

A

J. V. KAPADIA & COMPANY

v.

SUVA MOTORS LIMITED

[COURT OF APPEAL, 1974 (Gould V. P., Marsack J.A., Haslam J.A.),
12th, 18th March]

B

Civil Jurisdiction

Agency—whether ex-employee able to pledge former employer's credit by fraudulent issue of its official order forms—whether sufficient to set up agency by estoppel.

C

Estoppel—whether firm liable to pay for goods obtained by ex-employee through his fraudulent use of its official order forms—whether agency by estoppel established.

An employee who had left the respondent company's employ several months earlier, fraudulently submitted its official order forms to the appellant firm and so obtained a number of tyres for his own use. There was no evidence that the employee had ever purchased tyres from the appellant firm before, nor did any responsible officer of the respondent company intimate by express or implied consent to the appellant firm that the employee had full authority to purchase goods. The respondent company refused to pay for the tyres.

D

Held: 1. The employee having left the respondent company several months before the transaction could not be regarded as an agent in the absence of any special authority.

E

2. The appellant firm had failed to discharge the onus of satisfying the Court that the employee was, in any sense, an agent of the respondent company.

3. Even if an official order form was issued, the respondent company could not be held absolutely liable in the absence of evidence from which agency could be inferred.

F

Per curiam: Employers are not always obliged to advertise the fact that an employee has left their employ, in the absence of special circumstances, as this would lead to an impossible situation in the business world.

Appeal against the judgment of the Supreme Court in favour of the respondent company.

G

K. Chauhan for the appellant firm.

H. M. Patel for the respondent company.

18th March 1974.

H

The following judgments were read:

MARSACK J.A.:

A This is an appeal against a judgment of the Supreme Court entered at Suva on the 5th October 1973 in which it was held that the respondent company was not liable to pay to the appellants a sum of \$1946.50 for certain tyres sold by the appellants to one Campbell.

B The basic facts may be shortly stated. One Cedric Campbell was employed by the respondent company for between one and two years until the 12th July 1971, after which date he was no longer so employed. The respondent company used what was called an official order form for purchases made from other traders. This form had, as a matter of company regulation, to be signed by a departmental manager. Campbell was not so authorised to sign. On several occasions between the 20th and 30th September 1971 Campbell presented Suva Motors Limited official order forms for tyres to the appellants, and by this means obtained 31 tyres which he personally took away in transport other than a company vehicle. At this time the respondent company did not have a credit account with the appellants. After the last delivery of tyres to Campbell, one of the partners in the appellants firm began to have doubts, and communicated with C the respondent company which disclaimed all knowledge of the matter and rejected a demand for payment of the sum involved. Proceedings were then brought in the Supreme Court by the appellants against the respondents claiming the purchase price of the tyres, and judgment was given in favour of the respondent. It is from that judgment that this appeal is brought.

D Appellant's case was based upon the submission that at the time of the sale of the tyres concerned, Campbell was the agent of the respondent company; or, alternatively, that the company by its conduct had led the appellants to believe that Campbell was authorised to buy the tyres on behalf of the company.

E The first of these submissions cannot in my opinion be sustained. Campbell had ceased to be employed by the company more than two months before the transactions concerned. He then had no standing whatever with regard to the company and, in the absence of any special authority given to him by the company, could not in any sense be regarded as the company's agent.

F The argument for the appellants was almost entirely directed to the alternative ground set out above. The principle involved in this ground was that of agency by estoppel. The facts on which counsel for the appellant relied were shortly these: that Campbell had been well-known to be an employee of the respondent company; that no notice had been given of the termination of his employment; that use had been made of the respondent's official order form upon which the appellants were entitled to act; that Campbell in the course of his employment did purchase tyres on behalf of the respondent; and that these particular purchases were carried out in the normal way of the respondent's business. In G counsel's contention these facts were sufficient to set up in law an agency by estoppel, with the result that the respondent company would be liable, notwithstanding the fraud of Campbell in stealing the official order forms and taking away the tyres for himself.

H The determination of this question depends upon an examination of exactly what were the actions of the respondent company from which the appellants were reasonably entitled to draw the inference that at the time of the transactions in question, Campbell was acting as agent of the company. It was the practice of the respondent to use the official order form when making a purchase from another trader. Certain people only—of which Campbell never had been one—had authority to sign an order form and without such an authorised signature the company would not recognise the order as valid. In my view, the use of such an order form would not in itself have rendered the respondent liable in a case,

for example, where the form had been stolen by a burglar, or as here, wrongfully abstracted by an employee. There is no evidence that Campbell had ever purchased tyres from the appellants before, and there was therefore no course of dealing from which the appellants could draw the inference that they could supply him with tyres and debit the company with the cost. There is no evidence that a responsible officer of the respondent company at any time said expressly, or intimated by conduct, to the appellants, that Campbell had full authority to purchase goods on behalf of the company. In my view, this case does not fall within the ambit of the principle set out in 1 *Hals. (3rd Edition)*, para. 374, which was cited by counsel for the appellant :—

“ *Holding out.* Agency by estoppel arises where one person has so acted as to lead another to believe that he has authorised a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority. ”

To establish an agency by estoppel here it is thus necessary to show that the respondent so acted as to lead the appellants to believe that Campbell was authorised to do what he did on behalf of the respondent. I can find no proof of any such action. The mere fact that the order forms were kept in the office cannot amount to an intimation to any dealer that the use of such a form would necessarily create a liability on the company. Mr Chauhan's contention was that the mere institution of a system of purchase by order forms amounted to a holding out to all dealers that any person presenting such a form could be considered the agent of the company ; the ostensible authority was there, even if the person concerned were acting fraudulently. I find myself unable to accept this argument, in the absence of proof of any action on the part of the respondent from which such an agency could reasonably be inferred.

It was further contended by Mr Chauhan that as Campbell had been known to be an employee of the respondent company, and the company had not given public notice that his employment had been terminated, appellants were entitled to assume, and to act upon the assumption, that Campbell was still so employed and consequently entitled to enter into purchase transactions on behalf of the company. I do not think this argument is tenable. There might on occasion be special circumstances calling for a notice of some kind to that effect, but it cannot be said that every time an employee of a business concern leaves that employment, whether by way of dismissal or otherwise, the employers are under an obligation publicly to advertise the fact. It would lead, in my view, to an impossible situation in the business world.

Mr Chauhan presented a carefully reasoned argument in support of the appeal ; but in my opinion, the appellants have not discharged the onus of satisfying the Court that Campbell was in any sense the agent of the respondent company in his transactions with the appellants concerning the tyres. That being so, I would dismiss the appeal with costs to the respondent.

HASLAM, J.A.

I have read the reasons for judgment just delivered by Marsack, J.A. with which I am in complete agreement. I have nothing further to add.

GOULD, V.P.

I have had the opportunity of reading the judgment of Marsack, J.A. in this appeal. I fully agree with it and have nothing to add.

All members of the court being of the same opinion the appeal is dismissed with costs.

Appeal dismissed.