

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT GAINES,

Plaintiff-Appellant,

v

JAMES A. KERN, d/b/a JAMES A. KERN  
AGENCY, ALLSTATE INSURANCE  
COMPANY, and MICHIGAN BASIC  
INSURANCE ASSOCIATION,

Defendants-Appellees.

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UNPUBLISHED

April 20, 2006

No. 266049

Oakland Circuit Court

LC No. 2004-059906-CK

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying his motion for summary disposition and granting summary disposition in favor of defendants. We affirm in part and reverse in part.

This case arises from an insurance dispute following a house fire that occurred on December 2, 2003. Specifically, plaintiff and his friend, Erica McGowan, entered into an agreement that included plaintiff purchasing a house that he would immediately sell to McGowan, who worked in real estate. They agreed that McGowan would facilitate his purchase of the house, including securing the necessary insurances. Plaintiff admitted that he authorized McGowan to do whatever was necessary on his behalf to complete the transactions.

Subsequent to its purchase, the house burned down. Thereafter, plaintiff attempted to determine from whom the fire insurance policy was purchased. It appeared from the closing documents that defendant Kern had provided the fire insurance policy, which was issued by defendant Michigan Basic. However, when plaintiff attempted to make a claim, he was told that the insurance policy had been cancelled by his son, Sedrick. Sedrick was not plaintiff's son, but rather was McGowan's boyfriend, and he had secured the insurance policy on plaintiff's behalf. Defendant Kern's representative testified that Sedrick had purchased the policy on plaintiff's behalf, claiming to be plaintiff's son, therefore when he requested to cancel the policy some days later, the policy was cancelled effective November 25, 2003. The policy that was cancelled was issued by Michigan Basic, not Allstate, and defendant Michigan Basic sent a cancellation notice to the address of record.

After coverage was denied, plaintiff filed suit alleging that (1) defendant Kern was negligent for canceling his insurance coverage at the request of a third party, and (2) defendants Michigan Basic and Allstate breached the terms of their insurance policy. Subsequently, motions for summary dispositions were filed by defendants. Defendant Allstate moved for dismissal under MCR 2.116(C)(8) on the ground that it never issued an insurance policy to plaintiff. Defendants Michigan Basic and Kern moved for dismissal under MCR 2.116(C)(10), primarily on the ground that plaintiff was not entitled to insurance coverage for the fire damages because the policy was cancelled by plaintiff's agent before the fire occurred. Plaintiff also filed a motion for summary disposition under MCR 2.116(C)(10), primarily arguing that there was no genuine issue of material fact that he was entitled to insurance coverage because he did not personally cancel the coverage and neither he nor his mortgagee were notified of the cancellation. And, further, plaintiff argued, the effective date of the cancellation with respect to the mortgagee was December 5, 2003, two days after the loss; thus, coverage was available.

Following oral arguments on the motions, the trial court issued its written opinion and order (1) granting defendant Allstate's motion on the ground that plaintiff failed to present any evidence that Allstate issued an insurance policy, (2) granting defendant Michigan Basic's motion because it properly relied on codefendant Kern's cancellation request when it cancelled plaintiff's policy, and (3) granting defendant Kern's motion because plaintiff gave McGowan authority to take all actions in connection with the purchase of the house, she delegated that authority to Sedrick to effectuate the purchase of the insurance policy and, if he had the authority to purchase the policy, he had the authority to cancel the policy. Therefore, the court held, plaintiff was "legally bound by the acts of those with authority to act on his behalf." Accordingly, plaintiff's motion for summary disposition was denied. Plaintiff's motion for reconsideration, merely presenting the same issues ruled on, was denied and this appeal followed.

On appeal, plaintiff argues that summary disposition in favor of defendants was improper because his insurance policy was not validly cancelled before the loss and, even if it was, the cancellation as to the mortgagee was not effective until two days after the fire. After review de novo to determine whether plaintiff established a genuine issue of material fact, we agree in part. See MCR 2.116(C)(10); *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

Without reference to the agency law principles relied on by defendants' arguments and the trial court's decision, plaintiff claims that a third-party, namely Sedrick, could not cancel his fire insurance policy. The trial court held that an agency relationship existed between plaintiff and Sedrick and between plaintiff and defendant Kern. Whether an agency relationship existed is a question of fact that is reviewed for clear error. *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). "An agency relationship may arise when there is a manifestation by the principal that the agent may act on his account." *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). An agent is a business representative whose function is to obtain, modify, affect, accept, or terminate contractual obligations between his principal and third parties. *St Clair Intermediate Sch Dist v IEA/MEA*, 458 Mich 540, 557; 581 NW2d 707 (1998). Here, plaintiff admittedly authorized McGowan and her associates to secure fire insurance on the house on his behalf. McGowan then delegated the responsibility to her associate Sedrick, who contacted defendant Kern, who then obtained the insurance policy from defendant Michigan Basic. Thus, plaintiff had established agency relationships, including with

Sedrick and defendant Kern, and the trial court did not clearly err in so concluding. See *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 109-110; 577 NW2d 188 (1998).

An agent with actual or apparent authority may bind the principal. *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001). Plaintiff does not deny that Sedrick had actual authority to purchase the fire insurance policy on plaintiff's behalf. Indeed, if plaintiff denied that Sedrick was authorized to purchase the policy, there would be no insurance coverage over which to dispute. Similarly, defendant Kern was authorized to secure the fire insurance policy from defendant Michigan Basic. The issue is whether Sedrick had the authority to cancel the fire insurance policy. Plaintiff claims that he did not. And, plaintiff claims that defendant Michigan Basic was negligent in canceling his policy.

“Apparent authority may arise when acts and appearances lead a third person reasonably to believe that an agency relationship exists.” *Meretta, supra* at 698-699. “Apparent authority must be traceable to the principal and cannot be established by the acts and conduct of the agent.” *Id.* at 699. All of the surrounding facts and circumstances must be considered in determining whether an agent possessed the apparent authority to perform a particular act. See *Smith v Saginaw Savings & Loan Ass'n*, 94 Mich App 263, 271; 288 NW2d 613 (1979).

Here, defendant Kern's representative, Jenetra Johnson, knew that Sedrick was previously authorized to purchase the fire insurance policy on plaintiff's behalf and had processed the request. Thus, when she received Sedrick's request some days later to cancel the same policy on plaintiff's behalf, she processed the request. Because of Sedrick's previous actual authority to enter into the contract, defendant Kern and its representative were reasonable in their belief that Sedrick had the authority to terminate the same contract that he secured on plaintiff's behalf. Once an agency relationship and the extent of the agent's authority are shown, the principal has the burden of proving that the agent's authority was limited. See *Meretta, supra* at 698. Here, plaintiff failed to establish that Sedrick's authority was limited to obtaining the insurance policy and did not include terminating the contract. Therefore, we agree with the trial court that defendant Kern's reliance on Sedrick's request to cancel the insurance policy, and defendant Michigan Basic's subsequent cancellation of the policy in accordance with the request, were proper. Accordingly, the insurance policy was validly cancelled before the loss and defendants Kern and Michigan Basic were entitled to the grant of summary disposition with regard to plaintiff's claims arising from the cancellation. Defendant Allstate was also entitled to summary dismissal because plaintiff failed to present any evidence that Allstate issued the insurance policy.

However, plaintiff further argues that even if the insurance policy was validly cancelled, the cancellation as to the mortgagee was not effective until two days after the fire; thus, there is insurance coverage. Although plaintiff clearly raised this issue in the trial court, the court did not address the issue in its opinion and order dismissing the case against Michigan Basic. Defendant Michigan Basic responds to the argument on appeal by claiming that it “inadvertently sent a cancellation notice with a different cancellation date for the mortgage company after the loss.” But, review of the extensive records submitted in this case reveals that the Michigan Basic insurance policy, a “legal contract” by its own terms, provided that: “If we cancel or do not renew this policy, we will notify the mortgagee at least 10 days before the date cancellation or nonrenewal takes effect.” And, the cancellation notice issued by defendant Michigan Basic provides as follows:

The policy identified above [dwelling fire], issued to the named insured by Michigan Basic Property Insurance Association, is cancelled as of 12:01 am (standard time), shown below:

Effective date of cancellation as respects the named insured: 11/25/2003

Effective date of cancellation as respects the mortgagee: 12/05/2003

The undisputed facts are that Sedrick called defendant Kern to cancel the insurance policy on November 25, 2003, and the fire occurred on December 2, 2003. But, the record is inadequate for meaningful review of this issue. Accordingly, we vacate the order granting defendant Michigan Basic's motion to dismiss and remand this matter to the trial court for consideration of plaintiff's argument that the insurance policy remained in effect as to the mortgagee until after the fire. See, e.g., *Essexville v Carrollton Concrete Mix, Inc*, 259 Mich App 257, 278; 673 NW2d 815 (2003); *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 326; 565 NW2d 915 (1997).

We also note, and reject, defendant Michigan Basic's argument that the insurance policy was void due to plaintiff's alleged misrepresentation. This claim is premised on plaintiff asserting in the application for insurance that the purchase price was \$107,000, not the \$42,000 that plaintiff actually paid. However, the instructions for completing the fire/homeowners application provide:

On Fire policies where the property was purchased within the first year of applying for coverage, the purchase price can be exceeded by submitting with the application one of the following: a professional appraisal of the property, copies of the State Equalized Value (SEV), receipts or proof that repairs and improvements have been made.

Consistent with that instruction, it appears that plaintiff submitted with the application for insurance a professional appraisal of the property, dated October 16, 2003, which estimated the market value at \$107,000. Accordingly, this argument is without merit.

In sum, we affirm the summary dismissal of plaintiff's claims against defendants Allstate and Kern, but reverse the summary dismissal of plaintiff's claims against Michigan Basic and remand for a factual determination consistent with this opinion.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper  
/s/ Mark J. Cavanagh  
/s/ E. Thomas Fitzgerald