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Private Law: Agency & Partnership

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DEVELOPMENTS IN THE LAW, 1980-1981

A Symposium

[*Editor's Note.* As announced in last year's symposium, the title has been changed to *Developments in the Law* to reflect expanded coverage of legislative amendments in Louisiana and of federal statutes and decisions of interest to the Louisiana lawyer. However, the symposium continues to cover primarily decisions of Louisiana courts. This year's symposium includes cases decided from March, 1980 through March, 1981.]

PRIVATE LAW

AGENCY & PARTNERSHIP

*Milton M. Harrison**

MANDATE

It is axiomatic that an agent, who acts within the authority granted to him by a principal who has been disclosed as the contracting party, does not incur contractual liability; the principal alone is obligated.[1] In *Roll-up Shutters, Inc. v. South Central Bell Telephone Co.*,[2] the fourth circuit interpreted a clause limiting the liability of the principal to be applicable to the agent as well. The agent negotiated the contract on behalf of its principal for the sale of advertising space in the principal's "Yellow Pages." The contract provided that the principal's liability for any error or omission would be limited to no more than the charges for the advertising. There was an error in plaintiff's advertisement and suit was brought against both principal and agent. The argument was made that the contract limited the principal's liability only and not the agent's, but the court properly held that the agent incurred no liability. The court did not deal with the situation which would have arisen had the agent been negligent, inasmuch as no negligence was proven here.

The general rule that mandates are revocable at the will of the principal[3] is subject to the exception that grants of authority may be

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1. LA. CIV. CODE art. 3013.
2. 394 So. 2d 796 (La. App. 4th Cir. 1981).
3. LA. CIV. CODE art. 3028.

made irrevocable when the agent is given, in addition to the mandate, an interest in the thing authorizing him to act in his own name.[4] An irrevocable mandate is not an agency in fact because the agent is acting on his own behalf rather than for the principal. In *Brown v. Holland*,[5] the third circuit interpreted a contract whereby the defendants gave the plaintiff the exclusive right to act in their behalf in securing possible royalty interests. The defendants agreed to give the plaintiff one-half of "whatever royalty interest" he was able to recover. The court held that the contract was mandate and was therefore terminable at the will of the principals. This portion of the decision is certainly correct.

The court, however, ruled that the plaintiff was entitled to recover on quantum meruit only, saying that the termination of the mandate under article 3028 had the effect of ending the contract and rendering its compensation provision unenforceable. It is submitted that the decision is in error and the court should have ruled that the plaintiff was entitled to damages. Articles 3072 and 3028 are not intended to permit a principal to abrogate his contract without penalty, but only give the power to terminate the authority. The court also drew an analogy with the termination of the attorney-client relationship. The analogy here is not a good one because the jurisprudence whereby the courts supervise the amount of fees charged by lawyers results from the courts' responsibility in supervising the bar; it does not come about because the attorney-client relationship is one of mandate. Furthermore, the Louisiana Supreme Court departed from quantum meruit as the basis for recovery in *Saucier*[6] and *Scott*.[7]

PARTNERSHIP

In *Martinez v. Posner, Martinez and Padgett*,[8] the third circuit was confronted with the fundamental question of the nature of a partner's interest in the assets of the partnership. Following a dissolution of her marriage to one of the partners who owned a one-third interest in the partnership, the plaintiff sought to be recognized as an owner of a one-sixth interest in the partnership. Citing the articles of the Louisiana Civil Code in effect prior to January 1, 1981,

4. Robinson v. Hunt, 211 La. 1019, 31 So. 2d 197 (1946); Marchand v. Gulf Ref. Co. of La., 187 La. 1002, 175 So. 647 (1937); Succession of Zatarain, 138 So. 2d 163 (La. App. 1st Cir. 1962).

5. 392 So. 2d 726 (La. App. 3d Cir. 1980).

6. Saucier v. Hayes Dairy Prods., Inc., 373 So. 2d 102 (La. 1979).

7. Scott v. Kemper Ins. Co., 377 So. 2d 66 (La. 1979).

8. 385 So. 2d 525 (La. App. 3d Cir. 1980).

the court held that no one is a partner except by the consent of all other partners.[9] Therefore, the former wife of a partner, upon the dissolution of the community of acquets and gains, does not receive any interest in the partnership, but is entitled only to one-half of the value of the husband-partner's interest in the partnership assets.

In a similar situation,[10] a former wife claimed a one-half interest in real property acquired during the marriage by her former husband and his partner. If the property was owned by the partnership, the former wife would not be entitled to ownership of the real property; she would be entitled only to one-half of the value of the former husband's interest in partnership assets, as in *Martinez*. However, the property in this case had been transferred from the partnership to a corporation in which the former husband was owner of one-half of the shares of stock. The second circuit held that the former wife was entitled only to one-half of the shares of corporate stock but no interest in the real estate. Shareholders in a corporation, like partners, are not owners of the things owned by the corporation or partnership; they are owners of an interest in the corporation or partnership.

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9. *Id.* at 527 (citing LA. CIV. CODE arts. 2801, 2802, 2803, 2805, 2809 & 2810).
10. McAteer v. McAteer, 393 So. 2d 805 (La. App. 2d Cir. 1981).