

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

STEWART DICKLER,	:	CIVIL ACTION
BEECH TREE RUN, INC.,	:	NO. 90-4288
<i>et al.</i> ,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
CIGNA PROPERTY AND	:	
CASUALTY CO., AND PACIFIC	:	
EMPLOYERS INSURANCE CO.,	:	
Defendants.	:	

NEWCOMER, S.J.

July 12, 2005

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Presently before this Court are Machne Israel, Inc.'s Special Appearance and Motion to Vacate Judgment for Lack of Personal Jurisdiction, Beech Tree, Inc.'s Response, and Beech Tree's Supplemental Memorandum thereto. After a hearing in open court, held on June 8, 2005, and after consideration of the testimony of the witnesses, the admitted exhibits, and the arguments of counsel, the Court will grant said Motion consistent with the following findings of fact and conclusions of law.

I. BACKGROUND

This is a bitterly fought case with an extensive procedural history. Because the Court writes for the Parties, it will limit this section to the relevant facts necessary to resolve the two issues in dispute: (1) whether the Proceeds Stipulation was signed on behalf of Machne Israel of New York or Machne Israel of Philadelphia (or both), and (2) if the Proceeds Stipulation was

signed on behalf of Machne Israel of New York, whether this Court has personal jurisdiction over that entity.

II. FINDINGS OF FACT

1. The Proceeds Stipulation at issue in this litigation was signed on June 23, 1993 by Fredric L. Goldfein, Esq. on behalf of "Machne Israel, Inc." It provided that \$2,875,000.00 was to be paid by Plaintiffs for the sole purpose of completing the construction of a school building in Brooklyn, New York. It further provided that if the school were not built on time, the gift would then lapse and the net proceeds of the gift would be repaid by "Machne Israel, Inc." to Beech Tree.

2. There are two Machne Israel entities at issue in this case. The first is "Machne Israel", a corporation organized under the Religious Corporation Law of the State of New York. It is the corporate successor by a 1994 merger of Machne Israel, Inc., a corporation organized under the same statute. This entity will be referred to as "Machne Israel of New York". The second is Machne Israel of Philadelphia, a Pennsylvania corporation.

3. Rabbi Abraham Shemtov, the head of Machne Israel of Philadelphia, was in charge of the school project in Brooklyn, New York. He asked Mr. Goldfein to represent Machne Israel of Philadelphia in connection with the Beth Rivka school project in

New York.

4. Mr. Goldfein signed the "Proceeds Stipulation" on behalf of Machne Israel of Philadelphia and, in doing so, understood that "Machne Israel, Inc." referred exclusively to Machne Israel of Philadelphia.

5. Mr. Goldfein has never represented Machne Israel of New York.

6. Machne Israel of New York did not receive any of the funds for the Beth Rivka school.

7. Rabbi Yehuda Krinsky acted in his capacity as the Corporate Secretary and Chairman of the Board of Directors of Machne Israel - the corporate successor to Machne Israel, Inc.

8. On October 21, 1994, Machne Israel, Inc. merged with and into "Machne Israel". This entity is referred to here as "Machne Israel of New York".

9. Machne Israel of Philadelphia is a separate and distinct Pennsylvania corporation. There is no parent-subsiary relationship between Machne Israel of Philadelphia and Machne Israel of New York.

9. Neither Machne Israel of New York nor Rabbi Krinsky participated in the Beth Rivka school project.

10. Rabbi Krinsky's signature was forged on the "New Building Application" for the City of New York Department of Buildings (Ex. M-7), as well as the Plan/Work Approval Application (Ex. M-8). His name was misspelled both in the signature line and in the underlying signature.

11. Felix Tambasco is an architect and partner with the firm that performed architectural work for the construction of the Beth Rivka school. He could not certify ownership of the school.

12. Rabbi Krinsky's name on the Certificate of Substantial Completion was also misspelled, and erroneously entered as the owner of the Beth Rivka school. Rabbi Krinsky was also involved with Mr. Tambasco's former partner Nathan Kirshenbaum and it is possible that someone in the architect's office erroneously identified Rabbi Krinsky as owner of the Beth Rivka school.

13. Rabbi Krinsky is a public figure who has been employed by Machne Israel of New York in some capacity for nearly fifty years, and has functioned as a spokesman for the Lubavitcher Movement to the press.

II. CONCLUSIONS OF LAW

1. Mr. Goldfein did not have authority to sign the Proceeds Stipulation on behalf of Machne Israel of New York. Under Pennsylvania law, "an agent can bind his principal if the agent has actual or apparent authority." Richardson v. John F. Kennedy Mem'l Hosp., 838 F. Supp. 979, 985 (E.D. Pa. 1993). Apparent authority, as defined by Pennsylvania courts, is "that authority which, although not actually granted, the principal knowingly permits the agent to exercise, or holds him out as possessing." In re Mushroom Transp. Co., 382 F.3d 325, 345 (3d Cir. 2004) (citations omitted). "It is well settled that apparent authority (1) 'results from a manifestation by a person that another is his agent' and (2) 'exists only to the extent that it is reasonable for the third person dealing with the agent to believe that the agent is authorized.' RESTATEMENT (SECOND) OF AGENCY §§ 8 cmts. a & c (1958)." Mercy Catholic Med. Ctr. v. Thompson, 380 F.3d 142, 161 (3d Cir. 2004) (citing Taylor v. Peoples Natural Gas Co., 49 F.3d 982, 989 (3d Cir. 1995)).

In this case, the great weight of the evidence suggests that there was no agency relationship in the first instance between Machne Israel of New York and Mr. Goldfein. Both Mr. Goldfein and Rabbi Krinsky unequivocally testified to that effect. Only the words or conduct of Machne Israel of New York as the principal could give rise to apparent authority and this Court

has not heard any such evidence. See Residential Reroofers Local 30-B Health & Welfare Fund v. A & B Metal & Roofing, 976 F. Supp. 341, 345 (E.D. Pa. 1997). It follows then that Mr. Goldfein did not possess actual authority because there was no evidence of any express grant of authority by Machne Israel of New York to Mr. Goldfein.

2. Because the Court finds that Mr. Goldfein did not have the authority to bind Machne Israel of New York, it need not address whether this Court has personal jurisdiction over Machne Israel of New York. It should be noted, however, that Beech Tree did not provide any evidence of any minimum contacts between Machne Israel of New York and the Commonwealth of Pennsylvania. Thus, the Court will amend its January 17, 2003 Order to relieve Machne Israel of New York once and for all of the judgment against it. The judgment will attach only to Machne Israel of Philadelphia.

An appropriate Order follows.

S/ Clarence C. Newcomer
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEWART DICKLER,	:	CIVIL ACTION
BEECH TREE RUN, INC.,	:	NO. 90-4288
<i>et al.</i> ,	:	
Plaintiffs	:	
	:	
v.	:	
	:	
CIGNA PROPERTY AND	:	
CASUALTY CO., AND PACIFIC	:	
EMPLOYERS INSURANCE CO.,	:	
Defendants.	:	

O R D E R

AND NOW, this 12th day of July, 2005, upon consideration of Machne Israel, Inc.'s Special Appearance and Motion to Vacate Judgment for Lack of Personal Jurisdiction (Doc. 289), Beech Tree, Inc.'s Response, Beech Tree's Supplemental Memorandum, and the Evidentiary Hearing on June 8, 2005, it is hereby ORDERED that said Motion is GRANTED. It is further ORDERED that this Court's January 17, 2003 Order, which imposed liability on Machne Israel, Inc., shall be AMENDED as follows:

Any reference to "Machne Israel, Inc." shall refer exclusively to "Machne Israel of Philadelphia."

AND IT IS SO ORDERED.

S/ Clarence C. Newcomer
United States District Judge