

Civil law case essay example

[Business](#), [Management](#)



Business Law II

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The case originated from the District Trial Court, to Missouri Court of Appeals and then the State Supreme Court.

ISSUE: The issue in this case is whether or not the attorney Devereux of The Bar Plan (TBP) had been appointed to act as the agent for TBP when it consented to incur additional legal fees.

RULING: The Supreme Court ruled that the attorney was not the agent for Appellant, TBP. The trial court ruled that lawyer Devereux had acted as the agent TBP when it offered assistance to the respondents to look for an appellate counsel. This provided the impression to respondents that TBP had approved and will pay for the legal services of Bardgett to respondents. In effect, the trial court ruled that TBP has the duty and obligation under the agreement to reimburse to the respondents the payments made to Bardgett for his legal fees. However, TBP argued that Devereux was not given the authority to act as their agent. As a result, any act the Deveruex entered does not bind TBP. The Supreme Court ruled in favor of TBP when it stated that Devereux was not given the authority to act as the agent for TBP.

ANALYSIS: In this given case, in order to establish the existence of a principal-agent relationship, the respondents are required to present proof that: TBP had given its consent to Devereux to act on as its principal, whether expressly or impliedly; and that lawyer Devereux was subject to the supervision and control TBP. Agency is defined as the fiduciary relationship between the principal and agent, where the principal manifested his assent to the agent to act on his behalf and that the agent shall be subject to the

control of the principal (Munday 1). Hence, the principal had initially had the intention to appoint the agent to act for him, and that the agent had accepted the authority and act on it. Agency may be established through a written contract or done consensually. Here in this case, there was no agreement to the effect that a fiduciary relationship existed between Devereux and TBP. Thus, the defense counsel cannot be considered as an agent of TBP. Although Devereux became the defense counsel of the respondents during the trial, he was not given the authority to make necessary amendments to the contract. Under the provisions of the contract, the respondents are required to produce a written authorization from TBP for the purpose of giving them the counsel of their choice. Hence, Devereux was not given the authority to amend such provision in the contract.

Another argument of the respondents is that Devereux merely waived a single provision in the contract and that he did not change it. As a result, the express non-agency provision is not applicable in this case. In effect, the contract itself has to be maintained and that no changes can be made without the written consent of TBP since Devereux was not the agent of the principal.

Another argument posed by the respondents is that despite any express provision in the contract, the representations made to the respondents established that Devereux was given the authority to act as its agent.

It is essential to determine whether or not TBP's actions manifested that it had given to Devereux the actual or apparent authority to represent it as its agent, even without the contractual provision. The term actual authority shall embody the principal's act of expressly informing his agent what should

be done and the implied powers in relation to the authority that was expressly given. Apparent authority takes place when the principal had given manifestations to a third party which established a reasonable belief in the third party that he or she was appointed as the agent to act for the principal. This may also include the situation where the principal is fully aware that another person is acting as his or her agent, and such person did not do anything to correct such misconception.

CONCLUSION: The Supreme Court ruled the only way to determine the existence and scope of apparent authority shall be dependent on the third person. In this particular case, it was clear that Devereux did not possess actual authority for failure to present any evidence that will show that TBP expressly notified Devereux what he needs to do or was given the power to amend the provisions of the contract. As part of their defense, the respondents provided two pieces of evidence in order to establish that the doctrine of apparent authority applies. The first evidence that was presented was the letter that TBP sent to respondents indicating that Devereux was their designated defense attorney. Based on such letter, TBP notified the respondents that they can freely call Devereux at any given time at their convenience, if they have any questions that will need clarification regarding their defense. It is the argument of the respondents that the letter has complied with the creation of a reasonable belief that Devereux was acting as the agent of TBP.

The Court held further that there was no clear indication that the letter presented by the respondents had given Devereux the authority to make decisions on behalf of TBP, and waive any contractual provisions on its

behalf. The letter merely indicated that respondents are required to talk to their attorney about their case, which is a natural activity between clients and attorneys to discuss their defense, and the fact that TBP had appointed Devereux as their designated lawyer. The letter was not able to establish a manifestation on the part of TBP that will create a reasonable belief to the respondents that Devereux was given the authority to act as the agent of TBP. Furthermore, the respondents made this clear when TBP had sent a billing to Devereux for his legal fees. Here, it was shown that he was not assigned as the primary lawyer to handle the appeal since he was only billed limited hours. In fact, the respondents showed billing dated July 2003, where a letter of Devereux was sent to TBP informing TBP that respondents hired another lawyer named Bardgett, who shall become their personal lawyer during the appeal ; proceedings. They contended that TBP was fully aware that Devereux was given the authority to act as its agent by waiving the written consent provision. The failure of TBP to respond on this matter created the apparent authority for Devereux. However, the court was not convinced with such argument and ruled in favor of TBP.

This case is relevant for future discussion since it clearly explained the doctrine of apparent authority and how it is applied in a given scenario.

Works Cited:

Munday, Roderick. Agency: Law and Principles. London: Oxford University Press, 2009. Print.

The Bar Plan v. William Cooper, et al. 290 S. W. 3d 788 (2009)