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Private Law: Mandate

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can Creosote Co. v. Springer.¹⁴ The important question to be decided is whether the sale of premises included *sub silentio* the sale of rails and angle irons leased by the owner and used by him in the construction of railroad trackage thereon.

MANDATE

*Milton M. Harrison**

A real estate salesman who shows property, which is unlisted, to a prospective buyer has no right to a fee from the owner when the sale is ultimately effected between the buyer and owner. The Fourth Circuit Court of Appeal held in *Shannon Real Estate, Inc. v. Toll*¹ that the obligation to pay a fee must come from the consent of the owner and the absence of such an agreement precludes recovery. However, in *Nugent v. Downs*,² a case in which an attorney represented a client without an agreement with reference to the fee, the Third Circuit Court of Appeal held that the attorney was entitled to a fee based on *quantum meruit*. In the latter case, however, there was ample evidence that both attorney and client understood that a fee would be charged, only the precise amount being undetermined.

In *Interior Contractors, Inc. v. Cashen Metal Fabrication, Inc.*³ the defendant alleged in its answer and reconventional demand that the plaintiff while acting as agent for defendant engaged in practices which were adverse to the defendant and which resulted in its loss. More specifically, it was alleged that the plaintiff acted for and on behalf of defendant's competitor. The court of appeal found that the agency relationship which had existed between plaintiff and defendant had come to an end, that the defendant had refused to agree to continue it and that, therefore, plaintiff's representing adverse interests was not a violation of the fidelity owed by plaintiff to the defendant. Clearly, had the evidence supported the existence of the agency relationship, plaintiff's representation of interests adverse to defendant would have been a violation of its obligations under the mandate.

14. 232 So.2d 532 (La. App. 4th Cir. 1970).

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1. 223 So.2d 693 (La. App. 4th Cir. 1969).

2. 230 So.2d 597 (La. App. 3d Cir. 1970).

3. 231 So.2d 708 (La. App. 1st Cir. 1970).

The court of appeal had occasion to distinguish mandate from *negotiorum gestio* in *Citizens Discount Co. v. Royal*.⁴ The owner of a damaged automobile negotiated a loan with plaintiff to pay for repairs. The owner requested that one of plaintiff's employees recommend and secure a mechanic to make the repairs. In a dispute relative to the repairs, the court properly held that the doctrine of *negotiorum gestio* was applicable only when one "undertakes, of his own accord, to manage the affairs of another" and is inapplicable when one performs at the request of another.⁵

SECURITY DEVICES

*Joseph Dainow**

Building Contract Privileges

In *McCulley v. Dublin Construction Co.*¹ the court held that there could not be a materialman's privilege in the absence of the owner's consent for the furnishing of the supplies, under the clear terms of La. R.S. 9:4801. The first part of the private building contract law in R.S. 9:4801-4805 is applicable only in the situation where a written construction contract and appropriate bond have been duly recorded,² but there is no indication that such was the situation in the present case. Having decided the appeal on this ground, the court did not consider the other contention that in the absence of a recorded contract and bond, the matter was governed by R.S. 9:4812 and that the affidavits of the claims for liens had not been timely filed. If these facts were proved (as the evidence seemed to indicate), a denial of the privilege would have been grounded on more accurate authority.³

4. 230 So.2d 857 (La. App. 4th Cir. 1970).

5. LA. CIV. CODE art. 2295.

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1. 234 So.2d 257 (La. App. 4th Cir. 1970), *cert. denied*, 236 So.2d 503 (La. 1970).

2. *Glassell, Taylor & Robinson v. Harris Associates, Inc.*, 209 La. 957, 26 So.2d 1 (1946); *State ex rel. Bagur Co. v. Christy-Ann-Lea Corp.*, 223 So.2d 421 (La. App. 1st Cir. 1969); *Picou's Builders Supply Co. v. Picou*, 161 So.2d 347 (La. App. 4th Cir. 1964); *Lawrence v. Wright*, 124 So. 697 (Orl. App. 1929).

3. *Courshon v. Mauroner-Craddock, Inc.*, 219 So.2d 258 (La. App. 1st Cir. 1968), *cert. denied*, 253 La. 760-62, 219 So.2d 778 (1969); *Cox v. Rockhold*, 128 So. 702 (La. App. 2d Cir. 1930).