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Agency—Authority to Endorse Checks—Effect of Signature Cards

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AGENCY—AUTHORITY TO ENDORSE CHECKS—EFFECT OF SIGNATURE CARDS*—Cases concerned with the authority of an agent to endorse checks payable to his corporate principal offer few consistent standards by which to judge a specific fact pattern. One reason for this is the general confusion surrounding the terminology applicable to the relationship between the agent and his corporate principal.[1] Before determining whether an agent has been authorized to endorse checks, it is necessary to classify logically the different concepts of authority and their characteristics.

An agent may, of course, have *actual* authority to endorse an instrument payable to his principal.[2] This authority will be either *expressly* conferred by the principal,[3] or *implied* from the position the agent holds.[4]

An agent may also have the apparent authority to endorse; that is, authority which the principal permits the agent to exercise or the authority which the principal holds the agent out as possessing.[5]

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* Cooper v. Albuquerque Nat'l Bank, 404 P.2d 125 (N.M. 1965).

1. Annot., 37 A.L.R.2d 453, 460 (1954):

> While the courts appear greatly confused about the terminology which is applicable to the rules concerning the authority of an agent to endorse commercial paper, the same confusion is not always apparent in the results reached. Perhaps the reason for this is that application of the rules of the common law generally produces an equitable result. . . .

2. Clinton v. Hibb's Ex'rx, 202 Ky. 304, 259 S.W. 356 (1924); Williams v. Dugan, 217 Mass. 526, 105 N.E. 615 (1914); 3 Am. Jur. 2d *Agency* § 143 (1962).

3. Express authority may be conferred by means of a corporate resolution. Belknap v. Davis, 19 Me. 455 (1841); Cowles v. Wells, 222 Mo. App. 122, 2 S.W.2d 151 (1928).

4. Thus, in Ocean Acc. & Guar. Corp. v. Denner, 207 Okla. 416, 250 P.2d 217 (1952), an agent in the position of a general manager was held to have the implied authority to endorse commercial paper because he would have been unable to carry out the duties of his position without such authority. See Collins v. Palmer, 231 App. Div. 321, 248 N.Y. Supp. 133 (1931); Iten Biscuit Co. v. Hamilton Nat'l Bank, 16 Tenn. App. 655, 65 S.W.2d 615 (1933); Moneypenny v. Third Nat'l Bank, 172 Tenn. 237, 111 S.W.2d 375 (1937). However, the weight of authority indicates that general management of a business does not of itself imply power to endorse commercial paper. Midland Sav. & Loan Co. v. Tradesmen's Nat'l Bank, 57 F.2d 686 (10th Cir.), *cert. denied*, 287 U.S. 615 (1932); Burstein v. People's Trust Co., 143 App. Div. 165, 127 N.Y. Supp. 1092 (1911). See also Beacon Chocolate Co. v. Bank of Montreal, 14 F.2d 599 (7th Cir. 1926), where the court said that notice to a bank that only three individuals could draw out money deposited by a sales manager, who was not included in the three, *overcomes* his implied authority and constitutes notice of the limitation of this authority to endorse.

5. The following cases and texts are set forth because they seem to make the distinction between *apparent* authority and situations in which the principal is *estopped* to deny the authority. Oklahoma State Bank v. Galion Iron Works & Mfg. Co., 4 F.2d 337 (8th Cir. 1925), *modified*, 11 F.2d 370 (1926); First Nat'l Bank v. Staley, 4 F.2d 324 (5th Cir. 1925); Jackson Paper Mfg. Co. v. Commercial Nat'l Bank, 199 Ill. 151, 65 N.E. 136 (1902); 3 Am. Jur. 2d *Agency* § 146 (1962). It should be noted that a case decided by a federal court, which arose in New Mexico, supports the dis-

The cases suggest that authority to endorse will not be lightly conferred or implied.[6] For this reason, and in order to develop a logical pattern to which the cases in this area may be said to conform, a third classification must be added: authority by *estoppel.*[7] This third concept is too frequently forced to exist as a logically uncomfortable subsection of apparent authority.[8] However, the distinction between apparent authority and authority by estoppel is useful and should be made. Several courts have held that authority by estoppel will operate when the principal has negligently permitted an agent to exercise authority which is neither actual nor, because of the presence of certain facts, can it be properly labeled apparent.[9] The necessary element is reasonable reliance by a third party.

Because of the possibility that an agent such as a general manager or secretary-treasurer who lacks actual authority to endorse checks may later be held to have been clothed with the apparent authority to endorse, or actual implied authority, corporations occasionally seek to protect themselves by limiting the agent's authority by an express resolution to that effect.[10] When the resolution has been

tinction: McNutt Oil & Ref. Co. v. Mimbres Valley Bank, 174 F.2d 311 (10th Cir. 1949). The court in Landau Grocery Co. v. Bank of Potosi, 223 Mo. App. 1181, 26 S.W.2d 794, 795 (1930), bases the distinction between authority of estoppel and appointment authority on the fact of the principal's *negligence* as contrasted to his *conscious permission* of the acts. A preferable distinction would seem to be the reasonable reliance of the third party.

6. Merchants' & Mfrs.' Ass'n v. First Nat'l Bank, 40 Ariz. 531, 14 P.2d 717 (1932); Jackson Paper Mfg. Co. v. Commercial Nat'l Bank, *supra* note 5; Hallett v. Moore, 282 Mass. 380, 185 N.E. 474 (1933).

7. See note 5 *supra* for a discussion of this distinction.

8. Annot., 37 A.L.R.2d 453, 479 (1954): "[T]he courts do not seem . . . inclined to make such distinctions."

The following cases use the terms "apparent authority" and "authority by estoppel" interchangeably: Commercial Cas. Ins. Co. v. Isbell Nat'l Bank, 223 Ala. 48, 134 So. 810 (1931); Sinclair Ref. Co. v. Moultrie Banking Co., 45 Ga. App. 769, 165 S.E. 860, (1932). In Hamlin's Wizard Oil Co. v. United States Express Co., 265 Ill. 156, 106 N.E. 623 (1914), the distinction was not made and resulted in a loss to the defendant bank. In *Wizard Oil*, an agent had signed the names of the corporate officers on commercial paper without the *knowledge* of the corporation. Although the corporation was admittedly *negligent*, the court said that because the corporation made no positive acts to mislead the bank, nor did the corporation have *knowledge* of what the agent was doing, could it be estopped to deny the apparent authority. It is in these cases, in which the corporate principal has been negligent in its affairs, and the bank has relied on the behavior of the principal, that the distinction is especially helpful.

9. Reichert v. State Sav. Bank, 274 Mich. 126, 264 N.W. 315 (1936). For this distinction, see Landau Grocery Co. v. Bank of Potosi, 223 Mo. App. 1181, 26 S.W.2d 794 (1930), discussed at note 5 *supra.*

10. Freehold Bank v. Baker, 293 Mass. 73, 199 N.E. 342 (1936); Belknap v. Davis, 19 Me. 455 (1841); General Inv. Corp. v. Schulman, 22 N.J. Super. 449, 92 A.2d 60 (1952); Campbell Trucking Corp. v. Public Nat'l Bank & Trust Co., 201 Misc. 745, 105 N.Y.S.2d 870 (Sup. Ct. 1951).

brought to the attention of a third party, courts have held this an effective notice to the third party that the agent had no power to endorse.[11] Resolutions limiting the agent's authority sometimes take the form of signature cards at banks.[12]

Signature cards bear the signature of those authorized to make or endorse instruments and state limitations to this authority, if any exist. In New Mexico such an authority problem arose in *Cooper v. Albuquerque Nat'l Bank*.[13] During a five-year period, various persons and firms, for valuable consideration, executed checks payable to the "New Mexico Pipe Trades Welfare Trust Fund." These checks were delivered to John Peke, administrator of the trust fund. Peke was also the general manager of Associated Plumbing and Heating Contractors of New Mexico. Peke endorsed checks payable to the trust fund and deposited them in the account of Associated Plumbing. The trust fund is a legal entity established for the purpose of administering a trust for the benefit of certain employees of the contractors' association. These two legal entities, the trust fund and the association, operated a joint office and all books and records were readily accessible to both groups. The association administered the trust fund and paid all bills and salaries of the trust fund's employees, for which administrative services the association was paid a certain percentage of the trust fund's receipts.

The minutes[14] of a meeting of the trustees of the trust fund on

11. Campbell Trucking Corp. v. Public Nat'l Bank & Trust Co., *supra* note 10; E. Moch Co. v. Security Bank, 176 App. Div. 842, 163 N.Y. Supp. 277 (1917), *aff'd mem.*, 225 N.Y. 732, 122 N.E. 879 (1919); L. W. Cox & Co. v. Chemical Bank & Trust Co., 175 Misc. 1063, 26 N.Y.S.2d 38 (N.Y. City Ct. 1941); Industrial Plumbing & Heating Supply Co. v. Carter County Bank, 25 Tenn. App. 168, 154 S.W.2d 432 (1941).

12. Campbell Trucking Corp. v. Public Nat'l Bank & Trust Co., 201 Misc. 745, 105 N.Y.S.2d 870 (Sup. Ct. 1951); Industrial Plumbing & Heating Supply Co. v. Carter County Bank, *supra* note 11.

13. 404 P.2d 125 (N.M. 1965).

14. Record, p. 74, Cooper v. Albuquerque Nat'l Bank, 404 P.2d 125, 129 (N.M. 1965):

> Gray offered a motion that the manager and T. D. Smith be given the authority to get legal advice and to establish whatever method is necessary in making payment or depositing funds to the association that are due it as custodian of the trust fund, protecting the association's tax status that either the manager or Mr. Smith . . . make necessary deposits, this in case the manager was out of town, Seconded by Cooper.
>
> Chairman Smith asked the manager, Peke, if in his opinion, the work of handling of the trust would require more than half of his time. Peke suggested that as the trust would grow that it might require more time and everyone should keep in mind that it would also take the full time of one girl bookkeeper. Gray stated that Peke was aware that the custodianship of the trust fund belonged to the association and should he leave the employ of the association, he

November 20, 1953, indicate that Peke was given authority to endorse checks payable to the trust fund and deposit them in the association's account to the extent such funds were owed to the association by the trust fund for services rendered. However, on November 30, 1953, ten days after the trustees' meeting, the following written contract was entered into between the trust fund and the defendant bank:

> 'Signature card dated November 30, 1953 . . . 'RESOLVED, that xxxxx Two Signatures Required, President————, Vice-President, or Harold Troyer, Secretary John Peke, Administrator of this corporation may, and they are hereby authorized to sign checks and drafts for and on behalf of this corporation, and that each of them be and is hereby authorized to *endorse* for and on behalf of this corporation, checks and other instruments for deposit, encashment or otherwise; and that the Albuquerque National Bank . . . be, and it is hereby authorized to pay on account of this corporation any and all checks . . . signed and/or *endorsed* in accordance herewith.'[15]

Another signature card dated January 30, 1956, contained similar provisions, except that Thomas Hall was substituted for Troyer as the co-endorser with Peke.[16]

From October 14, 1953, to March 13, 1958, Peke endorsed the trust fund's checks with only his signature and deposited an ex-

could not take the trust fund custodianship to some other office or organization. Driver suggested that this being true, the association should pay all bills and salaries, thus saving social security and employment taxes, and this would solve the problem of jeopardizing the association's tax exemption question, just deposit whatever monies are due the association directly to the association's bank account and avoid any misunderstandings, then there would be no question of payment for services, rentals or expenses. Trustees agreed that this was a good proposal and that the manager should follow the suggestions as outlined. Meeting adjourned by the Chairman, 5:30 P.M.

15. 404 P.2d 125, 127-28. (Emphasis added.)

16. Record, p. 63:
RESOLVED, that either ————————, President, or ————————, Vice-President, or Thomas W. Hall, Secretary-Treasurer, Secretary, John Peke, Administrator of this corporation may, and they are hereby authorized to sign checks and drafts for and on behalf of this corporation, and that each of them be and is hereby authorized to endorse for and on behalf of this corporation, checks and other instruments for deposit, encashment or otherwise; and that the Albuquerque National Bank, Albuquerque, New Mexico, be and it is hereby authorized to pay on account of the corporation, any and all checks and other instruments signed and/or endorsed in accordance herewith. 2 (Two) Signatures required.

cessive amount[17] to the association's account. The plaintiffs, trustees of the trust fund, claimed that the defendant bank had wrongfully accepted Peke's endorsement of their checks because the cosignature was lacking and Peke had no authority to endorse with his signature alone. The district court in a non-jury trial rendered judgment for the plaintiff-trustees. On appeal to the New Mexico Supreme Court, *held,* Reversed.[18]

The supreme court seems to treat the *Cooper* case as though it involved a question of *actual* authority. By reason of the minutes of November 20, Peke was held to have been granted actual authority (implied, if not express) to endorse the checks. The fact that the bank had knowledge of the corporate resolution which expressly defined and limited this authority did not seem important to the court:

> [W]e are of the opinion that on November 20, 1953, Peke was given the necessary authority to endorse the checks payable to the Trust Fund, the endorsement being necessarily incidental to his authority to make the deposits in the Association's account . . . .
>
> Appellees [trustees] cite no direct authority to support their statement that the signature cards revoked or superseded the authority previously given to Peke to deposit checks made out to the Trust Fund to the Association's account.[19]

Although some direct authority was in fact brought to the attention of the court,[20] it was summarily dismissed.[21] The court bases its decision to a great extent on the case of *Glens Falls Indem. Co. v. Palmetto Bank.*[22] But in *Glens Falls*, the signature card expressly authorized the agent to endorse company checks with his signature alone.[23] When the agent did so endorse, the court in *Glens Falls* said that the bank did not act negligently in cashing the checks. The major issue in *Glens Falls* concerned the effect of a rubber stamp as an endorsement, an issue not vital in the *Cooper* case.[24]

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17. See State v. Peke, 70 N.M. 108, 371 P.2d 226 (1962), in which the supreme court affirmed Peke's conviction on charges of embezzlement.

18. 404 P.2d at 134.

19. *Id.* at 130-31.

20. Industrial Plumbing & Heating Supply Co. v. Carter County Bank, 25 Tenn. App. 168, 154 S.W.2d 432 (1941).

21. 404 P.2d at 127.

22. 23 F. Supp. 844 (W.D.S.C. 1938).

23. *Id.* at 847. Defendant bank had on file a signature card with Link's name and the name of the president of the company stating "either signature *and only one signature necessary.*" (Emphasis added.)

24. The Uniform Commercial Code adopted in New Mexico offers guidance as to

The *Glens Falls* case is distinguishable from *Cooper* on yet another ground. In *Glens Falls*, it was the *bank* that had requested the completion of the signature cards for its own protection.[25] The corporation had issued no resolution limiting the authority of the agent, nor did it attempt, on the card itself, to state the extent of the agent's authority. The court in *Glens Falls* thus held that the effect of the signature cards was to protect the bank in situations in which it might refuse to honor the signature of a corporate official not named on the card. In *Cooper*, however, it was the plaintiff trust fund that initiated completion of the cards, and on two separate occasions passed specific resolutions limiting Peke's authority to endorse. The facts in *Cooper* are therefore readily distinguishable from those in *Glens Falls*. Moreover, although the cards in *Glens Falls* furnished protection only to the bank, the cards in *Cooper* expressly set forth a limitation on the agent's power to endorse.

Although the New Mexico court cites language in *Glens Falls* that might be interpreted as limiting the general effectiveness of the signature cards,[26] the federal court in *Glens Falls* said:

> The purpose of the signature card was . . . to indicate to the bank *what officers* of the mill were authorized to draw checks against its account or *transact other business* with the bank.[27]

Thus, it would seem that the signature cards in *Glens Falls* were not as insignificant as the New Mexico court indicates. In other cases, where the cards expressly authorized an agent to endorse without limiting this authority, the courts have held that the banks were protected by these signature cards.[28] When the positions were reversed, as they were in *Cooper*, and the cards *do* limit the agent's authority, the trustees should be equally protected by the signature card contract.

Later in the *Cooper* opinion, the New Mexico Supreme Court again denied effect to the signature cards because they were prefaced by the following statement:

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the validity of a rubber stamp endorsement. It is valid if the person using the stamp does in fact have the authority, the sole issue in the *Cooper* case. See N.M. Stat. Ann. § 50A-3-401 (Repl. 1962).

25. 23 F. Supp. at 849.

26. 404 P.2d at 132, quoting from *Glens Falls, supra* note 25: "I do not construe the signature card to mean that no business could be transacted with the bank without the signature of either Link or Henry."

27. 23 F. Supp. at 849.

28. Freehold Bank v. Baker, 293 Mass. 73, 199 N.E. 342 (1936).

> 'Below will be found duly authorized signatures which are to be recognized in the payment of funds or the transaction of other business on this account, and all rules and regulations of the Bank are hereby subscribed to.'[29]

The court, citing no authority, reasoned that the transactions involved were not on the *trust fund's account* as they concerned checks made out to the *trust fund* as *payee*. The supreme court said that these checks, because they never went into the trust fund's account, were not intended to be covered by the signature card contract.[30] But the express language on the signature card is to the contrary.[31] The mere fact that the corporate resolutions were expressed in the form of signature cards should not serve to negate specific provisions of the resolutions themselves. If the bank did not want the responsibility of checking endorsements, it need not have contracted to do so.[32]

Because of the supreme court's failure to define the exact nature of Peke's authority, it is difficult to determine the lesson of law to be extracted from the *Cooper* case. Two questions arise: (1) Once authority has been generally conferred at a corporate meeting, are later resolutions purporting to limit or specifically define that authority, ineffective even when communicated to the bank in the form of signature cards? (2) In the absence of the minutes which the court held conferred the authority, will the cards bind the bank in respect to an agent's authority to endorse?

Suppose that the trustees had been diligent and had discovered Peke's unauthorized acts one week after the issuance of the November 30th signature card. Relying on *Cooper*, the supreme court could hold that the bank is still protected. The signature cards would not have affected the authority because the court would not consider them effective to change the general authority once conferred. Suppose again that there had been no corporate minutes, but that the trustees had not discovered Peke's actions for five years, the case in *Cooper*. Arguably, the bank would be liable to the trustees because of the absence of any definite conferral of authority on the agent. Neither result in these two hypotheticals is reasonable nor satisfying, yet both are logical extensions of the holding in *Cooper*.

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29. 404 P.2d at 133.
30. *Ibid.*
31. See text at p. 145 *supra*.
32. Even had the bank not so contracted, there would still remain the issue of whether the bank was put on notice by its knowledge of the corporate resolution.

The New Mexico Supreme Court was justifiably disturbed about the five-year delay of the trustees in discovering Peke's unauthorized acts. Both the trust fund and the association had the same office and the books were open to the trustees to examine. Yet no one, during that five-year period, discovered that Peke was endorsing *any* of the checks payable to the trust fund, even those which were for sums rightfully due the association.[33] Although the most careful inspection of the trust fund's check book would have revealed none of Peke's unauthorized endorsements because the checks so endorsed were of course returned to the various *drawers*, the account books listing the expenses of the trust fund recorded certain sums (approximately $50,000) due the association. Because no checks had been drawn payable to the association, the trustees should have realized that the association was being paid by means of checks drawn to the trust fund and endorsed by Peke directly to the association. Influenced by, and perhaps drawing an unconscious analogy to, the Uniform Commercial Code's section concerning the duties of a depositor,[34] and similar common law cases, the court wanted to reach an equitable result. At best, the trustees had been very negligent. Why should the bank suffer because of this neglect? Thus, the court decided that the bank was not going to be bound by the signature cards when the co-endorser had not even bothered to conform to the two signature requirements or to see that it was carried out.

Occasionally, a judicial opinion may struggle to a satisfying conclusion, but leave behind it a maze of doubtful and irrelevant points of law which will be the source of later decisions that will be neither reasonable nor satisfying. *Cooper* is such a case.

Had the court relied on *Reichert v. State Sav. Bank*,[35] presented in the defendant's brief, it could have reached the same result but would not have further confused the law regarding the effect of signature cards on unauthorized endorsements. In *Reichert*, there was a similar resolution passed by the plaintiff pipe company authorizing two persons to endorse company checks. One Dunkel, who was not included in the authorization but who was manager of both the plaintiff pipe company and a lumber company to which money was owed by the plaintiff pipe company, endorsed and cashed several checks payable to the plaintiff pipe company and deposited

33. Record, pp. 2, 77, Cooper v. Albuquerque Nat'l Bank, 404 P.2d 125 (N.M. 1965). Approximately one half of the amount of the checks endorsed by Peke were deposited in the association's account for debts due the association by the trust.

34. N.M. Stat. Ann. § 50A-4-406 (Repl. 1962).

35. 274 Mich. 126, 264 N.W. 315 (1936).

them in the account of the lumber company. This was done over a period of one year, during which time one of the agents duly authorized to endorse had resigned, leaving only one authorized agent. The court said:

> [I]t seems incredible to believe that others connected with the pipe company's [plaintiff] business would not have realized that when large payments . . . were made to the lumber company on pipe company accounts without the accounts being assigned to the lumber company, Dunkel or some one else in the lumber company must have been endorsing the checks. . . . The pipe company unquestionably overlooked important details of their business and left them to Dunkel in whom they reposed their confidence. . . . The pipe company after the practice had been going on for such a length of time is estopped from disclaiming Dunkel's agency.[36]

Thus, despite the existence of the signature cards, the plaintiffs in *Reichert* acted in such a negligent manner that the Michigan court refused them the protection usually offered by such cards.

Reichert illustrates the doctrine of authority by *estoppel*.[37] An articulate use of this concept in *Cooper* could have avoided the difficulties which arose when the court attempted to force the round facts of the case into the square holes of actual apparent authority.

To use the "standard"[38] apparent authority doctrine would have necessitated circumventing the widely accepted requirement that the trustees have placed Peke in a position to mislead third parties.[39] The New Mexico Supreme Court may have wondered how the plaintiffs could have done this when they expressly limited the authority by issuing a signature card requiring two signatures. But if the supreme court in *Cooper* is really stating that Peke had *actual* authority in spite of the limitation of the cards, use of the estoppel doctrine would support a holding that is less arbitrary under the specific facts. By use of the estoppel theory, even though the trustees may be found to have not held Peke out as having authority and did originally limit this authority, their negligence in the handling of the trust fund is sufficient to deny them what would ordinarily be their rightful protection.

While this reasoning produces the same result reached by the court in *Cooper,* it does not negate or confuse the effect of the

36. 264 N.W. at 316-17.
37. For a discussion of authority by estoppel, see text p. 143 *supra.*
38. See note 5 *supra.*
39. See note 5 *supra.*

signature cards. The answer to the two questions posed earlier would be more definite and more reasonable: (1) general authority to endorse conferred at a corporate meeting may later be limited by specific resolution communicated to the bank by means of signature cards, *but* (2) neglect in conducting corporate affairs, evidenced by a long delay in discovering unauthorized endorsements when the means for discovery were readily available, will not be shielded by the existence of a signature card. These two propositions will by no means create a definite judicial standard easily applied to various unauthorized endorsement problems. There remains under the theory of authority by estoppel a necessary degree of vagueness that will enable the courts to grant relief when the specific facts under scrutiny require this equitable relief. Thus, the lapse of six months, one year, or two years, together with the presence of a signature card limiting an agent's authority to endorse, may or may not indicate such neglect that the court will hold the corporation estopped from denying the agent's authority. Applying the estoppel theory, the courts will be as free to act with well reasoned equity to the parties as it would by applying an arbitrary or, at best, confusing rule based on a recognition that equitable considerations demand a certain result.

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