

## SHE DID WHAT?

### Understanding the inadvertent grant of authority to your employees, agents, or other representatives to bind your company

#### Background

Business owners rely on their employees, agents, and other representatives to interact with customers, vendors, and other third parties to develop and maintain business relationships on behalf of their companies. But who among all of these company representatives can bind the company to contracts and other undertakings? If a business owners' actions or inactions lead its representatives - or worse, a customer, vendor, or other third party - to believe that its representative has authority to act on behalf of and bind the company, the business owner may in fact be bound by the acts of its representative - regardless whether the business owner actually intended the representative to have the requisite authority.

#### Apparent Agency

Relying on the theory of apparent agency announced by the Supreme Court of Ohio in *Master Consolidated Corp. v. BancOhio Natl. Bank*, 61 Ohio St. 3d 570 (1991), the Ninth District Court of Appeals of Ohio recently upheld a lower court determination that the president of a company facilitating a transaction between a buyer and seller had authority to act on behalf of and bind the seller in directing the buyer to pay moving and storage fees to a third party and deduct those fees from the balance buyer owed to seller. *Pelmar USA, LLC v. Machinery Exchange Corporation*, 2012-Ohio-3787 (Ohio App. 9 Dist., August 22, 2012).

According to the Supreme Court of Ohio in *Master Consolidated Corp.*, a principal may be bound by the acts of his agent under the theory of apparent agency if the evidence affirmatively shows:

- (a) that the principal held the agent out to the public as possessing sufficient authority to embrace the particular act in question, or knowingly permitted him to act as having such authority, and
- (b) that the person dealing with the agent knew of those facts and acting in good faith had reason to believe and did believe that the agent possessed the necessary authority.

In *Pelmar USA*, the Court listed the following factors in support of its conclusion that the seller held the president of the facilitating company out to the public as possessing authority to act on behalf of seller and that the buyer reasonably believed that the president of the facilitating company had such authority:

- (1) Seller was a foreign corporation that had used the facilitating company and its president to act on its behalf with respect to business transactions in the United States for many years.
- (2) In a prior transaction between buyer and seller, the buyer had dealt exclusively with the president of the facilitating company.
- (3) The buyer looked to the president of the facilitating company when issues arose during the deal and the president of the facilitating company addressed all of those issues.

[more](#)

(4) Seller did not object to the buyer's reliance on the president of the facilitating company's directions on any issue except for the deduction of storage and moving fees from the balance buyer owed seller (and then waited three years to object).

(5) Seller accepted buyer's final payment based on the reconciliation of accounts prepared by the president of the facilitating company.

## Conclusion

As the *Pelmar* decision reminds us, business owners should be certain that their actions or inactions, as the case may be, as well as those of their employees, agents, or other representatives, make clear to business counterparties the company's intentions concerning the authority of those representatives to act on behalf of and bind the company.



Michael S. Messenger is a partner in the firm's Business Group and concentrates in the corporate, mergers and acquisitions, commercial and finance areas.



Brittney M. Shreffler is an associate in the firm's Business Group and concentrates in the corporate, mergers and acquisitions, commercial and finance areas.



**Toledo**  
Four SeaGate, Ninth Floor  
Toledo, Ohio 43604  
419-249-7900/phone  
419-249-7911/fax

**Findlay**  
220 W. Sandusky Street  
Findlay, Ohio 45840  
419-423-4321/phone  
419-423-8484/fax

**Waterville**  
204 Farnsworth  
Waterville, Ohio 43566  
419-878-2931/phone  
419-878-4727/fax

**Tecumseh**  
105 Brown Street, Suite 100  
Tecumseh, Michigan 49286  
517-423-5404/phone  
517-423-5647/fax

**Monroe**  
23 East Front Street, Suite 101  
Monroe, Michigan 48161  
734-457-1092/phone  
734-457-1094/fax

*This publication is designed to provide general information prepared by professionals in regard to the subject matter covered. Although prepared by professionals, this publication should not be utilized as a substitute for professional service in specific situations. If legal advice or other expert assistance is required, the services of a professional should be sought.*