Chapter 17: Agency

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CHAPTER 17

Agency

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§17.1. Borrowed servant: Contributed employee. In Weiss v. Republic Pipe & Supply Corp.¹ the Supreme Judicial Court held that there was sufficient evidence to warrant a finding by the jury that the defendant undertook to contribute a driver and equipment for unloading but that the jury was also warranted in finding that the driver did not become the servant of the plaintiff’s employer.

The plaintiff was injured by a boiler which fell upon him while it was being delivered to his employer. The defendant had requested that there be some men ready to accept delivery and the plaintiff was present with other employees for this purpose. There was a conflict as to whether the boiler was to be delivered to the sidewalk or to the cellar. The accident occurred on the cellar steps. At the time of the accident the plaintiff was exercising some supervision but was not otherwise assisting. The cause of the accident was the slipping or loosening of the knot tied by the defendant’s employee to hold the boiler as it was removed from the truck to the basement.

When the Court stated that the driver and equipment could be found to be contributed, did it mean that the driver became the servant of the plaintiff’s employer? The fact that the plaintiff was exercising supervisory power did not of itself give rise to a borrowed servant relation. Other factors were necessary, the Court holding it to be a question of control with respect to details. A general supervisory power, such as the giving of directions as to where the boiler was to be placed, was not such control. If the driver was not a borrowed servant then the word “contributed” means that the defendant agreed to make delivery to the basement, thus making both the plaintiff’s employer and the defendant parties to the venture. A combination of employees under different employers does not make the employees fellow servants.

§17.2. Negligence of independent contractor. Todd v. Wernick¹ presented the question of insulation from liability by the use of an in-

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§17.1. 1335 Mass. 422, 140 N.E.2d 657 (1957). The tort aspects of this case are discussed in §13.4 supra.

§17.2. 1334 Mass. 624, 138 N.E.2d 124. The tort aspects of this case are discussed in §13.1 supra.
dependent contractor. In this case a child of seven years was killed by the fall of a boom used for pulling tar and gravel to the defendant's roof. The boom had been erected by employees of an independent contractor. The Court found for the defendant under the principle that when the owner of a building uses due care in the selection of an independent contractor, he will not be responsible for the negligence of the contractor or the contractor's servants in the performance of the work unless a nuisance will be created or harm would occur unless guarded against.

§17.3. Creation of agency: Tenancy relationships. Two cases decided during the Survey year considered the problem of who may be deemed an agent. The first case, involving tenants by the entirety, held that the husband was an agent for his wife; the second case held that a co-tenant in common was not by virtue of the tenancy an agent of the other co-tenant. In the Le Blanc case, in which the husband and wife had contracted to sell an estate held by the entirety, their relationship, the fact that each had signed the contract, and their conduct on being notified of the place of performance were sufficient to permit a finding of an agency relation. The case does not change the basic principle that the relationship of tenants by the entirety does not of itself create an agency but it does indicate that additional facts, essentially minor, will do so. In the Goodhue case it was held that the tenancy in common was distinct from an agency relationship and that the knowledge of a co-tenant that his mother had authorized removal of small quantities of gravel to pay taxes did not warrant a finding that he had authorized her to be his agent to contract for the removal of all the gravel and loam contained in thirty acres.

§17.4. Real estate broker: Right to commission. When a broker procures a customer ready, able and willing to buy on the terms of the principal, he is not required to show a completion of the sale in order to obtain his commission. The fact that a letter signed by the buyer provided for purchase "if suitable terms and conditions can be agreed upon" did not change the result when the court found as a matter of fact that the customer was ready, willing and able to buy on the vendor's terms.

§17.5. Real estate broker: Extent of authority. A broker had been expressly informed by the purchasers in Vallis v. Rimer that they could not purchase the house except with the aid of a GI mortgage. The agreement of purchase, however, contained no provision for the return of the deposit in the event the sale was not approved by the Veterans Administration. There was no evidence to indicate

§17.3. 1 Le Blanc v. Molloy, 335 Mass. 636, 141 N.E.2d 519 (1957).

§17.4. 1 McKallagat v. La Cognata, 335 Mass. 376, 140 N.E.2d 185 (1957).

§17.5. 1 335 Mass. 528, 140 N.E.2d 638 (1957).
that the seller knew of the necessity of the GI mortgage or that the
sale would take place only upon approval of the Veterans Admin­
istration. The Court held that a broker was at most a special agent
and a person dealing with him has implied notice of his limited
authority. As no express authority had been given to the broker to
limit the transaction by making it subject to the approval of the
Veterans Administration, the purchaser could not recover his deposit.
Nothing was said by the Court of the possibility of imputing the
knowledge of the agent to the principal.2

2 The inexperience of the broker and her consequent failure to realize the limits
of her authority were largely responsible for misleading the purchasers in the Vallis
case. Acts of 1957, c. 726, providing for the licensing of real estate brokers after
examination, will help protect purchasers in this type of situation. For a discus­

sion of this statute, see §11.6 supra.