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Law of Agency: Legal Relationships

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As in most agreements, the parties are contractually bound to a set of rights and duties by which they have to abide throughout the term of the agreement. A breach of the duties by one party or failure to render any obligations by the other party could potentially lead to the termination of a contract. Rarely, the agent might find himself tied into a contract with the third party personally, though this would never be his intention. This chapter will discuss the main rights and duties of the parties involved in an agency agreement, together with the events that could result in the termination of a contract and which would lead to the dissolution of the agency arrangement.

At common law, the principal and the agent owe each other certain duties. These duties are reflected in reciprocal rights held by the other, e.g. the principal has a duty to compensate the agent and the agent has a right to compensation.

Principal's duties

■ Duty of compensation

As has been noted in Chapter 11, agency is an onerous contract. The principal has a duty to compensate the agent for the services the latter rendered. This would normally arise if the agent has acted in good faith and within the realms of the authority that has been conferred upon him as per the agency agreement. Compensation might be in the form of a commission on sales, or a fee, depending on the terms of the contract or customs of the trade.

The following cases are authority for the duty of compensation of the principal:

In *Kennedy v Glass* (1890) 17 R. 1085, Glass was a dealer in old machinery and Kennedy was an architect who had often introduced Glass to people who had old machinery for sale and had been paid for this. On one occasion, Kennedy introduced Glass to a company which had machinery and plant for sale. Glass entered into a contract with the company to buy it but failed to carry out the contract. Kennedy said there had been an arrangement that he would get £250 commission. Glass said it was £50, and only if the contract was carried out.

The court held that Kennedy was entitled to £50 on a *quantum meruit* basis (“as much as it is worth”) as he had taken considerable time and trouble on Glass’s behalf.

In *Way v Latilla* [1937] 3 All E.R. 759 (H.L), Way agreed to send to Latilla information about gold mines in Africa and, in return, Way would receive a concession in any gold mine that Latilla obtained. However, the agency agreement was silent in relation to the remuneration that Way would receive and Latilla denied offering Way a concession.

The court held that Latilla should be compensated on a *quantum merit* basis since the work done by the agent was not to be gratuitous.

In *PJ Pipe & Valve Co Ltd v Audco India Ltd* [2005] E.W.H.C. 1904 (QB), the claimants had two agency agreements with the defendant, one of which did not make any provision for the rate of commission to be paid. When this agreement was terminated by the defendant, the claimants brought a claim for compensation for commission outstanding in respect of orders placed for a project. Expert evidence showed that the usual commission level in industry was 5%, but lower levels were paid for high value orders, which this was.

The court held the claimants were entitled to a commission of 4.5%.

■ Duty of reimbursement

The principal owes a duty of reimbursement to the agent in the event that the agent has incurred out-of-pocket expenses, in the reasonable performance of his agent’s duties. It is important to note that such a duty can be challenged if the agent has not acted in good faith and/or has exceeded the authority that has been conferred upon him.

In *Drummond v Cairns* (1852) 14 D. 611, Cairns was a stockbroker who was instructed by Drummond to buy certain shares. He bought them and told Drummond he had done so, but when the time came to pay the price, Drummond refused to pay. Cairns then sold the shares, but the price had fallen. The court held that Drummond was liable to repay Cairns the difference in the two prices.

In *Tomlinson v Scottish Amalgamated Silks Ltd* 1935 S.C. (H.L.) 1, Tomlinson was a director of Scottish Amalgamated Silks Ltd. The articles of association of Scottish Amalgamated Silks Ltd allowed for a director to be indemnified by the company against all losses and expenses incurred in performance of his duties as director. The company then went into liquidation and Tomlinson was tried for fraudulently using the funds of the company. He was acquitted, and lodged a claim in the liquidation for the costs of defending the case. The court held he was not entitled to reclaim this since the expenses were not incurred in the performance of his duties as a director.

■ **Duty to relieve agent from legitimately incurred liability**

The principal owes a duty of relief to the agent in circumstances whereby the agent has acted in good faith and in the best interest of the principal without exceeding the authority that has been conferred upon him.

It is perhaps stating the obvious to say that an agent would be deemed as being personally liable for any expenses he may have incurred as a result of him acting beyond the scope of authority given to him by the principal.

In *Rhodes v Fielder, Jones & Harrison* [1919] ALL E.R. 846, a firm of country solicitors employed a firm of London solicitors to brief counsel. After the case, the country solicitors instructed the London solicitors to withhold payment of counsel's fees. Nevertheless, the London solicitors paid the fees and claimed to be entitled to an indemnity.

The court held in this case that the London solicitors were employed as solicitors and to fail to pay counsel would be deemed as professional misconduct. Therefore, they were entitled to go against the principal's instructions in order to act properly. In the circumstances, they were entitled to be indemnified (reimbursed).

In *Marshall, Wilson Dean & Turnbull v Feymac Properties Ltd* 1996 G.W.D. 22 1247, the pursuers were solicitors instructed by the defenders to act in the sale of property belonging to the defenders. Before the sale could be com-