MANDATE

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In three cases, two courts of appeal held corporate officers personally responsible for corporate debts on open account because the officers had not adequately indicated to suppliers of goods that they were acting in a representative capacity for the corporations. In Reeves Brick Co. v. Forrest, the court found that all sales to the defendant were invoiced in the name of "Jim Forrest," and that at no time did the defendant advise the seller that he was purchasing as an agent of "Jim Forrest Contractor, Inc." In Chartres Corp. v. Twilbeck, invoices and bid proposals were submitted to defendant in the name of "C. Twilbeck and Sons" and not in the corporate name of "Twilbeck & Son General Contractors, Inc." The Fourth Circuit Court of Appeal, in reversing the trial court, stated that "it is not the seller's burden to show that the purchaser ... withheld information of his capacity as an agent ..." Rather, "[i]t is the agent's duty to disclose his capacity as agent of the corporation if he is to escape personal liability." The court also held an officer individually liable for testing services he ordered without disclosing to the supplier the fact that he was acting as agent. All of these cases are consistent with recent Louisiana decisions.

In Elflein v. Graham, the owner of an undivided interest in immovable property appointed an attorney in fact and authorized him to sell her interest. The owner disregarded the power of attorney and subsequently sold her interest in the land. The sale was properly recorded. Seven days later, plaintiff, after having a title check made, purchased the undivided interest from the attorney in fact. The Louisiana Civil Code provides that powers of attorney are revocable by the principal, but that if third persons with whom the attorney is authorized to deal have no notice of the revocation, the attor-

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1. 297 So. 2d 712 (La. App. 1st Cir. 1974).
2. 305 So. 2d 730 (La. App. 4th Cir. 1974).
3. Id. at 732.
ney who continues to act under the power will bind the principal with such third persons acting in good faith. The court equated good faith required under article 3033 with that required for good faith possession under article 3479. In view of the title check, the subsequent purchaser was held to know what the check revealed and therefore was not in good faith at the time of the purchase. The court refused to express an opinion concerning the plaintiff’s right had there been no title check. The answer appears to be clear, however. The purchaser from the attorney would be in good faith and the grantor of the power of attorney would be bound by the attorney’s act. If the property had previously been sold and the principal could not deliver it, he should be required to respond in damages.

In *Brasher v. Life Insurance Co. of Louisiana*, the court faced the necessity of determining whether a bank was an agent of an insurance company or of the borrower-customer. Clearly, under the facts, the bank was authorized by the insurance company to issue policies of life insurance covering the amount of loans made to customers, and for this purpose the bank through its employees served as an agent of the insurance company. When the customer requested that the bank secure insurance on his life from one of the companies it represented, and the bank agreed, for that purpose the bank owed a fiduciary duty as agent to the customer. When it failed to procure the insurance it became liable to the customer for breach of its fiduciary duty.

8. Id. art. 3029.
9. Id. art. 3033.
10. Id. art. 3033: “In the cases above enumerated, the engagements of the agent are carried into effect in favor of third persons acting in good faith.” In comparing this article to LA. CIV. CODE art. 3479, which deals with acquisitive prescription, the court said: “It appears to have been the intention of the redactors of the Civil Code to require that a person relying upon a transaction with an agent have substantially the same kind of good faith as one who relies upon a plea of ten years acquisitive prescription . . . . ‘Good faith,’ according to the cases dealing with the prescription of ten years, demands a firm and positive belief by the buyer that the seller had a valid title . . . . We think the Code articles regarding mandate reflect an intention to demand of a third person seeking to enforce a contract against a principal a firm and positive belief that the agent was authorized by his principal to enter the transaction.” 307 So. 2d at 672.