

EXAMINERS' ANALYSIS OF QUESTION NO. 2

An "agency" is "a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions." *Logan v Manpower of Lansing, Inc*, 304 Mich App 550, 559 (2014), quoting *Breighner v Mich High Sch Athletic Assoc, Inc*, 255 Mich App 567, 582-583 (2003). Here, at a minimum, an express agency relationship was created by the contract between Reston (the principal) and Dennis (the agent) for the purpose of redecorating Reston's master bedroom and bathroom.

(1) Reston's liability to Greg's Granite - Reston will be required to pay Greg's Granite under a theory of agency by estoppel (ostensible agency).

Generally, a principal is not liable for the acts of an agent that occurred prior to the commencement of the agency. *Polly v Charouhis*, 253 Mich 363, 366 (1931). However, under the facts presented, the doctrine of agency by estoppel (ostensible agency) would apply. An agency is ostensible when the principal causes a third person to believe another to be his or her agent where no agency actually exists. *VanStelle v Macaskill*, 255 Mich App 1 (2003). "[T]hree elements . . . are necessary to establish the creation of an ostensible agency: (1) the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one, (2) the belief must be generated by some act or neglect on the part of the principal sought to be charged, and (3) the person relying on the agent's authority must not be guilty of negligence." *Id.* at 10, quoting *Chapa v St Mary's Hosp of Saginaw*, 192 Mich App, 29, 33-34 (1991).

Regarding ostensible agency, it is clear that Greg's belief that Dennis was Reston's agent was based on Reston's action - the facts indicate that Reston called Greg, discussed the granite he desired and indicated that his interior decorator would follow up. When Dennis arrived and identified himself as Reston's interior decorator, Greg placed the order believing Dennis was who he said he was. The facts presented do not indicate that Greg's belief was anything other than reasonable.

Therefore, Reston will be liable to Greg under a theory of agency by estoppel (ostensible agency).

(2) **Reston's liability to Cal Carpenter** - Reston will be liable to Cal Carpenter under a theory of implied authority. "Actual authority may be either express or implied." *Afar v Mercy Mem Hosp*, 208 Mich App 518, 528 (1995). "Implied authority is the authority that an agent believes the agent possesses." *Id.* An agent's implied powers are coextensive with the business entrusted to his or her care, *Grossman v Langer*, 269 Mich 506, 510 (1934), and agents have the implied power to carry out all acts necessary to executing the principal's expressly conferred authority. *Smith, Hinchman & Grylls Associates, Inc v City of Riverview*, 55 Mich App 703, 706 (1974). See also Restatement (3d) of Agency, § 2.02(1) ("An agent has actual authority to take action designated or implied in the principal's manifestations to the agent and acts necessary or incidental to achieving the principal's objectives, as the agent reasonably understands the principal's manifestations and objectives when the agent determines how to act.")

In permitting Dennis to undertake a "complete redecoration of Reston's master bedroom and bathroom," Dennis possessed the implied authority to take all actions necessary to accomplishing that goal, including procuring Cal Carpenter to take care of the carpentry needs of the project. Reston will be liable to Cal Carpenter.

An applicant can also reasonably argue that Reston is liable to both Greg and Cal through ratification. The Michigan Supreme Court, in *David v. Serges*, 373 Mich 442, 443-444 (1964), discussed ratification as follows:

When an agent purporting to act for his principal exceeds his actual or apparent authority, the act of the agent still may bind the principal if he ratifies it. The Restatement of Agency 2d, § 82, defines ratification thusly:

Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him.

Affirmance is defined in section 83 of the Restatement:

Affirmance is either

(a) a manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized, or

(b) conduct by him justifiable only if there were such an election.

Here, because Reston accepted the work done by Cal and Greg at his agent's behest, it is reasonable to conclude that Reston ratified the acts of his agent. Thus, he could be liable on this ground as well.

(3) **Reston's liability to Pete Painter** - "A principal is generally liable for the torts of his agent committed in the scope of the agency." *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 109 (1998), citing *McLean v Wolverine Moving & Storage Co*, 187 Mich App 393, 400 (1991). Under these facts, it is unlikely that Reston will be liable to Pete for his injuries because Dennis's assault was not committed within the scope of the agency. The facts indicate that the assault occurred after hours, not on Reston's premises, and arose because of a dispute that had nothing to do with the redecoration project. Because the assault cannot be properly viewed as being in furtherance of the principal's business, Reston will not be liable to Pete Painter for injuries sustained as a result of Dennis's assault. Cf. *Cronk v Chevrolet Local Union No. 659*, 32 Mich App 394, 401402 (1971).