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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1902**

Al Dressely, et al.,
Respondents,

vs.

CAL Properties, LLC,
d/b/a Inver Grove Auto,
Appellant.

**Filed June 24, 2019
Affirmed
Slieter, Judge**

Dakota County District Court
File No. 19HA-CV-17-2077

Anthony J. Novak, Bradley R. Prowant, Larson King, LLP, St. Paul, Minnesota (for respondents)

John G. Westrick, Savage Westrick, P.L.L.P., Bloomington, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant CAL Properties, LLC challenges the district court's entry of a judgment and decree (J&D) in favor of respondents Al Dressely and Hadley Investments LLC, a business owned by Dressely, in the amount of \$40,650 for a breach-of-contract claim based

on an apparent agency relationship. CAL Properties argues that the district court erred by finding Scott Ferrozzo acted under apparent authority on its behalf when entering into the flooring arrangements and that the district court violated the four-corners rule¹ in interpreting the contracts. We affirm.

FACTS

In 2014, Cheryl Lang, owner of CAL Properties, began operating a car dealership known as Inver Grove Auto. CAL Properties employed Ferrozzo as its general manager to run the dealership and engage with investors with respect to flooring arrangements. The parties use the term “flooring arrangements” to mean obtaining funds from investors to purchase vehicles at auction for sale at the dealership. The investor would receive their initial investment on the vehicles when it sold and an additional profit from the sale. Between July 16, 2015 and July 29, 2016, Ferrozzo, on behalf of CAL Properties, entered into three flooring arrangements with Dressely; but Ferrozzo used the funds for his own benefit rather than to purchase vehicles for the dealership’s benefit. The district court determined Ferrozzo acted under apparent authority from CAL Properties to enter into these arrangements. CAL Properties paid Dressely the amount owed on the first flooring arrangement. On August 5, 2016, Lang fired Ferrozzo after discovering he created a checking account in the name of Inver Grove Auto LLC. Lang refused to pay Dressely the

¹ “Consideration of facts outside the four corners of a contract is admissible only if the contract language, by itself—i.e., not in light of what one of the parties claimed was intended—is ambiguous.” *NC Props., LLC v. Lind*, 797 N.W.2d 214, 219-20 (Minn. App. 2011); *see also Black’s Law Dictionary* 772 (10th ed. 2014) (defining “four-corners rule” as “that no extraneous evidence should be used to interpret an unambiguous document”).

outstanding amounts owed on the remaining flooring arrangements totaling \$40,650. The district court entered judgment against CAL Properties on a breach-of-contract claim and awarded Dressely the outstanding amounts. This appeal follows.

DECISION

“On appeal from judgment following a court trial, this court reviews whether the district court’s findings were clearly erroneous and whether the district court erred as a matter of law.” *In re Distrib. of Attorney’s Fees between Stowman Law Firm, P.A. & Lori Peterson Law Firm*, 855 N.W.2d 760, 761 (Minn. App. 2014), *aff’d*, 870 N.W.2d 755 (Minn. 2015). “A finding is clearly erroneous if we are left with the definite and firm conviction that a mistake has been made. We review issues of law *de novo*.” *Id.* (quotation and citation omitted). We evaluate the record in the light most favorable to the district court’s judgment. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

“Whether an agent is clothed with apparent authority is a question of fact.” *Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 457 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). Even though an agency relationship is a legal determination, it hinges on “the factual arrangement between the parties.” *In re Ins. Agents’ Licenses of Kane*, 473 N.W.2d 869, 873 (Minn. App. 1991), *review denied* (Minn. Sept. 25, 1991).

“Agency is the fiduciary relationship that results from the manifestation of consent by one person to another that the other shall act on his [or her] behalf and subject to his [or her] control, and consent by the other so to act.” *A. Gay Jenson Farms Co. v. Cargill, Inc.*, 309 N.W.2d 285, 290 (Minn. 1981). The principal, generally, is bound by the actual authority provided to the agent and the apparent authority delegated to the agent. *Duluth*

Herald & News Tribune v. Plymouth Optical Co., 176 N.W.2d 552, 555 (Minn. 1970).

“Apparent authority is that authority which a principal holds an agent out as possessing, or knowingly permits an agent to assume. The doctrine is based on the conduct of the principal, not the conduct of the agent.” *Foley v. Allard*, 427 N.W.2d 647, 652 (Minn. 1988).

The supreme court explained these requirements to establish apparent authority:

The principal must have held the agent out as having authority, or must have knowingly permitted the agent to act on its behalf; furthermore, the party dealing with the agent must have actual knowledge that the agent was held out by the principal as having such authority or had been permitted by the principal to act on its behalf; and the proof of the agent’s authority must be found in the conduct of the principal, not the agent.

Id. (quoting *Hockemeyer v. Pooler*, 130 N.W.2d 367, 375 (Minn. 1964)). And

[I]f a principal acts or conducts his [or her] business, either intentionally or through negligence, or fails to disapprove of the agent’s acts or course of action so as to lead the public to believe that his [or her] agent possesses authority to act or contract in the name of the principal, the principal is bound by the acts of the agent within the scope of his [or her] apparent authority as to persons who have reasonable grounds to believe that the agent has such authority and in good faith deal with him [or her].

McGee v. Breezy Point Estates, 166 N.W.2d 81, 89 (Minn. 1969).

I. The district court properly found an agency relationship.

The district court found Ferrozzo acted with apparent authority as an agent of CAL Properties when entering into the three flooring arrangements with Dressely. “In determining whether apparent authority exists, the [district] court may consider any statements, conduct, lack of ordinary care, or manifestations of the principal’s consent,

such that a third party might be justified in concluding that the agent acted with apparent authority.” *Powell*, 626 N.W.2d at 457.

The district court, in reaching its conclusion, considered evidence that CAL Properties held Ferrozzo out as “the ‘face’ of the dealership such that persons dealing with him regarding the dealership’s affairs could reasonably believe they were dealing with the corporation.” Lang hired Ferrozzo as the general manager to run the daily operation with duties that included entering into flooring arrangements with investors. Although Lang limited Ferrozzo’s ability to enter into flooring arrangements after learning about the first flooring arrangement with Dressely, she never communicated this limitation to Dressely. Even when Lang first met Dressely, she failed to clarify that Ferrozzo acted improperly by entering into the flooring arrangement with him on behalf of CAL Properties. Lang allowed Ferrozzo to represent to Dressely—in her presence—that she was merely his bookkeeper, and she made a payment from CAL Properties’ account to pay for a portion of the first flooring arrangement. The district court found that the evidence before it “strongly indicate[d] that, at all relevant times, CAL Properties knew that Mr. Ferrozzo was holding himself out as the owner of the dealership and that, . . . CAL Properties acquiesced in and consented to the misrepresentation.”

The district court’s findings of fact are supported by the record and justify the determination that CAL Properties held Ferrozzo out as having authority to bind it. *Foley*, 427 N.W.2d at 652.

II. The district court properly construed the second and third flooring arrangements to hold CAL Properties liable.

The district court found the second and third flooring arrangements enforceable against CAL Properties based on Ferrozzo's apparent authority. In reaching this conclusion, the district court acknowledged that the second flooring arrangement, a written flooring arrangement, did not identify CAL Properties, but it found the "course of dealing and the circumstances surrounding [the second flooring arrangement] support[ed] that this was a corporate obligation" entered into by Ferrozzo on behalf of CAL Properties. Similarly, the district court found the third flooring arrangement, an oral arrangement, constituted a corporate undertaking entered into by Ferrozzo on behalf of CAL Properties. Appellant argues the district court's interpretations for both agreements are clearly erroneous pursuant to the four-corners rule.

The district court relied on *Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320 (Minn. 2004) in concluding that the two unpaid flooring arrangements included CAL Properties as a party. In *Rosenberg*, the supreme court, *inter alia*, considered including an unnamed party to a listing agreement. 685 N.W.2d at 330-31. The supreme court recognized that "a disclosed principal 'is subject to liability upon an authorized contract in writing . . . although it purports to be the contract of the agent, unless the principal is excluded as a party by the terms of the instrument or by the agreement of the parties.'" *Id.* at 331 (quoting Restatement (Second) of Agency § 149 (1958)). The supreme court further relied on the comments to section 149 that state:

The fact that the principal's name is not in the instrument and that there is no appearance of agency upon the writing is some

evidence that the parties intended that the agent alone was to be liable. However, it is not sufficient evidence to rebut the inference that a disclosed or partially disclosed principal is a party to a contract made by his [or her] agent.

Upon the question whether or not, under the circumstances, the third person accepted the credit of the agent only, the written memorandum binding the agent is not conclusive evidence, unless by its specific terms the principal is excluded as a party.

Id. (quoting Restatement (Second) of Agency § 149, cmt. a.) The supreme court noted “[a]n undisclosed principal is bound by contracts and conveyances made on his [or her] account by an agent acting within his [or her] authority.” *Id.* (quotation omitted).

The district court applied the standard set out in *Rosenberg* and the Restatement (Second) of Agency § 149 to the facts before it and determined the contracts included CAL Properties as a party. CAL Properties acknowledges *Rosenberg* is binding precedent but contends it is inconsistent with the four-corners rule. This court, like the district court, is bound by supreme court precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018); *see State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010).

Ferrozzo and Dressely entered into the second flooring arrangement for the same purpose as the first arrangement: to provide inventory for the car dealership. Ferrozzo and Dressely entered into the arrangement at Inver Grove Auto, and the dealership’s bookkeeper drafted the agreement in Ferrozzo and Dressely’s presence.² Dressely wrote a check payable to Inver Grove Auto, which Ferrozzo used to purchase a motorcycle for sale

² The district court credited testimony from Dressely that the second flooring arrangement “was prepared at the dealership by the dealership’s bookkeeper, [C.]”

at the dealership. The district court found that Lang knew about “[her] agent’s unscrupulous business dealings” and failed to supervise and limit his behavior. Even though Ferrozzo and Dressely executed the second flooring arrangement without Lang, Lang discovered the arrangement soon after. Lang failed to act on her discovery that Ferrozzo may be engaging in unauthorized business dealings or notify and warn Dressely about Ferrozzo’s limits as an employee of CAL Properties. We agree with the district court’s determination that the circumstances before it established that “Ferrozzo was an agent of CAL Properties with apparent authority to bind the corporation at the time that [the second flooring arrangement] was executed.”

The third flooring arrangement is similar to the first two flooring arrangements except that it was orally made. The purpose of the third flooring arrangement was to provide inventory for sale at the car dealership. Dressely and Ferrozzo executed the oral agreement at Inver Grove Auto and Dressely wrote a check payable to Inver Grove Auto. In the context of Dressely’s involvement with Ferrozzo presenting himself as the owner of the car dealership and Lang’s failure to dispel that misrepresentation—even when she was present—the district court found that the third flooring agreement included CAL Properties as a party. The district court, in accordance with *Rosenberg*, properly determined the facts before it permitted including CAL Properties as a party to the flooring arrangement.

The district court appropriately determined that the two outstanding flooring arrangements included CAL Properties pursuant to *Rosenberg* and based on the facts in the record. The district court made extensive credibility determinations and findings that

support applying *Rosenberg* to the facts here.³ We defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Affirmed.

³ Appellant also argues including it as a party to the flooring arrangement violates the statute of frauds. Pursuant to Minn. Stat. § 513.01(2) (2018):

No action shall be maintained, in either of the following cases, upon any agreement, unless such agreement, or some note or memorandum thereof, expressing the consideration, is in writing, and subscribed by the party charged therewith:

. . . .
(2) every special promise to answer for the debt, default or doings of another.

Because the district court properly found that the second and third flooring arrangements included CAL Properties as a party based on the apparent agency relationship, the agreements are not for the debts of another.