STATE OF MICHIGAN

IN THE 13TH CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PETERSON ENVIRONMENTAL
CONSULTING, INC.,

Appellee/Cross-Appellant,

v

HENRY W. PETERS,

Appellant/Cross-Appellee.
/

Case No. 98-18126-AR
HON. PHILIP E. RODGERS, JR.

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DECISION AND ORDER ON APPEAL

This is a collection case. Appellee/Cross-Appellant Peterson Environmental Consulting, Inc. ("PEC") brought this action against Appellant/Cross-Appellee Henry Peters ("Peters") to collect on an invoice for professional services rendered. The Court has reviewed the parties' briefs and entertained the oral arguments of counsel in Traverse City, Michigan, on February 8, 1999. The Court took the matter under advisement. For the reasons that will now be described, the Court reverses in part and affirms in part the decision of the trial court. MCR 2.517.

Peters was at all relevant times a client of the law firm of Olson & Noonan ("Olson"). Peters hired Olson to represent him regarding a proposed timber sale by the National Forest Service of trees on Ottawa National Forest land situated adjacent to his property in the Upper Peninsula. His primary goal was to protect certain endangered fern species. Olson entered into an Environmental Consulting Agreement with PEC on behalf of Peters. Pursuant to that agreement, Peters was to pay all of PEC's fees and expenses.

The case was tried before the District Court on September 10, 1998. The trial court issued a written Decision and Order on September 15, 1998. The trial court found that "Mr. Olson did have authority to hire [PEC]" and that Peters "should be responsible for all of the billings of PEC to the extent of the authority extended to Mr. Olson." The trial court further found that at some time after Olson was authorized to hire PEC, Peters "called [Olson] and revoked his authority to continue the relationship with PEC." The trial court held that Peters should be responsible for the full amount of the November 10, 1995 invoice because "most of the work reflected on the . . . invoice had already been billed" by the time Peters revoked Olson's authority to continue the relationship with PEC. It was undisputed that neither Peters nor Olson communicated any termination of authority to PEC.

Peters timely filed this appeal. Peters contends that the trial court's finding that he gave Olson authority to hire PEC and that he was responsible for all of the billings of PEC to the extent of the authority given to Olson was "clearly erroneous" in light of the factual record developed at trial.

PEC filed a cross-appeal. PEC contends that the trial court erred in finding that Olson's authority to hire PEC was effectively revoked as to PEC and seeks payment in full for all services rendered.

I.

The issues before this Court are whether the trial court erred when it found that Olson had authority to enter into a contract with PEC on behalf of Peters and whether the trial court erred when it found that such authority was subsequently revoked.

The law of Michigan is that disputes over the existence and scope of an agency relationship are properly determined as questions of fact. This Court's authority to contradict such findings of fact is limited to determining whether the findings are clearly erroneous in light of the evidence supporting them. *Michigan Nat'l Bank v Kellam,* 107 Mich App 669, 678-679; 309 NW2d 700 (1981).

The parties correctly set forth the applicable standard of review. This appeal is governed by MCR 2.613(C) which states, in pertinent part:

> **(C) Review of Findings by Trial Court.** Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.

A trial court finding is "clearly erroneous" when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *United States v United States Gypsum Co*, 333 US 364, 395; 68 S Ct 525, 542 (1949); *People v Saxon*, 118 Mich App 681; 325 NW2d 795 (1982).

II.

The law is well settled that a principal is responsible for the acts of its agents done within the scope of the agent's authority. *Allstate Ins Co v Snarski*, 174 Mich App 148, 157; 435 NW2d 408 (1988), lv den 432 Mich 883 (1989). A principal's responsibility to third persons is not, however, confined to instances where the agent is acting with express or implied authority. A principal's responsibility extends further, and binds the principal in all cases where the agent is acting within the scope of his usual employment, or has held out to the public, or to the other party, as having competent authority, although, in fact, he has, in the particular instance, exceeded or violated his instructions, and acted without authority. *Snarski, supra,* 174 Mich App at p 158 quoting *Central Wholesale Co v Sefa,* 351 Mich 17, 27; 87 NW2d 94 (1957). See, *Dick Loehr's, Inc v Secretary of State,* 180 Mich App 165, 168; 446 NW2d 624 (1989).

In *Dick Loehr's, supra*, the Court of Appeals held that a motor vehicle dealer was liable for the fraudulent acts of his salesman who the dealer had "clothed with apparent authority" to make representations regarding the mileage of vehicles on the dealer's lot when the salesman misrepresented a car's accumulated mileage to a purchaser.

A principal may be estopped from denying that his agent has apparent authority.

> Whenever the principal, by statements or conduct, places the agent in a position where he appears with reasonable certainty to be acting for the principal, or without interference suffers the agent to assume such a position, and thereby justifies those dealing with the agent in believing that he is acting within his mandate, an apparent authority results which replaces that actually conferred as the basis for determining rights and liabilities. The measure of authority consists of those powers which the

principal has thus caused or permitted the agent to seem to possess whether the agent had actual authority being immaterial if his conduct was within the apparent scope of his powers; the question involved is no longer what authority was actually given or was intended by the parties to the agency agreement, but resolves itself instead into the determination of what powers persons of reasonable prudence, ordinarily familiar with business practices, dealing with the agent might rightfully believe him to have on the basis of the principal's conduct. Absence of intention to confer any power of the character of that exercised cannot be asserted so as to avoid or vitiate the authority, for the agent's authority as to those with whom he deals is what it reasonably appears to be.

* * *

Whenever a principal has placed an agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in assuming that such agent is authorized to perform in behalf of the principal the particular act, and such particular act has been performed, the principal is estopped from denying the agent's authority to perform it.

Central Wholesale Co v Sefa, 351 Mich 17, 24-26; 87 NW2d 94 (1957).

In *Capital Dredge and Dock Corp v Detroit,* 800 F2d 525 (Sixth Circuit 1986), a contractor brought an action against the City of Detroit for extra work and delay claims arising from a tunnel explosion. The United States District Court for the Eastern District of Michigan entered summary judgment in favor of the City as to all of count one and parts of counts two and three of the complaint and dismissed a related suit that was subsequently brought by the contractor against the City. The contractor appealed. The subsequent action was consolidated with the prior action and the Court of Appeals held that where the attorney was employed to represent the contractor, and the contractor held out the attorney as having authority to represent him in not only the personal injury claims but also certain related claims against City, the City could reasonably believe that the attorney had the authority to release the contractor's extra work and delay claims against the City arising from the explosion. The attorney, under Michigan law, had "apparent authority" to release the extra work and delay claims against the City, even though the contractor allegedly instructed the attorney not to compromise any of the contractor's claims against the City for extra work and delay.

In *Capital Dredge*, the Court said:

Generally, when a client hires an attorney and holds him out as counsel representing him in a matter, the client clothes the attorney with apparent authority to settle claims

connected with the matter. See, *Terrain Enterprises, Inc v Western Casualty & Surety Co*, 774 F2d 1320 (5th Cir.1985); *Bergstrom v Sears, Roebuck & Co*, 532 F Supp 923 (D Minn 1982); *Walker v Stephens*, 3 Ark App 205; 626 SW2d 200 (1981); *Hutzler v Hertz Corp*, 39 NY2d 209; 383 NYS2d 266, 347 NE2d 627 (1976); cf. *Sustrik v Jones & Laughlin Steel Corp*, 189 Pa Super 47; 149 A2d 498 (1959); *Rader v Campbell*, 134 WVa 485; 61 SE2d 228 (1949). But see *Blanton v Womancare, Ins,* 38 Cal3d 396; 696 P2d 645; 212 Cal Rptr 151 (1985). Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney for professional malpractice. The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement.

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The courts of Michigan have evidently not specifically addressed the apparent authority question in the attorney-client context. In *Michigan National Bank v Kellam, supra*, the Michigan Court of Appeals held that an attorney had no apparent authority to bind a partnership (whose partnership agreement the attorney had written) in dealings with third parties. However, the court noted that the attorney worked for one of the partners individually and was not hired by the partnership to handle the matter that the third parties presented. In *Wells v United Savings Bank*, 286 Mich 619; 282 NW 844 (1938) and *Peoples State Bank v Bloch,* 249 Mich 99; 227 NW 778 (1929), the Michigan Supreme Court held that an attorney has no implied authority to settle or compromise a matter, but the court did not reach the question of apparent authority. We believe that Michigan courts would adopt the general rule stated above on apparent authority arising from the attorney client relationship; in the absence of Michigan precedent to the contrary, we will apply this rule. (Emphasis supplied.)

Capital Dredge was subsequently cited in *Nelson v Consumers Power Co*, 198 Mich App 82; 497 NW2d 205 (1993) wherein the defendant in a personal injury action moved to enforce settlement. The trial court entered judgment against the defendant in accordance with a settlement agreement. The plaintiff appealed. The Court of Appeals, Richard Allen Griffin, P.J., held that the plaintiff's attorney had apparent authority to settle the case. The defendant was entitled to rely upon that apparent authority.

When determining whether an agent possesses apparent authority to perform a particular act, the court must look to all surrounding facts and circumstances. Apparent authority must be traceable

to the principal and cannot be established by the acts and conduct of the agent alone. *Meretta v Peach,* 195 Mich App 695; 491 NW2d 278 (1992).

In *Kopprusch v New York Indemnity Co*, 250 Mich 491, 493-494 (1930), the Michigan Supreme Court quoting *Austrian & Co v Springer*, 94 Mich 343 (1892), said:

> It is well settled that 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, rather than the instructions given. In other words, the principal is bound to third persons, acting in ignorance of any limitations, by the apparent authority given, and not by the express authority. Mechem, Ag. § 283. The question is not, what was the authority actually given? But, what was the plaintiff, in dealing with the agent, justified in believing the authority to be? 1 Amer Lead Cas 567, 568; *Griffs v Selden*, 58 Vt 561 (5 Atl 504); *Ins Co v Pierce,* 75 Ill 426; *Packet Co v Parker*, 59 Ill 23; *Inglish v Ayer*, 79 Mich 516. Whatever attributes properly belong to the character bestowed will be presumed to exist, and they cannot be cut off by private instructions of which those who deal with the agent are ignorant. Among those attributes is the power to do all that is usual and necessary to accomplish the object for which the agency was created.

See also, *Grand Rapids Electric co v Walsh Mfg Co*, 142 Mich 4, 9-10 (1905); *Central Wholesale Co v Sefa*, 351 Mich 17, 25-27; 87 NW2d 94 (1957).

The trial court in the instant case found that Olson had actual express authority to hire PEC on behalf of Peters and that such express authority was subsequently revoked by Peters in a conversation with Olson. Those findings are supported by the evidence. Recognizing that Olson had actual express authority to hire PEC on behalf of Peters, he had apparent authority thereafter to continue to deal with PEC on behalf of Peters and PEC could rightfully act in accordance with Olson's apparent authority. *Snarski, supra,* at p 158. In other words, Peters is bound where Olson acted "within the scope of his usual employment" because Peters "clothed [Mr. Olson] with apparent authority" (*Dick Loehr's, supra,* at p 168) even though the express authority to hire PEC had been revoked. Sadly, the revocation was never communicated to PEC and PEC acted in reasonable reliance on its written contract with Olson.

Conclusion

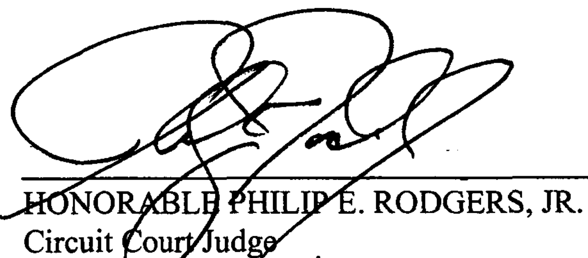
When Peters hired Olson and gave him actual express authority to hire PEC, Peters also placed Olson in a position where even after that authority was revoked, Olson nonetheless appeared

with reasonable certainty to be acting on Peters' behalf. PEC was justified in believing that Olson was acting within his authority. Apparent authority resulted and replaced the actual authority conferred upon Olson by Peters. The measure of Olson's authority at that point consisted of those powers which Peters had caused or permitted him to seem to possess. Whether Olson continued to have actual authority to utilize PEC became immaterial so long as Olson's conduct was within the apparent scope of his powers.

The question, then, became not what authority was actually given or was intended by the parties, but rather what authority persons of reasonable prudence, ordinarily familiar with business practices, dealing with Olson might rightfully believe him to have on the basis of Peters' conduct. As to PEC, Peters cannot claim that he did not intend for the expert witness relationship to continue. Olson's continued work with PEC was reasonably within the scope of his apparent authority. Peters' relief for Olson's failure to terminate PEC's work lies with Olson.

The judgment of the trial court should be and hereby is affirmed in part and reversed in part. In so far as the trial court held Peters liable for the full amount of the November 10, 1995 invoice and entered judgment in favor of the Plaintiff in the amount of $4,931.58, the judgment is affirmed. In so far as the trial court held that Peters was liable for "nothing thereafter," the judgment of the trial court is reversed. Consistent with this opinion, the trial court is directed to enter a judgment in the full amount sought by the Plaintiff, together with all lawful interest. Each party shall bear its own costs and attorney fees.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 2/25/99