

DENCO SHIPPING LINES, by and thru its General Manager, EUGENE COOPER, Appellant, v. **AMINATA & SONS, INC.**, by and thru its Manager, SIAKA TOURE, Appellant.

AN APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: June 15, 1992. Decided: September 4, 1992

1. A third person, by undertaking to deal with a known agent, put upon inquiry as to the nature and scope of his powers, and must use due care to discover them or else suffers the consequences if they are exceeded.

2. No liability attaches to an individual for the acts of one who assumes without authority, to act for him in the capacity of an agent, all elements of ratification or estoppel being absent.

Plaintiff, Denco Shipping Lines, filed an action of debt against Aminata & Sons, defendant, for failure to pay for services in the amount of Nine Thousand Five Hundred Dollars (\$9,500.00) for the shipment of petroleum products to and from the port of Greenville, Sinoe County.

Defendant claimed that payment was made to one James P. Jackson, an employee of plaintiff, whom defendant believed to be its agent. The checks representing payment of the amount due were made payable to James P. Jackson personally, therefore plaintiff contended that payment was not made since Mr. Jackson is not an agent of defendant. When this controversy arose, Mr. Jackson was immediately fired from his position by the plaintiff.

The debt court concluded that James P. Jackson was an agent of plaintiff and, accordingly, discharged defendant Aminata & Sons, Inc. from liability for the debt. The plaintiff appealed. The Supreme Court reversed the decision of the debt court, holding that James P. Jackson acted outside the scope of his employment. The Court also noted that when the matter was brought to the attention of appellant, it immediately took steps to dismiss James Jackson, therefore it cannot be estopped from denying that Jackson is its agent.

Henry Reed Cooper of the Cooper & Togba Law Firm appeared for appellant. *Charles Walker Brumskine* of Brumskine Law Chambers appeared for appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

This case grows out of debt proceedings brought by Denco Shipping Lines, the appellant herein, against Aminata & Sons, the appellee.

As gathered from the records, the appellee (the defendant in the court below), commencing sometime in February, 1985, contracted with the appellant for shipping services to transport petroleum products to and from the port of Greenville, Sinoe County, from time to time until around January, 1986 when the business relations of the parties was strained according to the appellant, because of the failure of appellee to pay freight charges of Nine Thousand Five Hundred dollars (\$9,500.00). The shipping services were carried out by the use of one of appellant's tankers, the vessel "Du".

In January, 1986, the appellee contracted the appellant's services to tranship from Greenville to Monrovia refined petroleum products consigned to the appellee. The services were rendered here again by the appellant's tanker, the vessel, "Du". Upon completion of the said services, appellant tendered to the appellee a bill for freight charges in the amount of Nine Thousand Five Hundred dollars (\$9,500.00). About two (2) months after rendition of the said services, the appellant did not receive, according to its records, payment of the bill in question. Upon checking, appellant discovered that the bill had been paid to James P. Jackson, Jr., one of its employees. The said payment was made to the said James P. Jackson, Jr., in his individual capacity, by check or checks issued in his name instead of in the name of Denco Shipping Lines.

When appellant made a demand upon Aminata & Sons, the appellee, the response to the appellant was that appellee had settled the bill by paying the said amount of \$9,500.00 to James P. Jackson, Jr., appellant's employee, as hereinabove stated who, appellee said, was the appellant's agent. Appellant thereupon communicated to the appellee its denial of James P. Jackson's agency and contended that payment to James P. Jackson did not constitute payment to the corporation, Denco Shipping Lines, since James P. Jackson was not its agent. Appellant dismissed James P. Jackson, as shown by the records. Based upon the inflexible stance of both parties on this matter, the appellant filed a complaint for debt against the appellee in the Debt Court, Montserrat County, on the 4th day of April, 1986. The complaint contained two (2) counts. Pleadings were thereafter exchanged between the parties by a five-count answer filed by the appellee and a seven-count reply by the appellant. Pleadings then rested.

Trial was held by the debt court, and upon conclusion thereof, the trial judge entered a final judgment holding that James P. Jackson was the appellant's agent;' and that, consequently, the payment of the bill of \$9,500.00 to him by the appellee constituted payment to the plaintiff/appellant; and discharged the appellee, Aminata & Sons, from liability for the debt. Upon this, the appellant announced an appeal to this Court.

The required appellate steps were met by the timely filing of a bill of exceptions, appeal bond and notice of completion of appeal, thus devolving upon us the duty of an appellate review of the case.

As earlier stated in the opinion, the plaintiff in the court below, the appellant herein, filed a two-count complaint and a seven-count reply, while the defendant, the appellee herein, filed a five-count answer. We have deemed, for purposes of this opinion, the complaint, counts 2, 3 and 6 of the reply and counts 2, 3 and 4 of the answer as the salient points in considering the outcome of the case.

The pleadings and the arguments of the parties center on whether or not James P. Jackson is an agent of the appellant. It is undisputed by both parties that Mr. James P. Jackson was employed as operations or traffic manager by Denco Shipping Lines, the appellant. It is on this account that the appellee has taken the position that James P. Jackson was the agent of the appellant and that the appellee's payment of the bill, which is the subject of the debt proceedings and this appellate review, constituted payment to Denco Shipping Lines, the appellant.

The two-count complaint of the appellant reads as follows:

"1. Plaintiff says that the above named defendant is justly indebted to plaintiff in the full sum. of \$9,500.00, same being freight charges incurred by defendant, as will more fully be seen from photocopy of invoice hereto attached and marked plaintiffs exhibit "A" to form a part hereto.

2. And plaintiff further says that in spite of repeated demands to pay, the defendant has failed to honour its obligation to the plaintiff, as will be clearly seen from the attached correspondence and marked as Exhibit "B", "C", "D" to form a cogent part of this complaint.

In response, the appellee filed an answer, counts 2, 3 and 4 thereof reading as

follows:

"2. Further to count 1 of the complaint, defendant denies that it is indebted to the plaintiff. Defendant submits that the amount in question was fully paid in two installments through plaintiff's employee/agent, James P. Jackson, Jr., as is more fully shown by copies of check and receipts hereto attached and marked exhibits D-1 to D-4.

3. Still further to count 1 of the complaint, defendant says that on February 4, 1986, James P. Jackson, Jr., plaintiff's agent, submitted to defendant an invoice (plaintiff's exhibit "1") prepared upon his (Jackson) approval for payment and requested that payment of said invoice (copy of which is hereto attached as D-5) be paid in cash because of the difficulty one has in withdrawing money from his account when only checks have been deposited. Defendant accordingly issued three (3) checks in the name of plaintiff's agent to facilitate the cash payment; only one of the three checks (defendant's exhibit D-1) was encashed by defendant's bank, the others, hereto attached as exhibits D6 and D-7 were returned uncashed because defendant had deposited majority of the checks in its account. Plaintiff's agent, therefore, issued a receipt for only \$3,000.00. On February 10, 1986, plaintiff again sent its agent to collect the second amount which was paid and receipt issued. It was not until February 21, 1986, when defendant's General Manager was invited to a meeting at plaintiff's office when he was informed that the amount paid to Mr. Jackson had been misappropriated and, as a result, Mr. Jackson's services were dispensed with by plaintiff on the same day. All of which plaintiff stands ready to prove.

4. And also because as to count 2 of the complaint, defendant says that it has fully honoured its obligation to the plaintiff. Defendant submits that receipt of payment by plaintiff's agent (Jackson) is receipt by the plaintiff, especially so when plaintiff selected Jackson as its agent, caused him to sign the invoices in the possession of Mr. Jackson for collection.

In the reply of plaintiff/appellant, the following contentions were raised in counts 2, 3 and 6 which are as follows:

"2. As to count two (2) of the answer, it is false and misleading that the amount in question was ever paid by the defendant in two installments to the plaintiff. Plaintiff notes that the issuance of checks in favour of Mr. James P. Jackson, Jr., is not payment to the plaintiff, Denco Shipping Lines. For defendant's Exhibits D-1 and D-3 are clear and convincing that the defendant, Aminata & Sons, Inc. issued two

checks in favour of Mr. James P. Jackson, Jr. and not in favour of the plaintiff. It is noted that had the issuance of the checks been made payable to the order of the plaintiff, Denco Shipping Lines, then and in that case, the contention of settlement by the defendant would have had credence under the law. Defendant having failed to pay to the order of plaintiff, it cannot deny its indebtedness to the plaintiff. Hence, count two of the answer must crumble.

3. And also because plaintiff further says as to count two (2) of defendant's answer, that it is a misleading information to this Court that it (plaintiff) ever issued any receipt of such kind like defendant's Exhibit D-2 and D-4, substantiating the fact that the alleged checks were received by Mr. James P. Jackson, Jr., on behalf of plaintiff, Denco Shipping Lines. Plaintiff notes that it had at no times issued out receipt other than its official receipt to anyone. Therefore, it is false and misleading that defendant's Exhibit D-2 and D-4 are receipt issued upon the authorization of plaintiff, Denco Shipping Lines. Plaintiff gives notice that at the trial it will produce copies of some of its official receipt issued to its customers to defeat the authenticity of defendant's Exhibit D-2 and D-4.

6. As to count four (4) of the answer, plaintiff submits that the defendant is justly indebted to it, and as such count four (4) is false and misleading. Plaintiff avers that whilst it is true that Mr. James P. Jackson is an employee of plaintiff, yet issuance of checks in favour of Mr. Jackson without the approval of plaintiff does not warrant payment to plaintiff. Hence count four (4) must crumble".

All of this leads us to the conclusion that the central issue to the determination of this case is whether James P. Jackson, Jr. was the agent of the appellant, Denco Shipping Lines for the payment to him by Aminata & Sons of the debt in question to constitute payment to Denco?

We have quoted the foregoing counts of the answer and the reply for clarity in order to set in proper perspective whether the appellant in any way admitted the agency of James P. Jackson for the payment of the amount in controversy. Much emphasis was placed on count six (6) of the reply as containing an admission by Denco of James P. Jackson's agency. It basically formed the basis of the trial judge's ruling in discharging the appellee from further liability to the appellant.

The appellant filed a bill of exceptions containing seven (7) counts. The counts which go to the core of the case, in our view, are counts one (1), two (2) and five (5). The appellant laid the following contentions in the said counts of the bill of exceptions:

"1. Because Your Honour's final judgment of September 9, 1988 was rendered erroneously, capriciously, and arbitrarily without regard to the substantive and probative evidence adduced during the trial of this case as same appears on the record which sits unrebutted by defendant and should therefore have been accorded the highest probative value. For instance, plaintiff at no time ever admitted that James P. Jackson was its agent but rather that James P. Jackson was an employee of plaintiff at the time of the incident, yet Your Honour erroneously ruled that plaintiff admitted to the agency of James P. Jackson in count six (6) of plaintiff's reply, and as such, payment of plaintiff's money in favour of James P. Jackson, an employee of plaintiff, was payment to plaintiff. Hence, your final judgment should be reversed.

"2. Because Your Honour erred when you ruled that plaintiff failed to establish what was its practice in issuing receipts, or to introduce into evidence any document evidencing such practice. The record reflects that plaintiff witnesses established the practice of plaintiff in collecting money from defendant and adduced, during the trial, sample of its official receipt which are always issued by plaintiff when payment is made by defendant to plaintiff. Yet Your Honour ignored this material point and ruled as you did. Hence, your final judgment demands reversal.

5. Because Your Honour erred when you ruled that: "It having been established, both by plaintiff's and defendant's witnesses, and admitted in the pleadings that Mr. James P. Jackson was the agent of plaintiff at the time payment was made by defendant to him for plaintiff which payment he (Jackson) admitted receiving on behalf of plaintiff following prosecution of the invoice....".

This ruling is erroneous, bias and prejudicial, in that no where in the pleading did the witnesses from either side ever admit that Mr. James P. Jackson was an agent of plaintiff who was clothed with the authority to receive checks drawn in Jackson's favour for the benefit of plaintiff, neither was it ever admitted in any of the pleadings filed by plaintiff before Your Honour that Mr. James P. Jackson was an agent of plaintiff who has the authority to do what he did. On the contrary, it was shown that plaintiff has a cashier and other officers who usually receive monies for plaintiff and issue receipts, a practice of which defendant was fully aware. Hence, your final judgment demands reversal."

As can be seen from count six (6) of the appellant's reply, which was quoted herein earlier, there was no showing in that count of an admission by the appellant that James P. Jackson was its agent to receive the payment.

With regard to the custom and usage which characterized the business dealings of the appellant and appellee from the inception up to the James P. Jackson incident, the records show that the appellant always tendered its invoices, approved by James P. Jackson, as operations manager, to the appellee and the appellee in turn issued checks in the name of Denco Shipping Lines or paid cash to the cashier. In all such instances, the appellant issued its official receipt to the appellee, as the records further show.

Why then was so much stress placed on the approval by James P. Jackson of this particular invoice of \$9,500.00 as to make him an agent of the appellant to receive payment of the said amount in his own name instead of in the name of Denco?

The appellee has asked us to take judicial notice of the fact of common knowledge that a liquidity problem existed at the time of the payment and that it was a usual practice for that reason for corporate obligations to be paid in the name of an individual in quite a number of instances. We judicially notice the said fact of common knowledge and agree that such a situation did exist at the time of the payment. But what appellee wishes us to close our eyes to is that when such payment settings arose, the corporate obligation was discharged in the name of an individual upon an express written authority from the corporate entity who was entitled to such payment.

This was absent in the case of James P. Jackson, as the records show. The appellee contends that the approval of the invoice and the possession and tender thereof by James P. Jackson justified the imputation of agency on James P. Jackson, and therefore meant payment to him in his individual capacity was payment to Denco, the appellant. Appellee supports this contention with reliance on 3 C.J.S., *Agency*, § 495(a), which we quote hereunder: Section 495.

"a. Presumption

There is no presumption that one person has authority as agent to receive payment for another unless the agent has possession of the goods which he is authorized to sell, or unless he has possession of the written evidence of, or security for, the debt *and there are no suspicious circumstances surrounding the possession"*. (Emphasis ours). 3 C.J.S., § 495 (a).

Other than his approval of invoices, which the records show was a part of his duties, there was no showing by the appellee in the pleadings or during the trial that it was

the usual practice or custom during the business relationship between the parties for James P. Jackson to bear invoices to appellee for payment to him (James P. Jackson). The records confirm the appellant's contention that this was the first time that such a method of payment was adopted in complete departure from the custom and usage in their business dealings. We therefore feel that possession and tender of the invoice by James P. Jackson should have raised a suspicion in the mind of the appellee when payment of the invoice was made to James P. Jackson. Appellee's reliance on the law quoted above as a result is misplaced. Its contention that possession and tender of the invoice by James P. Jackson raised a presumption of his authority to receive the payment in his own name for Denco cannot consequently be sustained. Dwelling further on the principle of agency, legal authorities state:

"A third person, by undertaking to deal with a known agent, put upon inquiry as to the nature and scope of his powers, and must use due care to discover them or else suffer the consequences if they are exceeded". 2A C.J.S., *Agency*, § 168, page 814.

Also, it is stated further that:

"No liability attaches to an individual for the acts of one who assumes without authority to act for him in the capacity of an agent, all elements of ratification or estoppel being absent". 3 C.J.S., *Agency*, § 395 page 227.

It is plain from the records that James P. Jackson acted without the scope of his employment and clearly cannot be deemed to be the agent of the appellant to receive the payment of the invoice in his own name for Denco, the appellant.

It is also quite evident that no ratification or estoppel attaches to the appellant with respect to the said transaction, the appellant having taken steps to dismiss James P. Jackson when the matter came to its attention.

In view of the facts and law reviewed and cited herein above, we hold that the judgment of the trial court was manifestly against the evidence and the law controlling in such cases and must therefore be reversed. Accordingly, the judgment of the court below is hereby reversed. We adjudged the appellee liable for the debt sued for in the amount of \$9,500.00, which the appellee is hereby ordered to pay to the appellant. Costs ruled against the appellee. And it is hereby so ordered.

Judgment reversed.