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## Private Law: Mandate

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## MANDATE

*Milton M. Harrison\**

In two cases<sup>1</sup> the Fourth Circuit Court of Appeal reiterated the well established rule that an agent acting on behalf of a corporation will incur personal liability for contractual obligations unless he bears the burden of proving that he disclosed that he was acting for his corporate principal and not for himself.<sup>2</sup> However, in *Webster v. Rushing*,<sup>3</sup> the supreme court held that when the contract is signed only by an agent in his capacity as president of a corporation, and the corporation is identified, the agent does not then incur personal liability; the judgment of the trial court holding the agent liable in solido with his principal was reversed.

The finding of implied authority, as well as apparent authority, in *Southwest Motor Leasing, Inc. v. Matthews Lumber Co.*,<sup>4</sup> is subject to some doubt on the interpretation of the facts. In that case, plaintiff delivered to an agent<sup>5</sup> an automobile, a lease agreement signed by plaintiff, a delivery receipt to be signed by the defendant-lessee, and an invoice for the rental payment for the first month plus a deposit. Defendant insisted on paying the rental for one year in advance and the agent prepared a new invoice, received the rental for one year, and marked the invoice paid. The agent remitted only the deposit and two monthly payments to plaintiff. The court held that by giving the agent authority to collect the deposit and one monthly rental payment, plaintiff impliedly authorized the agent to collect full payment in advance. The court went on to find that plaintiff was also estopped to deny that the agent had such authority because plaintiff had, by giving possession of the automobile and documents to the agent, led the defendant to rely reasonably that the agent had such authority. These conclusions may not be justified. A principal may entrust an agent with authority to collect rental payments as they become due, knowing that it

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1. *Lagniappe of New Orleans, Ltd. v. Denmark*, 330 So. 2d 626 (La. App. 4th Cir. 1976); *American Rent All, Inc. v. Culotta*, 328 So. 2d 743 (La. App. 4th Cir. 1975).

2. See *Chartres Corp. v. Twilbeck*, 305 So. 2d 730 (La. App. 4th Cir. 1974); *Prevost v. Gomez*, 251 So. 2d 470 (La. App. 1st Cir. 1971).

3. 316 So. 2d 111 (La. 1975).

4. 325 So. 2d 870 (La. App. 2d Cir. 1976).

5. The agent was characterized as a broker but the court found that he was not in fact a broker.

risks the loss of no more than the rental for one month, if the agent proves to be unreliable or dishonest. The same principal may be unwilling to trust the agent to receive twelve times that amount in advance which increases the risk of loss materially. It may be said that the authority to collect money as it becomes due does not imply the authority to collect money in advance of its due date; nor is a third person justified in believing that such is the case and his reliance on such an interpretation does not give rise to an estoppel under apparent authority.<sup>6</sup>

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6. See *Kansas Educ. Ass'n. v. McMahan*, 76 F.2d 957 (10th Cir. 1935).