

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET DAVIS,

Plaintiff–Appellee,

v

BRITE SITE, INC., a foreign corporation, d/b/a
BRITE SITE RETAIL CLEANING SPECIALISTS,

Defendant–Appellant.

UNPUBLISHED

September 20, 1996

No. 187412

LC No. 92-217916 NO

Before: Michael J. Kelly, P.J., and Hoekstra and E.A. Quinnell,* JJ

PER CURIAM.

Defendant, Brite Site Inc, appeals by right from the judgment upon the arbitration award entered in favor of plaintiff. We affirm.

In July, 1992, plaintiff, Margaret Davis, filed a complaint in this personal injury cause of action seeking damages from defendant for injuries she sustained in a slip and fall accident. Scottish Guarantee Insurance Company (Scottish Guarantee) with whom defendant was insured, retained attorney Dennis E. Zacharski to represent defendant in this matter. Eventually, an arbitration agreement was negotiated and executed by plaintiff, Zacharski, and Scottish Guarantee. The matter was, subsequently, arbitrated in accordance the arbitration agreement, and an arbitration award was rendered in favor of plaintiff. A judgment upon the arbitration award was then entered by the trial court.

Defendant argues that the trial court erred in entering the judgment upon the arbitration award against it because Brite Site was not bound by the arbitration agreement in this cause of action. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

Because a decision to arbitrate is consensual, a party can not be made to submit a claim to arbitration unless he has agreed to do so. *Arrow Overall v Peloquin*, 414 Mich 95, 98; 323 NW2d 1 (1982). An arbitration agreement in this matter was executed by plaintiff, her counsel, Zacharski, and Scottish Guarantee.

Defendant, however, argues that it is not bound by the agreement, because Zacharski lacked express authority to bind it to the terms of the arbitration agreement with his signature.¹ Defendant's argument lacks merit. Zacharski was hired by Scottish Guarantee to defend its insured, defendant Brite Site. As a result, an attorney-client relationship existed between Zacharski and defendant only. See *Atlanta International v Bell*, 181 Mich App 272, 274; 448 NW2d 804 (1989), modified 438 Mich 512; 475 NW2d 294 (1992); *Michigan Millers v Bronson Plating*, 197 Mich App 482, 492; 496 NW2d 864 (1992). Attorneys are recognized as agents acting on behalf of their clients and are governed in part by the rules of agency. *Fletcher v School Dist Bd of Ed*, 323 Mich 343, 358; 35 NW2d 177 (1948); *Slocum v Littlefield Bd of Ed*, 127 Mich App 183, 194; 383 NW2d 907 (1983). Pursuant to Michigan law, when a client holds his attorney out as counsel representing him in a matter, "the client clothes the attorney with apparent authority to settle claims connected with the matter." *Nelson v Consumer's Power Co*, 198 Mich App 82, 89; 497 NW2d 205 (1993) (Quoting *Capital Dredge & Dock Corp v Detroit*, 800 F2d 525 (CA 6, 1986)). Thus, although Zacharski did not have defendant's express authority to bind defendant, he did have the apparent authority to do so. Therefore, defendant was bound by the arbitration agreement which Zacharski executed.

In the alternative, defendant also argues that the trial court erred in binding defendant to the arbitration agreement pursuant to the principle of apparent authority because there was insufficient evidence to determine whether plaintiff's counsel knew that Zacharski lacked the actual authority to bind defendant. We disagree. The only evidence which defendant presents to support its contention that plaintiff's counsel knew that Zacharski lacked the authority to bind defendant are Zacharski's unsworn statements to defendant's subsequent counsel that Zacharski did not believe that he was binding defendant and that he believed that plaintiff's counsel also understood that to be the case.² Zacharski's assertions, however, are incredulous in light of the language contained in the arbitration agreement which expressly states that the decision of the arbitrators would "represent a full and final award as to any liability between Plaintiff and Brite Site Inc."

Affirmed.

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra

/s/ Edward A. Quinnell

¹ Defense counsel argued orally before this court that Zacharski represented to Plaintiff's counsel that, in essence, only the insurance company's liability was at stake. Counsel asserted that both plaintiff and Scottish Guarantee contemplated that defendant/appellant Brite Site would not be liable for payment of any arbitration award.. That argument was abandon when the appeal of the courts order of September 16, 1994 was dismissed by stipulation of the parties October 31, 1994; see Docket #179287.

² To the extent that these statements imply claims of legal malpractice, we disregard them. What counsel for either party knew or should have known was not confronted below.