

Legal Standard or Rule

Agent May Be Liable for Fraud Committed by Subagent

Description <i>Holdings</i>	Trial court held that an agent could possibly be liable for fraud committed by a subagent. While the agent was not aware of the fraud, it is for the jury to determine if the agent should have been more diligent in making sure its subagent could not engage in fraud against clients.
Topic	Agency
Key Words	Subagent; Vicarious Liability; Foreseeability; Diligence; Fraud

CASE SUMMARY

Facts <i>AGENT</i>	Clark worked as a warehouse manager for a restaurant chain, Buffets. His friend, Parsons, ran a shipping company, Carr Freight, which handled shipments for Buffets. The two conspired to steal from Buffets. Parsons, through Carr, would overbill Buffets for shipments, Clark would approve the inflated bill, and Parsons would kickback part of the overpayment received by Carr. Carr, a local transport company, worked with Transgroup for interstate shipments and for billing and accounting services, so paperwork bore the name Transgroup, not Carr. When the scheme was uncovered by an audit at Buffets, it was turned over to the U.S. Attorney. Clark and Parsons ended up in prison. Buffets filed a loss claim with its insurer, Hartford, which paid Buffets about \$3 million for the losses from the scheme. Hartford then sued Clark, Parsons, and Transgroup to recover the payout. Hartford claimed that Transgroup was liable based on vicarious liability for the acts of its local subagent, Carr/Parsons. Transgroup moved for summary judgment.
Decision <i>Foreseeable Notice</i>	Motion denied. The key question for liability, under Minnesota law, is if Parsons' actions were foreseeable. That is, should Transgroup have known that its local subagents could engage in such fraud? That will be determined at trial. An agent who deals with a subagent is put to a certain burden of reasonableness and standard

standard knowledge

diligence. Transgroup received revenue from business generated by Parsons, but did not know there was fraud involved in the business dealings. Nevertheless, Hartford can claim unjust enrichment by Transgroup because it received the business due to Parsons' fraud. Under the Third Restatement of Agency, "a subagent is a person appointed by an agent to perform functions that the agent has consented to perform on behalf of the agent's principal and for whose conduct the appointing agent is responsible to the principal." It will be for the jury to determine if Parsons was in fact Transgroup's subagent.

Citation

Hartford Fire Insurance Co. v. Clark, ---F.Supp.2d--- (2010 WL 2925050, D. Minn. 2010)

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