

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2018/0072

BETWEEN:

**DENZIL WARNER AND JAMES JARVIS
Personal Representatives for the Members of
ANTIGUA AND BARBUDA LEGENDS
SOFTBALL CRICKET CLUB**

Claimants

-and-

VOYAGES ANTIGUA TOURS & SERVICES

Defendant/Ancillary Claimant

CARIB-A-TRAVEL

Ancillary Defendant

Appearances:

Mr. Lawrence Daniels for the Claimant
Ms. Latoya Letlow for the Defendant

2022: November 9

2023: January 11TH

JUDGMENT

- [1] **BYER J.:** The claimants initiated proceedings by way of claim form and statement of claim dated the 12th day of February 2018 seeking relief from the defendant/ancillary claimant (hereinafter referred to as the Defendant) and ancillary defendant inter alia, damages in the sum of \$77, 735.50 for monies due and owing and damages for breach of contract.

- [2] Initially, the now named ancillary defendant had been named as the second defendant, however, upon an inability to effect service, the claimants continued its claim solely against the defendant. By virtue of an application filed by the defendant, the ancillary defendant was added back to the proceedings as a party.

Relevant Background and Evidence of parties

The claimants as the representatives of the Antigua and Barbuda Legends Softball Club (the club), entered into a contractual agreement in April 2016 with the defendant for a Caribbean cruise scheduled to take place during the period 7th -14th March 2017. The total sum of the cruise amounted to \$77,735.50 which was paid in three instalments by the claimants. The final and full payment was made by the claimants on the 28th of December 2016.

- [3] It was the claimant's contention that despite the funds towards the cruise having been fully paid, due to circumstances beyond their control, the club was unable to undertake the cruise nor were they refunded the monies paid or any part thereof.
- [4] The claimant's case was supported by the evidence of their two witnesses namely Mr. Denzel Warner, President of the Club and Mr. James Jarvis, Treasurer of the said Club.
- [5] Mr Warner 's evidence was that he was the point person who made the arrangements on behalf of the claimants with the defendant and all payments were made payable by them to the defendant.
- [6] Under cross-examination, Mr Warner did admit that at the time of purchasing the ticket for the cruise, he was aware that he was conducting business with a travel agency and that the defendant was in fact acting on behalf of someone else as agent. However, he further admitted, that he was only made aware of the extent of that agency when he received a copy of correspondence dated 31st January 2017. By that correspondence, which emanated from the ancillary defendant, the claimants for the first time, he alleged, became aware that the defendant was in fact acting on behalf of the ancillary

defendant in the sale of the cruise packages to the claimants. It was also by this said correspondence that the claimants were informed for the first time that the initially scheduled dates for the cruise were no longer available and were further presented with alternative options.

- [7] Mr. Warner's evidence further divulged that once they were in receipt of that correspondence, the claimants began direct communications with the ancillary defendant where initially they opted to reschedule the cruise and had chosen an alternative date of 4th of April 2017 which was confirmed in an email correspondence dated 13th February 2017. Having made this communication, Mr. Warner stated that the claimants continued direct communication to the exclusion of the defendant with the ancillary defendant.

- [8] Despite this change and the ultimate indication of the ancillary defendant, Mr. Warner continued to assert that it was the responsibility of the defendant, having been the entity that had received the monies for the trip from the Club, who were still ultimately responsible to make the refund to the claimants.

- [9] The defendant's case was supported by the evidence of their two witnesses namely Julie Thomas and George Thomas, both employed as tour coordinators for the defendant.

- [10] Under cross-examination of Mr. Thomas, it was revealed to the court that he was the individual who had actually dealt with Mr Warner and that he was the person who had received payments for the cruise package for which he stated he had been acting merely as agent, not the actual entity that made the booking on behalf of the client. However, when the invoice¹ which he had produced for the claimants was presented to him for comment, he was forced to reluctantly admit that the name of the ancillary defendant, did not in fact appear on the invoice nor was there any document produced representing an agency agreement between himself and the ancillary defendant.

¹ TB3 Page 10 Exhibit A dated 20/4/2016

- [11] Indeed both Mr. Thomas and Mrs. Thomas admitted that being aware of the circumstances that led to the cancellation of the booking, that the claimants were entitled to their refund but that the same had not been processed by the ancillary defendant whose responsibility it was to do so.
- [12] In support of their case, the defendants submitted that the claimants after opting to be refunded made the request for the refund directly to the ancillary defendant. At this point, because the defendants were physically located within the jurisdiction that they attempted to facilitate the processing of the transaction for a refund.
- [13] The defendants however maintained that they were not liable to the claimants and that they had in fact fulfilled all their obligations under the contract with the claimants, by organizing the relevant bookings and subsequently transferring all payments collected by themselves to the ancillary defendant who bore the responsibility for payment.
- [14] It must be noted that the ancillary defendant did not enter an appearance to the claim nor made any attempt to be heard in the proceedings.
- [15] The issues therefore to be determined by this court are as follows:
1. Whether the Defendant acted as agent for the Ancillary Defendant?
 2. Whether the Defendant is the suitable and proper party to be sued to recover damages?
 3. Whether the Defendant is liable to compensate the Claimants in the sum of \$77,935.50 for breach of contract? If so, are they obligated to refund the full sum of the monies?
 4. Whether the Ancillary Defendant has any liability for the contract made by his agent in the absence of a written agreement?

Law/Analysis

[16] The court is left to decipher whether, in fact, an agency relationship existed between the parties in this matter irrespective of there being no agency agreement produced to this court. The learned authors in Halsbury's Laws of England² bring clarity to the nature of the law of agency which states that such relationships arise "where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties." Such authority in which an agency may be derived may be effected in one of four ways including by express or implied appointment giving actual authority to the principal, subsequent ratification, ostensible authority and/or authority given by implication of law in cases of necessity.³ Furthermore, whether that relationship exists in any situation "depends not on the precise terminology employed by the parties to describe their relationship, but on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent."⁴

[17] In the case of **LC Fowler & Sons Ltd v St. Stephens College Board of Governors**⁵ the court was called on to determine questions of the liability of an agent in similar circumstances as the case at bar. That case involved a travel agent by the name of Mr. Murray who had a history of organizing overseas tours. A school used his services and paid the tour payments through him, which he was to pay to the Plaintiff company. Mr. Murray misappropriated the funds, and Justice Thomas in his analysis brought forth that the terminology of "agent" was simply "to connote the relationship which exists where one person has the authority or capacity to create legal relations between another person." He further encapsulated that the agent's position is that he or she is only an intermediary between two other parties. The court found Mr. Murray was acting as agent and held the school to be liable as principal for monies owing under a contract made by the travel agent with the Plaintiff company.

² ² Halsbury Laws of England (Volume 1 (2022))

³ Gilbert Kodilinye, Maria Kodilinye: Commonwealth Caribbean Contract Law, 2014 Page 223

⁴ Halsbury Laws of England (Volume 1 (2022)) para 2

⁵ [1991] 3NZLR

[18] In the case at bar and in assessing the evidence, this court is of the view that the defendant has likewise created the channel of a legal relationship as between the ancillary defendant and the claimant. The true nature of an agent is one who is vested with the “authority to act on behalf of another, called the 'principal', and consents so to act.”⁶ The court is satisfied that the defendant facilitated the booking of the cruise which they had the authority to do so by the ancillary defendant and likewise, this court is mindful that an intermediary relationship existed and as such a third party was at the time in existence or at the very least contemplated.⁷

[19] In the case at bar, when this court considers the evidence of the parties and the uncontroverted evidence of the manner in which the defendants conducted its affairs with the ancillary defendant and the correspondence emanating from the ancillary defendant accepting its liability, this court is of the opinion that there was, in fact, an agency relationship between the defendant and ancillary defendant. The court in making this determination, acknowledges that although no document termed or labelled ‘agency agreement’ was produced to the court, it is clear from the conduct and behaviour of the defendant and ancillary defendant that such a relationship in fact existed. Notably, the arrangement of the defendant making the bookings, accepting payments which were then forwarded to the ancillary defendant who was then responsible for the issuance of tickets and managing the cruise schedule demonstrated the existence of an agency relationship.

[20] The court is even more fortified in this determination when it considers the principle of law that agency can also be established by ratification. This obtains where an action has been taken by an individual that was then approved by the person on whose behalf the action was taken after the fact. Thus “where the act has been done by a person not assuming to act on their behalf, but for another, though without their precedent authority or knowledge, and is subsequently ratified by that other person, the relation of principal and agent is constituted retrospectively, and the principal is bound by the

⁶ ⁶ Halsbury Laws of England (Volume 1 (2022)) para 2

⁷ Ibid

act whether it is to their advantage or detriment, and whether liability is founded in contract or in tort ,to the same extent and with all the same consequences as if it had been done by their previous authority.”⁸ In this regard, the letter dated 31st January 2017⁹ is critical evidence of ratification as well as this clearly showed the claimants and the defendants themselves, that the ancillary defendant accepted and confirmed that all actions taken by the defendant had been done on its behalf and for their benefit.

- [21] The court is therefore satisfied that a valid agency relationship was created between the Defendant and the Ancillary Defendant.

Proper Party from whom to Recover Damages and Liability

- [22] A general doctrine in the realm of law is that only a party to a contract may sue on it, this principle is referred to as privity of contract. This doctrine states that a contract cannot confer rights or impose obligations on strangers or persons who are not parties to it.¹⁰ An exception to this doctrine would be the law of agency.
- [23] Having made the determination that there was in fact an agency arrangement as between the defendant and the ancillary defendant, the court now grapples with the issue of liability and whether the mere fact that an agency and principal relationship has been established between the defendant and ancillary defendant would absolve the onus on the defendant, and not the ancillary defendant, to refund the claimants. The defendant has admitted that the claimants should be refunded their monies but argues that they are not the proper party to be sued. My sister St. Rose-Albertini, J in **Cyril Dornelly Construction Company Limited v The Harbour Club Limited**¹¹ emphasized that “there is a direct contractual relationship between the principal and the third party, and the agent is neither liable under, nor entitled to enforce the contract he makes on behalf of the principal.” The learned judge then went further and stated

⁸ Halsbury Laws of England (Volume 1 (2022))

⁹ TB3 Exhibit G dated 31/01/2017

¹⁰ Halsbury’s Laws of England (Volume 22 (2012))

¹¹ SLUHCM2018/0069

that “the rule contemplates that where a person makes a contract in his own name without disclosing either the name or the existence of a principal, he is personally liable on the contract to the other contracting party, though he may be in fact acting on a principal’s behalf.”

[24] However, that situation is different where an agent who clearly contracts as agent but does not disclose the name of his principal, the effect is as if the principal was clearly known and disclosed to the party contracting. Thus, the agent would therefore drop out of the picture unless there is an express or implied term to the effect that he undertakes liability.¹²

[25] When this court assesses the evidence that was led by the claimants, this court accepts that even though the claimants were not aware of the name of the person on whose behalf the defendants were acting when they transacted the purchase of the cruise, this court must accept that by the claimants own evidence at trial, through their witness Mr. Warner, it was made clear that “[he agreed] that at the time of the booking [he] did not know that they were acting on behalf of a someone specific but that they were acting on behalf of someone” In fact Mr. Warner went on, under further cross examination that it was therefore when they received the correspondence of the 31st January 2017 that the claimants then knew the name of the entity on whose behalf the defendants had been acting.¹³ This court therefore finds that having known that there was a principal even if not aware of their name and the further ratification of all that the defendant did by the ancillary defendant, on a balance of probabilities the court accepts that the claimants knew of the agency and must be bound by the same.

[26] Under customary law and considering the foregoing circumstances, the ancillary defendant as principal is therefore liable to the claimants for the breach and losses they suffered. The principal has a direct legal contractual relationship with the claimants to enforce the contract that was made through its agent the defendant. The principal itself

¹² Gilbert Kodilinye, Maria Kodiinye: Commonwealth Caribbean Contract law (2014) page 234

¹³ Evidence elicited on cross examination at trial of the matter on the 9th November 2022

admitted liability through direct communications with the claimants stating that it received from the defendant the full payment via Wire transfer and was willing and committed themselves to refund the claimants.¹⁴

- [27] The court therefore finds that the defendant is not the proper party to be sued acting in the capacity of the agent to the ancillary defendant.

The order of the court is therefore as follows:

On the claim

1. The claim is dismissed in its entirety with prescribed costs to the Defendant on the sum claimed pursuant to Part 65.5 CPR 2000 Appendix B

On the Ancillary claim

1. In the circumstances where the defendant has not been found liable under the substantive claim, the claim is dismissed with no order as to costs.

P. Nicola Byer

High Court Judge

By the Court

Registrar

¹⁴ TB3 Exhibit Q Letter dated 30/10/2017 from Carib-A-Travel to Marshall & Co