

# Remedies for Breach of Duty in an Agency Relationship

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Where there is a breach of duty on any of the parties in an agency relationship, there are a lot of remedies that have been made available by the law. Such remedies would be outlined below.

## Remedies available to the Principal for the Agent's Breach of duty

The following are the various remedies that are available to the principal for an agent's breach of duty.

1. **Dismissal:** In the case of *Deep Sea Fishing and Ice Co vs Fernham (1957) 3 All ER 204*, it was held that where an agent commits a serious breach of duty, the agent can be dismissed by the principal.
2. **Action against the Agent:** If the agent commits a tort, like the tort of conversion, against the principal, he can bring an action in tort against the agent.
3. **Damages:** The principal can also bring an action in damages against the agent if he commits a pure breach of contract.
4. **Cause for money had and received:** If an agent earns money from the transaction without informing the Principal, the principal can bring an action against the agent to recover such money.

In the case of *Andrews vs. Ramsay and Co*<sup>[1]</sup> the agent made secret profit on the goods that he sold for his principal. The principal then sought to recover the commission he paid the agent and the secret profit. The court held that he was entitled to do so.

## Remedies available to the Agent against the Principal

The following are the actions that an agent can take against the principal for breach of duty:

1. **Action:** The agent can bring an action against the principal for recovery of his payment.
2. **Right of Lien:** The agent can exercise his right of lien on the goods of the principal which are lawfully in his possession. A lien can either be a general lien or a particular lien. A general lien occurs when the agent is in possession of a lot of goods for the principal. On the failure of the principal to perform his obligation on some of the goods, he then exercises his right of lien on another of the principal's property in his possession. A particular lien occurs when the agent exercises his right of lien in only the specific property on which the principal has failed to fulfil his obligation.

Before a lien can be applied, the following has to be fulfilled:

- The agency contract does not contain provisions inconsistent with the exercise of a right of lien.
  - The goods lawfully came into the agent's possession.
  - The agent received the goods by virtue of his position as an agent.
  - The goods did not come into the agent's possession with specific instructions which are inconsistent with the exercise of a right of lien.
3. **Action for Indemnity:** An agent is entitled to be indemnified for losses incurred by him in the exercise of his duties as an agent. In the case of *Christoforides vs. Terry*<sup>[2]</sup> the principal contracted a broker to engage in the speculative purchase of cotton. The principal became heavily indebted to the broker due to a fall in the price of cotton. The broker, as he was entitled to do, closed the account and sold the cotton at a loss. The court held that he was entitled to be indemnified by the principal for the loss he sustained.

## Remedies Available to Third Parties

The following are the remedies which are available to third parties against the agent and the principal.

1. **Equitable Remedies:** The third party can bring an action for equitable remedies against either the principal or the agent, depending on where liability lies.
2. **Tortious action for deceit:** The third party can also bring an action for the tort of deceit against the agent and the principal.

<sup>[1]</sup> (1903) 2 KB 635

<sup>[2]</sup> (1974) AC 556

