

The first issue concerning whether compusolutions ltd law commercial essay

[Law](#)



**ASSIGN
BUSTER**

The first issue concerning whether Compusolutions Ltd will be bound to pay the introductory fee to Computer Services Ltd will depend on the authority that has been vested onto Mr Swift to enter into any kind of contracts with third parties on behalf of Compusolutions Ltd. An agent can have actual express or/and actual implied authority to act on a principal's behalf and this arises from an agreement between the principal and the agent. In *Freeman & Lockyer v Buckhurst Park Properties Ltd*[2], Lord Diplock stated that ' actual authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties'. An agent has actual express authority when the principal and the agent agree in words that the agent will have authority to act for the principal (*SMC Electronics Ltd v Akhter Computers Ltd & Others*[3]). According to Joseph Valvof, Es. q- ' Anatomy of An Agency Relationship'- " The usual method of creating an agency relationship is by express authorisation, that is, a person is appointed to act for and on behalf of another.[4]" It has been expressly stated in the terms of contract of Mr Swift that he was ' to perform such duties as may reasonably be associated with his job title that is ' Director Sales Promotions'. However, there has been no mention of whether Compusolutions Ltd had entered into an agreement with Mr Swift to authorise him to act on behalf of the company and there has been no express authorisation of whether Mr Swift has the authority to sign any contracts and correspondence with clients as ' Director', therefore it seems that Mr Swift did not have actual express authority. Mr Swift's authority can be actual implied. An agent has actual implied authority to act for the principal where the principal and agent agree, otherwise in words, that the

agent should have such authority. Actual implied authority arises from the principal and agent's relationship to each other or from their conduct. In *Hely-Hutchinson v Brayhead Ltd*[5], it was held that the company, by its conduct and by the circumstances of the case, had impliedly agreed with the chairman that he should have the same authority as if he had actually been appointed managing director. Therefore, the fact that Mr Swift was given the title and business cards printed as ' Director Sales Promotions' may amount to actual implied authority by conduct given to him by Compusolutions Ltd which means that Mr Swift should have the same authority as that of a company director even though he was not appointed as such.

Compusolutions Ltd may be bound by the promise of paying an introductory fee made by Mr Swift to Computer Services Ltd as per the case of *Hely-Hutchinson* since Mr Swift had actual implied authority to bind the company. Implied actual authority may give an agent the power to do whatever is usual in the context of his trade, profession or position in order to execute his actual authority and this is sometimes known as usual authority[6]. Mr Swift may also have usual authority which a salesman has that is promoting sales of the company. Signing contracts and correspondence with clients may form part of Mr Swift's usual authority and the exercise of this authority will be binding upon Compusolutions Ltd as per *Watteau v Fenwick*[7]and *Panorama Development v Fidelis*[8]. However, if the acceptance of the business proposition to pay an introductory fee to Computer Services Ltd does not form part of the usual authority of Mr Swift then based on general rules, Compusolutions Ltd will not be bound to pay the introductory fee as Mr Swift acted beyond its authority, unless Computer Services Ltd as a third

party succeeds in establishing apparent authority. Ostensible or apparent authority is the authority of an agent as it appears to others. In *Armagas Ltd v Mundogas SA*[9], Lord Keith of Kinkel said that 'Ostensible authority comes about where the principal, by words or conduct, has represented that the agent has the requisite actual authority, and the party dealing with the agent has entered into a contract with him in reliance on that representation'. Mr Swift was given the title and business cards printed as 'Director Sales Promotions' which may have led Computer Services Ltd to believe that Mr Swift was actually a director of Compusolutions Ltd. The general rule is that a principal is bound by an agent's exercise of ostensible authority even if that exceeds the agent's actual authority[10]. In *Freeman and Lockyer v Buckhurst Park Properties Ltd*[11], Diplock LJ laid down how the doctrine of ostensible authority works when the principal is a company and said that a contract made by an agent of a company exceeding the agent's actual authority would be binding on the company[12] if there have been a representation that the person making the contract was an agent; the representation has been made by the principal or by someone having authority in relation to the contract; the third party has relied on the representation as a reason for entering into the contract. The fact that Mr Swift was given the title and business cards printed as 'Director Sale Promotions' may amount to a representation made by Compusolutions Ltd (*Summers v Saloman*[13]) on which Computer Services Ltd might have relied when entering into the contract (*Farquharson Bros & Co v King & Co*[14]). Also, Computer Services Ltd had altered its legal position by entering a contract that is by believing that an introductory fee will be paid to the

company when Compusolutions Ltd will be awarded the contract by FFR Ltd. This amounts to a detriment according to *The Tatra*[15] in which it was stated that 'The only detriment that has to be shown... is the entering into a contract'. Therefore, as Compusolutions Ltd had given the impression that Mr Swift had the power to bind the company, it will be bound by the promise made by Mr Swift to Computer Services Ltd and the latter will be entitled to the introductory fee. Furthermore, as apparent authority has been established, it means that Mr Swift was acting without authority.

Compusolutions Ltd can decide to sue Mr Swift to compensate the company for any loss suffered. Mr Swift can also be dismissed by the company for breaching the terms of his contract. However, Compusolutions Ltd can ratify the terms of Mr Swift's contract. Ratification is basically the authorisation of an act which was not previously authorised. It occurs when the principal decides to adopt a contract which an agent had signed on behalf of the principal without authority and hence, the principal confers actual authority on the agent. In *Koeningsblatt v Sweet*[16], it was stated that 'Ratification is the equivalent to an antecedent authority and where there has been ratification, the act that is done is put in the same position as if it had been antecedently authorized'. According to *Bolton Partners v Lambert*[17], if the contract is ratified, Compusolutions Ltd may sue or be sued by Computer Services Ltd; Mr Swift will be discharged of all liabilities such as he will not be liable for exceeding his authority; and Compusolutions Ltd will be liable to Mr Swift to pay reasonable remuneration for loss sustained. Hence, by ratification, Compusolutions Ltd and Computer Services Ltd will become contractually bound to each other, just as if Mr Swift had been given prior

actual authority and will not be liable to compensate Compusolutions Ltd. Nevertheless, Compusolutions Ltd has no obligation to ratify. It has been stated in the scenario that Compusolutions Ltd refuses to pay the introductory fee to Computer Services Ltd, hence it seems that it will choose not to ratify the contract thereby Mr Swift will be personally liable for breach of warranty of authority to Computer Services Ltd and he may also have to compensate Compusolutions Ltd for the loss incurred. Moreover, regarding the issue of Compusolutions Ltd alleging Mr Swift to be in breach of his duties, there is the need to consider the number of duties an agent owe to their principals. These duties arise either from the agreement made between principal and agent, whether a contract or not, or from the fiduciary nature of agency[18]. The fact Compusolutions Ltd has given authority to Mr Swift to act on its behalf, it is clear that it has placed great trust and confidence on Mr Swift as the latter enjoyed a high degree of freedom with a minimum of supervision in the execution of his work. It is the duty of Mr Swift to obey instructions (Bertram Armstrong and Co v Godfrey[19]), to exercise care and skill, to act in good faith and in its principal's best interests. A breach of any of those duties is a tort, and the principal can recover for any proximate damage[20]. There is a general duty that the agent should not delegate the principal's authority, and should perform the task personally[21]. It has been stated in the scenario that on several occasions Mr Swift had sent his brother to commence negotiations with potential clients instead of going himself. In the judgment of John McCann & Co v Pow[22], Lord Denning stated that ' the general rule is that an agent has no authority to appoint a subagent except with the express or implied authority of the principal'. In the current situation

there is no mention of whether Compusolutions Ltd has given express or implied authority to Mr Swift to delegate therefore, Mr Swift was acting in breach of his duty by not performing the tasks himself. Fiduciary duties are placed upon the agent as agency is a fiduciary relationship having its origins in equity. Mr Swift must act in good faith and for the benefit of his principal. He must not let his own interest conflict with his duty to his principal and where a conflict of interest may arise, the agent should disclose the conflict of interest to the principal. In *Armstrong v Jackson*[23], the court held that the agent had a duty to disclose this potential conflict to the principal and had breached his duty in not doing so. Mr Swift sold a quantity of toner cartridges to Compusolutions Ltd which he had himself previously bought from a supplier and had not disclose this matter to Compusolutions Ltd. This situation amounts to conflict of interests as per the facts of *Armstrong v Jackson*. In *Imageview Management Ltd v Jack*[24], Jacob LJ stated that ' An agent's own personal interests come entirely second to the interest of his client. If you undertake to act for a man you must act 100% body and soul for him. You must act as if you were him. You must not allow your own interest to get in the way without telling him. An undisclosed but realistic possibility of a conflict of interest is a breach of your duty good faith to your client.' Mr Swift has been acting for his personal interest rather than for the interest of Compusolutions Ltd by selling the toner cartridges which he had himself previously bought. Hence, Mr Swift has been in a breach of his duty to act in good faith. Besides, an agent may not make a secret profit out of the performance of his duties as agent. Secret profit refers to any financial advantage which the agent receives over and above what he is entitled to

receive from his principal by way of remuneration[25]. In *Boardman v Phipps*[26], Lord Denning Mr identified that such a profit might arise from the agent's use of his position of authority, or from information or knowledge which he had acquired in the course of his agency[27]. Mr Swift has been gaining secret profits by selling the toner cartridges to Compusolutions Ltd which he had himself previously bought and he has not disclosed this secret profit. It is an agent's duty to account for all secret profit made and Mr Swift failed in doing so, hence he will be in breach of his contract of agency as he was liable to account to Compusolutions Ltd (*De Bussche v Alt*[28]). Mr Swift may be disentitled to his commission and liable to dismissal as well[29].