidd v. Thomas A. Edison, Inc.

District Court, S.D. New York

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239 F. 405 *; 1917 U.S. Dist. LEXIS 1437 **

KIDD v. THOMAS A. EDISON, Inc.

Core Terms

recitals, singers, cases, estoppel

Case Summary

Procedural Posture
A party brought a motion in an action regarding a principle's responsibility to third parties for acts of his agent that were outside the agent's authority.

Overview
An agent was selected by the principle to engage singers for musical recitals. In the action, the court concluded that the customary implication of the agent's authority would have been that his authority was without limitation of the kind imposed by the principle. The mere fact that the purpose of the recitals was advertisement, instead of entrance fees, gave no intimation to a singer dealing with the agent that the principle's promise was conditional upon so unusual a condition as that actually imposed. The natural surmise was that the undertaking was a part of the advertising expenses of the business, and that therefore the agent might engage singers upon similar terms to those upon which singers for recitals were generally engaged. The court held that once a third person assured himself of the agent's mandate, the very purpose of the agency relationship demanded the possibility of the principal's being bound through the agent's minor deviations.

Outcome
The court denied the motion regarding a principle's responsibility to third parties.

LexisNexis® Headnotes

Business & Corporate Law > ... > Duties & Liabilities > Unlawful Acts of Agents > General Overview

HN1[] **Duties & Liabilities, Unlawful Acts of Agents**
It makes no difference that the agent may be disregarding his principal's directions, secret or otherwise, so long as he continues in that larger field measured by the general scope of the business intrusted to his care.

Opinion by: **[**1]** HAND

Opinion

[*406] LEARNED HAND, District Judge.

The point involved is the scope of Fuller's "apparent authority," as distinct from the actual authority limited by the instructions which Maxwell gave him. The phrase "apparent authority," though it occurs repeatedly in the Reports, has been often criticized (Mechem, Law of Agency, §§ 720-726), and its use is by no means free from ambiguity. The scope of any authority must, of course, in the first place, be measured, not alone by the words in which it is created, but by the whole setting in which those words are used, including the customary powers of such agents. *Lowenstein v. Lombard, Ayres & Co., 164 N.Y. 324, 58 N.E. 44*; Lamon v. Speer Hardware Co., 198 Fed. 453, 119 C.C.A. 1. This is, however, no more than to regard the whole of the communication between the principal and agent before assigning its meaning, and does not differ in method from any other interpretation of verbal acts. In considering what was Fuller's actual implied authority by custom, while it is fair to remember that the "tone test" recitals were new, in the sense that no one had ever before employed singers for just this purpose of comparing their voices **[**2]** with their mechanical reproduction, they were not new merely as musical recitals; for it was, of course, a common thing to engage singers for such recitals. When, therefore, an agent is selected, as was Fuller, to engage singers for musical recitals, the customary implication would seem to have been that his authority was without limitation of the kind here imposed, which was unheard of in the circumstances. The mere fact that the purpose of the recitals was advertisement, instead of entrance fees, gave no intimation to a singer dealing with him that the defendant's promise would be conditional upon so unusual a condition as that actually imposed. Being concerned to sell its records, the venture might rightly be regarded as undertaken on its own account, and, like similar enterprises, at its own cost. The natural surmise would certainly **[*407]** be that such an undertaking was a part of the advertising expenses of the business, and that therefore Fuller might engage singers upon similar terms to those upon which singers for recitals are generally engaged, where the manager expects a profit, direct or indirect.

Therefore it is enough for the decision to say that the customary **[**3]** extent of such an authority as was actually conferred comprised such a contract. If estoppel be, therefore, the basis of all "apparent authority," it existed here. Yet the argument involves a misunderstanding of the true significance of the doctrine, both historically (Responsibility for Tortious Acts: Its History, Wigmore, 7 Harv. L. Rev. 315, 383) and actually. The responsibility of a master for his servant's act is not at bottom a matter of consent to the express act, or of an estoppel to deny that consent, but it is a survival from ideas of status, and the imputed responsibility congenial to earlier times, preserved now from motives of policy. While we have substituted for the archaic status a test based upon consent, i.e., the general scope of the business, within that sphere the master is held by principles quite independent of his actual consent, and indeed in the face of his own instructions. Of federal cases the following are illustrative: *Insurance Co. v. Wilkinson, 13 Wall. 222, 20 L. Ed. 617*; *Insurance Co. v. McCain, 96 U.S. 84, 24 L. Ed. 653*; *Gt. Northern Ry. v. O'Connor, 232 U.S. 508*, *34 Sup. Ct.* 380, *58 L. Ed. 703*; *Butler v. Maples, 9 Wall. 766, 19 L. Ed. 822* (obiter); **[**4]** Dysart v. M., K. & T. Ry., 122 Fed. 228, 58 C.C.A. 592; Lamon v. Speer Hardware Co., 198 Fed. 453, 119 C.C.A. 1; Foster v. C., C., C. & St. L. Ry. Co. (C.C.) 56 Fed. 434. These were, it is true, all cases in which the third person took some action upon the faith of the agent's authority, and it is possible to speak of them as though they were cases of estoppel, but in truth they are not. It is only a fiction to say that the principal is estopped, when he has not communicated with the third person and thus misled him. There are, indeed, the cases of customary authority, which perhaps come within the range of a true estoppel; but in other cases the principal may properly say that the authority which he delegated must be judged by his directions, taken together, and that it is unfair to charge him with misleading the public, because his agent, in executing that authority, has neither observed, nor communicated, an important part of them. Certainly it begs the question to assume that the principal has authorized his agent to communicate a part of his authority and not to disclose the rest. Hence, even in contract, there are many cases in which the principle of estoppel is a factitious **[**5]** effort to impose the rationale of a later time upon archaic ideas, which, it is true, owe their survival to convenience, but to a very different from the putative convenience attributed to them.

However it may be of contracts, all color of plausibility falls away in the case of torts, where indeed the doctrine first arose, and where it still thrives. HN1[↑] It makes no difference that the agent may be disregarding his principal's directions, secret or otherwise, so long as he continues in that larger field measured by the general scope of the business intrusted to his care. Blumenthal v. Shaw, 77 Fed. 954, 23 C.C.A. 590; *Palmeri v. Manhattan Railroad, 133 N.Y. 261, 30 N.E. 1001, 16 L.R.A. 136, 28 Am. St. Rep. 632*; *Quinn v. Power, 87 N.Y. 535, 41 Am. Rep. 392*.

[*408] The considerations which have made the rule survive are apparent. If a man select another to act for him with some discretion, he has by that fact vouched to some extent for his reliability. While it may not be fair to impose upon him the results of a total departure from the general subject of his confidence, the detailed execution of his mandate stands on a different footing. The very purpose of delegated authority **[**6]** is to avoid constant recourse by third persons to the principal, which would be a corollary of denying the agent any latitude beyond his exact instructions. Once a third person has assured himself widely of the character of the agent's mandate, the very purpose of the relation demands the possibility of the principal's being bound through the agent's minor deviations. Thus, as so often happens, archaic ideas continue to serve good, though novel, purposes.

In the case at bar there was no question of fact for the jury touching the scope of Fuller's authority. His general business covered the whole tone test recitals; upon him was charged the duty of doing everything necessary in the premises, without recourse to Maxwell or any one else. It would certainly have been quite contrary to the expectations of the defendant, if any of the prospective performers at the recitals had insisted upon verifying directly with Maxwell the terms of her contract. It was precisely to delegate such negotiations to a competent substitute that they chose Fuller at all.

The exception is without merit; the motion is denied.

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