

CITATION: *Stratco (NT) Pty Ltd v Robinson* [2007] NTMC 054

PARTIES: STRATCO (NT) PTY LTD

v

JAMES ROBINSON

TITLE OF COURT: Small Claims

JURISDICTION: Local Court

FILE NO(s): 20616818

DELIVERED ON: 17 August 2007

DELIVERED AT: Darwin – Posted as arranged to the Parties.

HEARING DATE(s): 17 May 2007, 29 May 2007

JUDGMENT OF: Jenny Blokland CM

CATCHWORDS:

AGENCY – APPARENT AUTHORITY

Watteau v Fenwick [1893] 1 QB 346

Blackburn v Mason (1893) 9 TLR 286

Debenhan v Mellon (1880) 6 App Cas 24

AL Underwood Ltd v Bank of Liverpool [1924] 1 KB 775

Maye v Colonial Mutual Life Assurance Society Limited (1924) 35 CLR 14

Ride v Hulberton [1963] SASR 336

Rutter v Linton (1935) 35 NSW SR on 32

Director of Post and Telegraph v Abbott (1974) 7 SASR 540

REPRESENTATION:

Counsel:

Plaintiff: Self

Defendant: Mr Porter

Judgment category classification: C

Judgment ID number: [2007] NTMC 054

Number of paragraphs: 24

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20616818

[2007] NTMC 054

BETWEEN:

STRATCO (NT) PTY LTD
Plaintiff

AND:

JAMES ROBINSON
Defendant

REASONS FOR DECISION

(Delivered 17 August 2007)

JENNY BLOKLAND CM:

1. The plaintiff company Stratco (NT) Pty Ltd are claiming the balance of the cost of the supply and installation of a garden shed for the defendant Mr James Robinson on or about 3 November 2005. The Statement of Claim alleges the total cost of the supply and installation of the garden shed was \$3,843. The Statement of Claim acknowledges a deposit of \$1,900 was paid by the defendant and the plaintiff claims the balance of \$1,943.88 plus filing fee and service fee.
2. In short, the defendant claims that his wife paid the balance to Stratco or a Stratco representative and he consequently does not owe the money as it has already been paid. Throughout the hearing the defendant made various extravagant statements about the plaintiff and various circumstances surrounding the case. I also note he is unwell and he has made a significant point of both his own ill-health and his wife's ill-health. Much of what he told the Court has not been relevant but there are certainly issues that need determination before this Court.

Evidence called on behalf of the Plaintiff

Scott Reynolds

3. Mr Scott Reynolds is employed by the plaintiff (hereafter “Stratco”) as their sales representatives and also performs administrative duties. He said that on 26 September 2005 he attended the defendant’s premises to measure up and quote for the shed for Mr Robinson. He said he went into the back yard to the site where Mr Robinson wanted the shed positioned. He said he and Mr Robinson agreed that the final figure for installing the garden shed would be \$3,844. He said the price was taken from the standard price list. He said he informed Mr Robinson of possible delays of about six weeks. He said he thought Mr Robinson went around to the kitchen to see his wife and came back with a deposit of \$1,900. Mr Reynolds said he signed and dated his price list to note that the initial deposit had been paid. He said it was paid in cash. He said he processed Mr Robinson’s order the next day and a receipt was posted to Mr Robinson as a formal receipt for the job.

4. Mr Reynolds said that some weeks later he issued a work instruction to Stratco’s contract installer, “Mick’s Welding and Fabrication”. He said Mick’s Welding and Fabrication are the contracted installer for Stratco. He said around 26 October 2005 the installer attended at the defendant’s yard and poured the concrete slab for the garden shed. He said a couple of weeks later the installer returned and finished erecting the main part of the garden shed. After the shed had been installed, Mr Reynolds, (in his role as a self certifier), completed the final inspection on the shed and raised the building permits and occupancy permits for the shed. He said he knocked on the door and Mrs Robinson answered; he told her he was there to do the final inspection on the shed and asked whether the shed was locked; she said “no”; he said he went around the back of the house and did the final inspection to make sure everything was adequate; he said he thanked Mrs Robinson and left the property.

5. Mr Reynolds said he did other paperwork necessary back in the office and posted the invoice to the defendant on 15 November 2005. He said the invoice would have stated the balance owing was \$1,944. (The invoice became Exhibit P1). He said as no payment was made for the shed, on or about 5 December 2005 he made a courtesy call to the Robinson's to let them know their occupancy permit was ready at the office and to collect it but they needed to come in and make the final payment. Mrs Robinson advised on the phone at that point that she had already paid the contractors on site when they completed the shed. Mr Reynolds said that he told her "I find that hard to believe but I will go and check it out and speak to our installers and find out and get back to you". He said Mr Robinson phoned back and was upset that Mr Reynolds had been speaking with Mrs Robinson. Mr Reynolds told the Court he said words to the effect of "listen I can't say anything at the moment, I don't know the story. I need to speak to our installers and get back to you". Mr Reynolds advised his manager (Mr Porter) of the problem. He said he spoke to the installers and they denied having taken any money on site at that particular time or in the past with any of the hundreds and hundreds of sheds they installed.
6. In cross-examination it was put to Mr Reynolds that Mr Robinson at the outset had offered to pay the whole amount rather than just the 50%. Mr Reynolds said he didn't recall that as it is normally their policy for people just to pay the 50% deposit and the balance at the completion of the job. Mr Robinson asked Mr Reynolds whether he (Mr Robinson) was present when Mr Reynolds completed the final inspection. Mr Reynolds said he was not. Mr Reynolds also denied Mrs Robinson told him at that time that Mr Robinson was in the Private Hospital having a kidney operation. Although it was difficult initially to find out what point was being made by some of the cross-examination, in effect it was suggested to Mr Reynolds that he didn't tell Mr Robinson that it would be sub-contractors installing the shed and not Stratco employees. Mr Reynolds said he would have only referred

to the builders as “our installers”. He said he doesn’t specifically tell people that Stratco use an external contractor. He said the installer has been installing sheds for Stratco for many years. Mr Reynolds was asked to comment on a Police Credit Union transaction slip (Exhibit D6) indicating a withdrawal of \$4,000 from the Robinson’s account on 27 October 2005. It was acknowledged that Mr Reynolds could not really comment on the slip but it was received into evidence. Essentially Mr Reynolds said he didn’t know where the money had gone. There was some complaint to Mr Reynolds that the inspection was made while Mr Robinson was in hospital. There was some reference made to the possibility that the slab was in someway damaged. Mr Reynolds agreed that the defendant’s residential address was PO Box 629 Sanderson. He agreed the street address was 170 Vanderlin Drive Wulargi. The point the plaintiff was making was that correspondence should have been to PO Box 629 Sanderson. Nothing of significance arises from that. The defendant seems to be asserting that the invoices weren’t received until months later because they were without an envelope and stuffed in the chain wire fence of 170 Vanderlin Drive.

7. Mr Robinson asked Mr Reynolds if the sub-contractors were acting under the “umbrella as employees of Stratco”. Mr Reynolds said the sub-contractors were paid to go and fit the garden shed according to Stratco specifications and were paid a fixed rate per shed for the installation. Stratco pay Mick’s Welding and Fabrication. He was asked about the protocol concerning handing over of keys. Mr Reynolds answered that it was up to the installer and they would usually be left inside the shed. He said if the owner was home and had been spoken to they maybe handed to the owner. He said if there was no-one home it would be left in the shed.

Michael Mason

8. Mr Michael Mason gave evidence for the plaintiff. Mr Mason described himself as a “steel fixer” and told the Court that on two occasions two people had tried to offer him money when he had worked as a Stratco installer but he refused to accept money. He said he worked for Mick’s Steel Fabrication and was not employed by Stratco. He said they were separate organisations and he never accepted money. He said he worked as a Stratco installer for three and a half years. He said he was not installing garden sheds anymore but was making steel wall frames for Stratco. He said that after installing the garden shed at 170 Vanderlin Drive he did not receive any money either from Mr Robinson or Mrs Robinson.

9. In cross-examination Mr Mason said that he did the first part of the job himself that involved pouring the concrete, finishing the concrete and removing the form work. He said for the second part of the job, (which was the installation) he had two people working for him. He said the first one (also a witness) was Michael Conroy and he hadn’t seen the second person for over a year. He agreed he had been questioned by the Fraud Squad or Casuarina Police about this incident and that he made a statement to police. Mr Mason said he always obtained permission before entering premises to install the slabs. He said he couldn’t remember this job in particular because the job was well over a year before giving evidence and he had done around 360 sheds. He disagreed with the suggestion that there was some damage done to the slab when it was stripped. Mr Mason said Michael Conroy was definitely with him when the shed was erected and he thinks the other person was someone called “Jamie” but he couldn’t recall his surname. He said “Jamie” worked with him for a while but was not a permanent person. He said Michael Conroy was his permanent employee. He said he had no idea of the whereabouts of “Jamie”.

Michael Conroy

10. Michael Conroy was called to give evidence. He gave his occupation as welder/labourer. He didn't have much recollection of the installation at 170 Vanderlin Drive saying he believed he was involved in it but he was clear that he did not take any money from Mr or Mrs Robinson. He was also asked in cross-examination whether he saw anybody when he entered the property and he said he couldn't be sure as he didn't really remember. He said usually he would have knocked on the door or yelled out from the gate prior to entry in case there are dogs present. It was put to him that there were two Chihuahua cross dogs that were hanging around while he was building the shed but he said he couldn't remember.

Evidence called on behalf of the defendant

James Robinson

11. Mr Robinson told the Court he is an invalid pensioner; he told the Court he couldn't give exact information about the payment of the shed; he said he offered the full amount to Mr Reynolds during the first visit when the deposit was paid. Mr Robinson made a number of references to his own and Mrs Robinson's ill health; he made a number of references to this case being a "David and Goliath situation". Mr Robinson seemed to want to make the point that if he had been allowed to pay the full amount at the start, none of this "unfortunate business" would have occurred. He said he has been stressed and under medication. He gave evidence that there was a chip out of the concrete. It was Mr Robinson's belief that his wife paid Stratco. In cross-examination Mr Robinson agreed that the outstanding balance was \$1,944. He agreed that he thought \$2,000 had been paid. He was asked why he didn't ask for the \$56 change. His evidence was "he told my wife that he would be back with the change – didn't I say that? He told my wife he would be back with the change or somebody would be back with the change

and the receipt”. He was then asked if he had rung Stratco after the payment, Mr Robinson answered:

“No we took it at face value and just sort of cruised along, didn’t do anything basically. I mean she had a lot on her plate, she had three close members of her family die within four months, you know, brother and a sister and her cousin. And she was every which way. You know she is beside herself thinking that I am going to die in hospital and having to rely on taxis. I mean the poor woman had enough to cope with without, you know, ringing people and chasing people. And she is not a business person. You might even say she is naïve. In hindsight, that’s what I would say she is because there is no way in the dam world I would be giving any person \$2,000 in an envelope and letting them waltz down the road. No way”.

Margaret Robinson

12. Mrs Robinson gave evidence under some difficulty as she has a hearing impairment. She told the Court that “Jimmy” (her husband) had given Scott Reynolds \$1,900 and she had other money. She said her husband had been raced to hospital and had an operation and she had to rely on her daughter to take her to the bank. She said she took out an extra \$2,000 as well as the \$2,000 Jimmy had told her to withdraw. She said she took out these large amounts as she had difficulty getting to the bank herself and tended to withdraw large sums when she could get there. She said she wasn’t told when they finished the shed but “the chap, the youngest one, he brought the keys”. She said she thought it was the “other one” because he was at her door. She said she had the money in a Police Credit Union envelope in \$100 notes, she gave it to him and said “thanks very much”. He said “look, we will bring the change and the receipt back” and she said “ok, no worries”. She said she gave the money to the chap sitting in the car and she had understood they would bring the receipt and change back. She said she didn’t hear anything for months and months. She stated “and all of a sudden, when I got a phone call from Scott about coming and picking the building board thing up and to pay the rest of the money, I said “what?” I said the chaps that did the shed came and gave me the keys and I gave them

the money and he said “but they don’t work for us, they are contractors””. She told the Court “I could have just screamed”.

13. Mrs Robinson confirmed that when the price was originally agreed Mr Robinson offered to pay the rest of the money. Mrs Robinson said the person she gave the money to was “the longest haired one”. She said he was at Court on the day that she gave evidence. Mrs Robinson then said later in evidence it was the “young bloke with the short hair”. Then referring to her daughter she said her daughter had said there was a chap with shorter hair, too, she said she was not sure.

Leanne Cameirao

14. The defendant’s daughter Leanne Cameirao also gave evidence. She said the day that the workers finished the job she was present and she recalls the dogs started barking. She said her mother got up and went to the door and there was a workman standing there. Her mother went into the bedroom and grabbed an envelope, took some money out and she was walking out and counting the money; when she got to the door she handed over the money and said something like “look I require – I need to get some change”; she said the man handed her mother the keys and then he said that he would be back with the receipt and the change. She said that that was all she had seen. She said a few days prior to that there were a few men there, there were three men but on the day in question she doesn’t know how many men were there. She said she only saw somebody come up to the door. She said there was only one person at the door and she didn’t see where the other workmen were. In cross-examination she agreed she couldn’t describe the person but she said he was basically a short guy. She didn’t see the whole person but said there was “a guy in work clothes”. She said he was a “short guy” but she couldn’t tell his eye colour because she was sitting some distance away. She said she didn’t check the shed until after the workmen

had gone. They were in a ute. She saw the back of the ute drive off. She said she couldn't describe the ute. She said it was a plain white ute.

Discussion Of The Issues

15. Much of the defendant's complaints about the state of the slab, the desire to pay the full amount at the outset, the use of contractors and his and his wife's ill health are largely irrelevant but the case throws up some difficult issues. The supposed David and Goliath struggle is also irrelevant.
16. I believe Mr Mason and Mr Conroy when they say that they did not accept any money from the defendant or Mrs Robinson. I also believe on balance that Mrs Robinson did pay a workman. Her daughter corroborates her to a significant extent, and she was obviously shocked on being asked for the balance when she had already paid. She gave a plausible reason on why she withdraws large amounts of cash and had the bank receipt noting the withdrawal. She was also given the keys to the shed. Both she and her daughter state that Mrs Robinson was told the change and receipt would be forwarded to her. I note the deposit receipt was forwarded later by the plaintiff. Mrs Robinson's descriptions were vague and somewhat contradictory in terms of hair length but that is understandable given the time that has passed. Similarly, Mr Mason and in particular Mr Conroy have only vague recollections of this matter. The matter was treated seriously by all parties and was put into the hands of police. I can only conclude on the balance of probabilities that it was the third workman who took the money. That is the natural conclusion on the facts as they are before me. It is a highly unfortunate state of affairs.
17. The problem in this case may be resolved by the law of agency. Agency may arise from the conduct of the parties or the relationship of the parties. The agency need not be part of an express agreement. Third parties are entitled to assume the agent has the usual authority by implication unless the third party knows the contrary is the case. For example, in *Watteau v*

Fenwick [1893] 1 QB 346, (quoting from the head note), “The defendants a firm of brewers, who were the owners of the business or a beerhouse, appointed a manager of the business; the license was always taken out in the name of the manager, whose name also appeared over the door. By the agreement between the defendants and their manager, the latter was forbidden to purchase certain articles for the purpose of the business, which were to be supplied by the defendants; but the manager, in contravention of his instructions, ordered such articles from the plaintiff for use in the business; the plaintiff supplied the goods and gave credit for them to the manager only. Subsequently, upon discovering that the defendants were the real owners of the business, the plaintiff sued them for the value of the goods”.

18. The plaintiff succeeded as the defendants who were the real principals, were liable for all acts of their agent which were within the authority usually conferred upon as an agent of his particular character, although he had never been held out by the defendants as their agent, and although the authority given to him by them had been exceeded.
19. In this matter, the workman who received the money had no actual authority from Stratco to receive it. The question is whether the authority to receive money in those circumstances would usually be conferred on an agent of that character, even though it is clear that Stratco had not given him authority and any authority he had may have been exceeded. It is clear that an agent has implied authority to perform such acts that are consistent with the trade or custom prevailing providing his or her acts are reasonable: *Blackburn v Mason* (1893) 9 TLR 286. Although there is no evidence of whether a workman might customarily receipt money for a principal, there is the evidence of Mr Mason indicating that on two occasions people had tried to offer him money when he had been doing work as an installer for Stratco. He gave evidence that he refused to accept the money, however the fact that people have previously offered payment to installers is some indication that

generally speaking members of the public might reasonably think that a workman has implied authority to take and receipt money. In my view that would certainly be the case with an employee, however in terms of the objective view of the situation, the independent contractor is in the same or similar position as an employee in terms of an assessment of whether they have implied authority to perform acts that are consistent with the trade or custom. It is also the position that an agency may be negated by the circumstances as envisaged in for example *Debenhan v Mellon* (1880) 6 App Cas 24. That case concerned whether a husband was liable for goods supplied to his wife. Essentially the question of whether there is a presumption of agency is to be answered as a matter of fact depending on the circumstances of each particular case. On the facts of that case the House of Lords held that the husband was not liable as the mere fact of co-habitation did not raise a presumption of agency.

20. A third party who deals in good faith with an agent, relying on the apparent scope of the authority of the agent will generally be able to rely on the agency. To rely on the agency the third party dealing in good faith must not be relying on a situation that is so unusual that they ought to enquire on whether the agent has the authority. Essentially the apparent authority cannot be said to exist if the circumstances are so unusual on enquiry. (*AL Underwood Ltd v Bank of Liverpool* [1924] 1 KB 775). I do not think it was so unusual for the defendant to have paid a workman who completed the work and delivered the key stating that change and the receipt would come later.
21. Agencies have been held to exist as a matter of law even when the agent acts outside of the apparent scope of their authority. For example in *Maye v Colonial Mutual Life Assurance Society Limited* (1924) 35 CLR 14, notwithstanding the canvasser of the insurance company made representations on a proposal that were fraudulent, he was still regarded an agent for the respondent company in an action against the company. The

canvasser was regarded and trusted by the assured as the appropriate representative of the insurance company and the insurance company was responsible for his fraudulent act. In *Ride v Hulberton* [1963] SASR 336, it was held that an authorisation to a land agent to sell land at a particular price did not include authority for adding special conditions such as a condition that the contract was subject to the purchaser obtaining finance by first mortgage loan. Justice Chamberlain considered that to establish such authority there would need to be a custom that agents who have general authorities can sell subject to special conditions. His Honour suggested that any such custom in those circumstances would be entirely unreasonable. In *Rutter v Linton* (1935) 35 NSW SR on 32, it was held that in order that an agent who is held out as having authority might bind his principals, it is necessary that there should appear from the facts that there was ostensible authority to perform the particular act (at 139). In *Director of Post and Telegraph v Abbott* (1974) 7 SASR 540 the plaintiff sued the Director for breach of contract to install a telephone service at his new office by a specified date and attempted to persuade the Court that it was within the actual or ostensible authority of the sales clerk with whom he had dealt to commit the Director to a specific contract to a promise. The majority held that the sales clerk on the evidence was merely carrying out clerical duties and had not been shown that she had actual or ostensible authority to bind the defendant contractually to have the telephone service installed by a particular date.

22. There is nothing specific in either the discussions at the time of concluding the agreement for the shed, nor so far as I can see in the documentation that indicates the plaintiff would only accept payment of the balance in a particular manner. In my view the defendant can rely on payment of the balance to the workman being an agent acting with ostensible (but not actual) authority. I appreciate this is a difficult outcome for the plaintiff

who did not authorize anyone to take payment but it is the conclusion I am drawn to.

23. I order the plaintiff's claim be dismissed.
24. These reasons shall be posted to the parties as agreed at the conclusion of the hearing.

Dated this 17th day of August 2007.

Jenny Blokland
CHIEF MAGISTRATE