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## Private Law: Mandate

Milton M. Harrison

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## MANDATE

Milton M. Harrison\*

In *The Paul Voisin Corporation v. Torrey*,<sup>1</sup> defendant granted to plaintiff corporation an option to purchase certain immovable property for a period of 90 days. Within the option period, the attorney for the corporation wrote two letters to defendant purporting to give notice that the plaintiff corporation was exercising its "option right and privilege to purchase the property. . . ."<sup>2</sup> In an action for specific performance, it was held that the letter from the attorney did not constitute an acceptance by the corporation inasmuch as the mandatory-attorney was not empowered in writing by the corporation to make the acceptance. The court quoted from the opinion in *Lake v. Lejeune*<sup>3</sup> to the effect that "the existence of a relationship of attorney and client does not give rise to a presumption that the attorney has authority . . . to dispose of his client's property."<sup>4</sup> The decision is entirely consistent with Louisiana Civil Code article 2997, even as limited to mean only that the authority to sell immovables need only be express,<sup>5</sup> there being no evidence of an express authorization in this case.

In two cases the courts once again applied the doctrine of apparent authority. Although there is no authority in the Louisiana Civil Code for apparent authority as developed at common law, it is well established in our case law. In *Analab, Inc. v. Bank of the South*,<sup>6</sup> the president of the defendant bank was permitted by the bank to engage in other business enterprises from his office in the bank. The president called plaintiff and requested analyses of gold and silver content of certain ores. He identified himself as president of defendant-bank, the ores were picked up from him in his bank office, and were in boxes labeled with the bank's name. Plaintiff sent its bill for services to the bank. Only then was it learned that the president who requested the analyses was not acting for the bank nor for himself, but on behalf of another corporation. In a suit against the bank,

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\* Professor of Law, Louisiana State University.

1. 271 So. 2d 624 (La. App. 1st Cir. 1972).

2. *Id.* at 626.

3. 226 La. 48, 74 So. 2d 899 (1954).

4. *Id.* at 54, 74 So. 2d at 901.

5. See *Resweber v. Daspit*, 240 So. 2d 373 (La. App. 3d Cir. 1970) (held that under Civil Code article 2997 the power to sell need only be express and not both express and special as stated in the article). See also the writer's comments in *The Work of the Louisiana Appellate Courts for the 1970-1971 Term—Mandate*, 32 LA. L. REV. 231-32 (1972).

6. 271 So. 2d 73 (La. App. 4th Cir. 1972).

it was held that the bank participated with its president in creating circumstances which led the plaintiff to reasonably believe that the services were being performed by the bank and therefore plaintiff could recover from the bank under the doctrine of apparent authority.<sup>7</sup>

An employee was given authority by his employer to purchase carpet from the plaintiff on the account of the employer.<sup>8</sup> The employee purchased carpet for his own personal use on his employer's account and in a suit against the employer, recovery was also permitted under the doctrine of apparent authority.

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7. The bank was granted recovery under its third party demand against its president.

8. *Dart Dist., Inc. v. Foti Enter., Inc.*, 271 So. 2d 705 (La. App. 1st Cir. 1972).