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Liability of a Principal on a Sealed Instrument

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LIABILITY OF A PRINCIPAL ON A SEALED INSTRUMENT

The facts in the recent case of *Toll v. Pioneer Sample Book Company*[1] are as follows:

Aaron and Bessie Toll entered into an agreement *under seal* for the sale of certain real estate to Sidney Smiler, the latter acting as agent for the Pioneer Sample Book Company (hereinafter called the company). Sidney Smiler, acting as agent and purchaser, executed the agreement in which he neither named nor referred to the company as a party. However, at the time of the agreement and prior thereto, the Tolls knew that Smiler was vice president and general manager of the company and was acting as agent for the company in making the purchase.

The Tolls subsequently alleged a breach of the above contract and brought an action of assumpsit against the company (alleged principal) to recover the balance of the purchase price.

As a general rule, under the common law a principal, whether he be disclosed or undisclosed, could be held liable for the contracts made by his agent acting within the scope of his authority.[2] Likewise, the parol evidence rule does not prevent showing that the principal, although not named in a written contract, was nevertheless intended by the parties to be bound by the agreement.[3]

Equally fundamental, however, is the notable exception to the above stated general rule that where the instrument is *sealed,* a principal, whether disclosed or undisclosed, is not liable as a party to the contract unless he is identified in the instrument.[4]

Notwithstanding the changes made by the *Uniform Commercial Code,*[5] the common law rules regarding seals are substantially still in force in Pennsylvania; although there seems to be few, if any, places where the private seal is required to validate an instrument.[6] Thus the instant case seems to fall within the established rule the effect of which is to relieve the principal of liability under a sealed instrument entered into by his agent. The majority of the court so held.

Historically, the action on a sealed instrument was in covenant, being based on the personal nature of the seal and therefore liability could be imposed only on the one whose seal appeared on the instrument.[7] With the abolition of this com-

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1 373 Pa. 127, 94 A.2d 764 (1953).

2 Mechem, Agency (2d ed), § 1707 et. seq.; I Williston, Contracts, § 295; Restatement, Agency, §§ 144 and 186; Hall v. White, 123 Pa. 95, 16 A. 521 (1888).

3 Mechem, Agency (2d ed), § 1714, "It does not violate the parol evidence rule . . . the effect is not to release the agent but simply to add the liability of the principal."; 3 C.J.S., Agency, § 241; Restatement, Agency, § 149; Dinger v. Friedman, 279 Pa. 8, 123 A. 641 (1924); Penn Discount Corp. v. Sharp et. al., 125 Pa. Super. 171 (1937); Calder v. Dobell, L.R. 6 C.P. 486 (1871). Cf. note, Parol Evidence and Undisclosed Principals, 61 Law Q. Rev. 130 (1945).

4 3 C.J.S., Agency, §§ 246-247; I Williston, Contracts, § 296; Restatement, Agency, §§ 151 and 191; Bellas v. Hays, 5 Serg. & R. 427, 9 Am. Dec. 385 (1819); Rader et. ux. v. Bernstein et. al., 15 D. & C. 341 (1931); Shermet v. Embick, 90 Pa. Super. 269 (1926), dictum; 32 A.L.R. 162.

5 Act of 1953, April 6, P.L.—Act No. 1 (Effective date, July 1, 1954). The effect of section 2-203 is to make inoperative any seal when appearing on a contract for sale or an offer to buy or sell goods.

6 Act of 1909, April 1, P.L. 91 § 9 as amended, 21 P.S. 10.

7 For brief historical development of the sealed instrument, see 21 Cornell L. Q. 177 (1935).

mon law form of action[8] and subsequent diminishing emphasis placed on the seal, the present justification for the rule seems to be without merit. Nevertheless it has been upheld if for no other compelling reason than adherance to the doctrine of stare decisis.[9] It cannot be denied that the purpose of the court is to arrive at the intentions of the parties. The inequity of the rule then becomes readily apparent when this intention is frustrated by conclusively limiting liability irrespective of intent without justification for such limitation.[10] Why such a restriction is imposed on a sealed instrument, while in an unsealed instrument surrounding circumstances[10a] as well as the contents of the writing are admissible to show what the intention of the parties was as to liability, is beyond comprehension.[11] To assume that merely because a seal appears on the document circumstances become inoperative to arrive at the intention of the parties is to burden reason.

However, the inequities produced by the rule have not gone unnoticed by the court. An attempt has been made to rectify the injustice of the result in some cases by creating exceptions to the rule that a principal is not liable on a sealed instrument unless named therein as a party. The court, in its majority opinion, groups these exceptions into four categories as follows: (1) where laborers and material men are involved, including certain other third party beneficiaries;[12] (2) where

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8 Act of 1887, May 25, P.L. 271, "all demands heretofore recoverable in covenant should be recovered in an action of assumpsit."

9 Rader et. ux. v. Bernstein et. al., 15 D. & C. 341 (1931); Williams v. Magee, 78 N.Y. Supp. 550 (1902); Lagumis v. Gerard, 116 Misc. 471, 473, 190 N.Y. Supp. 207, 208 (1921), "The rule has continued to be followed apparently merely because it had existed."; However, few courts have used a more rational approach by recognizing the feature of non-liability of the principal as a desirable characteristic. See Crowley v. Lewis, 239 N.Y. 264, 146 N.E. 374 (1925).

10 "The time to dispose of the rule, if not now, is near at hand. . . . When so much of the old value and high nature of the seal has been lost, the court should not be tenacious to preserve one of its minor incidents for the sake of the rule but should rather strive to give effect to the real agreement of the parties." Pound, J., in Harris v. Shorall, 230 N.Y. 343, 348, 130 N.E. 572, 573 (1921). This appeal by Justice Pound gave impetus to the impatience of the lower court which was quick to seize upon it as a basis for refusing to apply the rule in Lagumis v. Gerard, 116 Misc. 471, 190 N.Y. Supp. 207 (1921), ("certainly it is only an arbitrary, unreasonable rule, which never accomplishes any good, and is used only to prevent the administration of justice"); and Van Ingen v. Belmont, 121 Misc. 109, 200 N.Y. Supp. 847 (1923); only to be overruled by the Court of Appeals in Crowley v. Lewis, 239 N.Y. 264, 146 N.E. 374 (1925). Nevertheless it attracted the attention of the legislature which subsequently remedied the situation. "Except as otherwise provided by statute, the presence or absence of a seal upon a written instrument hereafter executed shall be without legal effect." N.Y. C.P.A. § 342, as amended by ch. 329 of the New York Laws of 1941.

10a See n. 3, supra. "If the principal is in fact disclosed, but the contract is made in the agent's name and on its face does not disclose the agency, then the intent of the parties determines whether the agent or the principal is liable." 3 C.J.S., Agency, § 241; Whitney v. Wyman, 101 U.S. 392, 25 L. Ed. 1050 (1879).

11 "The absurdity of this (rule) is apparent. . . the danger and pitfall of such a doctrine in business transactions is realized when we pause to consider how many printed forms of agreements have the letters "L.S." stamped upon them, or how numerous cases where the courts have been appealed to for modification of this rule." Crane, J., "The Magic of the Private Seal", 16 Col. L. Rev. 24 (1915).

12 Commonwealth v. Great American Indemnity Company, 312 Pa. 183, 167 A. 793 (1933); Brill v. Brill, 282 Pa. 276, 127 A. 840 (1925); Commonwealth v. National Surety Company, 253 Pa. 5, 97 A. 1034 (1916); Trustees of the Methodist Episcopal Church v. Equitable Surety Company, 269 Pa. 411, 112 A. 551 (1921); Philipborn v. 17th and Chestnut Holding Corporation, 111 Pa. Super. 9, 169 A. 473 (1933).

there exists a privity of estate between an undisclosed principal and his agent, and at the same time the principal is in actual possession or has the beneficial enjoyment of the property;[13] (3) where it is clearly disclosed from the body of an agreement for the sale of real estate that the agent was acting for his principal;[14] (4) where a partner executes a sealed contract in his own name, but the work was done for the benefit of the partnership.[15] The cases seemingly indicate a transition by the court on this rule commensurate with reality and justice.[16] In so doing, a proposition once considered axiomatic in the law of agency has been reduced to a position where it becomes questionable whether or not the exceptions to the rule have not expanded so as to overshadow the rule itself. Suffice it to note, they have at least made it increasingly difficult to reconcile the cases. For example, in *Dinger v. Friedman*[17] a partner had disclosed the existence of the partnership and the identity of his partners but signed the agreement under seal in his individual name. The court treated the contract as informal and held parol evidence admissible to show that the contract was intended to bind the partnership. That this exception is well recognized cannot be doubted.

> ". . . if an instrument executed by a partner, although made under seal would have been valid without a seal and is within the scope of the partnership business and within the powers belonging to each partner, then the seal may be disregarded as surplusage and the instrument treated as a simple contract."[18]

But can it be said, with reason, that the same exception does not apply to an officer of a corporation who was acting as an agent under similar circumstances? In the principal case, the plaintiff's complaint "named the Company as disclosed principal, alleging that they knew from the beginning of the negotiations that Smiler, who executed the agreement, was the Vice President and General Manager of the Company and was acting for the Company in making the purchase. Furthermore, the check of $9,500 which Smiler gave to the Tolls as his down payment was the check of the Company." It is apparent from the foregoing that the plaintiff did not intend to bind the agent, an employee and officer of the company, alone in a $95,000 transaction when it was obvious with whom they were dealing. In addition, the plaintiff out of necessity had to transact business with the agent since the principal was a corporation which must act through an agent if it is to act at all.

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13 Ottman v. Nixon-Nirdlinger, 301 Pa. 234, 151 A. 879 (1930), noted in 79 U. Pa. L. R. 357 (1935); The theory of this case recognizes two obligations in the sealed lease contract where the undisclosed principal is in possession of the premises. One arises out of the sealed lease (privity of contract) upon which no liability can be enforced against the principal since he does not appear as a party to it, and the other is predicated on the relationship which exists between the lessor and the principal (privity of estate) by the latter's possession and enjoyment of the premises.

14 Yentis v. Mills, 299 Pa. 25, 148 A. 909 (1930).

15 Dinger v. Friedman, 279 Pa. 8, 123 A. 641 (1924).

16 "The tendency of courts generally is to relax the rigor of common law and technical rules because they are a bar in many cases to the administration of substantial justice.", Pittsburgh Terminal Coal Company v. Bennett, 73 F.2d 387, 388 (1934).

17 279 Pa. 8, 123 A. 641 (1924).

18 20 R. C. L. 897 (1918); Dubois's Appeal, 38 Pa. 231 (1861).

The court in its majority opinion stated, "We know of no sound reason why, under these facts and circumstances, the law as to sealed instruments should be completely abrogated and the (plaintiff) should now be permitted, in good morals or in law, to sue the (principal) on a sealed instrument to which the (principal) was not a party or named therein."

Perhaps a justifiable reason for relaxing the rule (in addition to the fact that it defeats the true intention of the parties) is that the seal, a holdover from antiquity and formalism, is gradually being reduced to insignificance by the courts[19] as well as by legislation.[20] As early as 1869, the court, speaking through an eminent jurist, Mr. Justice Agnew, offered this pertinent admonition:

> "A seal in this state has no solemnity of form, being made by the mere gyration of a pen, and often affixed by persons ignorant of its legal effect. . . . *There is no good reason why the principal should be wholly discharged because of the ignorant use of the seal.*"[21] (Emphasis supplied.)

Still recognizing the inequity of the rule, Mr. Justice Chidsey, in his concurring opinion in the instant case (but disagreeing with the grounds upon which the majority opinion rests), points out how the relation of the parties to the seal today has reached oblivion.

> "I think this Court should be hesitant to give to a seal its full ancient effect, since the use of a seal has lost much of its former significance and solemnity. A seal was entitled to much weight when most contracting parties could not write. . . . Today. . . (m)ost legal forms are prepared by printers and invariably the word "SEAL" or "L.S.". . . is printed on the form at the end of the line intended for the signature. These forms are often signed by the parties to agreements without any knowledge of the history or legal significance of a seal or the effects of the printed words "SEAL" at the end of the line."

Indeed, the writer has found that the court in applying the rule, seldom does so without taking the opportunity to express its disfavor for the rule.[22]

Although an agent is required to have sealed authority to bind his principal on a sealed instrument,[23] it is settled in Pennsylvania that where such instrument is not required to be sealed but is in fact sealed, parol authority will be sufficient

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19 "The Present Status of the Sealed Obligation," 34 Ill. L. Rev. 457 (1939), a detailed discussion of legislation and cases designed to abolish or limit the common law effect of the seal. See also, "The Magic of the Private Seal," 15 Col. L. Rev. 24 (1915).

20 See n. 5 and n. 6, supra. In at least twenty-seven states the distinction between sealed and unsealed written contracts has been abolished. I Williston, Contracts, § 218.

21 Jones v. Horner, 60 Pa. 214, 218 (1869), dictum.

22 Cooper v. Rankin, 5 Binney 613, 616 (Pa. 1813), recommending legislation to abolish the private seal; Rader et. ux. v. Bernstein et. al., 15 D. & C. 341 (1931). "Until the distinction between sealed and unsealed contracts are abolished by statute, the time has probably come when the courts should decide that a seal has no legal significance." See also Jones v. Horner, ibid.; Brill v. Brill, n. 12, supra.; Pittsburgh Terminal Coal Company v. Bennett, n. 16, supra.

23 Gordon v. Bulkeley, 14 Serg. & R. 331 (Pa. 1826).

to bind the principal; the seal in the latter instance being regarded as surplusage.[24] It is suggested the same applies to ratification of a sealed instrument by the principal.[25]

By analogy then, the seal appearing on an instrument not required to be sealed as a requisite to validity should be regarded as surplusage.[26] At least one case (not within the exceptions stated) has taken this position. In *Lancaster v. Knickerbocker Ice Company*,[27] an agent had entered into an agreement under seal with the defendant. The principal brought action in her own name to recover the balance of the purchase price. The court sustained the action saying:

> "It is text-book law, applied and enforced in a long and unbroken line of cases, that where a simple contract, other than a bill or note, is made by an agent in his own name, his undisclosed principal may maintain an action or be sued upon it."
>
> *"It is also well settled that an unauthorized and unnecessary addition of a seal to such contract may be treated as surplusage."* (Emphasis supplied.)

However, in the instant case, the fact that the contract was not required to be sealed, but was in fact sealed, was of no consequence to the court.

The court need not have abrogated the legal effect of the seal entirely to achieve the desired result. The proposition expounded in *Dinger v. Friedman* and *Lancaster v. Knickerbocker Ice Company* could have been applied here without affecting the other legal effects of the seal. As was aptly stated in a jurisdiction which now treats a seal, when added to a simple contract, as surplusage:

> "The tendency of the courts is to ignore in large measure the technical distinction between sealed and unsealed instruments which were so jealously guarded by the common law. While it may be well to retain the seal to dispense with proof of consideration or lengthen the period of limitation, we know of no sufficient reason why they should not, in other respects, be dealt with as simple contracts."[28]

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24 Dick v. McWilliam, 291 Pa. 165, 39 A. 745 (1927). "The extension agreement itself, though under seal, was not an instrument requiring an affix of that character to insure its validity, consequently the seal may be treated as surplusage, and the agreement sustained as one within the power of the agent acting without sealed authority."; Swisshelm v. Swissvale Laundry Company, 95 Pa. 367 (1880).

25 Dick v. McWilliam, ibid. "In Massachusetts, instruments executed by one person in behalf of another may be ratified by parol, even though a seal is necessary for their validity."; Gross v. Cohen, 236 Mass. 468, 128 N.E. 714 (1920).

26 Restatement, Agency, § 151, Comment b.; Kirschbon v. Bonzel, 67 Wis. 178, 29 N. W. 907 (1886); Horner v. Beasley, 105 Md. 193, 65 A. 820 (1907); Harris v. McKay, 138 Va. 448, 122 S. E. 137, 32 A.L.R. 156 (1924); Stern v. Lieberman, 307 Mass. 77, 29 N. E. 2d 839 (1940); "Common sense would suggest that the instrument be treated as unsealed. . . .", Mechem, Agency, (4th ed.), § 318.

27 153 Pa. 427, 26 A. 251 (1893). In Pittsburgh Terminal Coal Company v. Bennett, n. 16, supra., the court held the undisclosed principal liable on a contract under seal for the sale of real estate since West Virginia had abolished the seal by statute. However, the court, after reviewing the Pennsylvania cases, added, "if the law of Pennsylvania, where the suit was brought controls, the same result must be reached." The latter indicates the confusion created by the decisions. See also Swisshelm v. Swissvale Laundry Company, n. 24, supra.; Hall v. White, n. 2, supra.; Rothermel, Jr., Trustee, etc. v. Nirdlinger et. al., 12 D. & C. 606 (1929) (dictum).

28 Harris v. McKay, 138 Va. 448, 122 S. E. 137 (1924).

Conclusion

While Pennsylvania still adheres to the common law rule that a principal cannot sue or be sued on a seal instrument unless he appears as a party therein, many exceptions to the rule have been created which have led only to irreconcilable confusion and injustice. To hold the rule inapplicable when the instrument, as a requisite to validity, need not be sealed, but is in fact sealed, while desirable, would merely accomplish what seems to be another step in the evolutionary process of limiting the rule in its application, and as such, would effect no significant change in the status quo but simply tend to create another exception.

Two alternative corrective measures are available: (1) abolish the rule, but retain the otherwise legal effects of the seal; or (2) abolish the legal effects of the seal entirely. In view of the fact that Pennsylvania, by its statute law and court decisions, has been steadily moving in the direction of the latter, it is to be recommended as the more desirable. The need stems not only from the viewpoint of necessity incident to the law of agency, but also as a means of adopting a more scientific arrangement so as to achieve predictability throughout the entire field of law and business practices.

While the courts are disposed to disfavor the rule, the means employed to achieve its diminution has reached its elasticity. It now becomes the duty of the legislature, with its more adaptable machinery, to effectuate this change.

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