

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

EXACT PRECISION, INC. : CIVIL ACTION  
 :  
 v. :  
 :  
 ACCURA ZEISEL MACHINERY CORP. :  
 :  
 v. :  
 :  
 R.R.I.C. ASSOCIATES, INC. : NO. 98-4168

**MEMORANDUM AND ORDER**

BECHTLE, J. DECEMBER , 1999

Presently before the court is defendant Accura Zeisel Machinery Corp.'s ("Accura Zeisel") motion for summary judgment and plaintiff Exact Precision, Inc.'s ("Exact") response thereto.<sup>1</sup> For the reasons set forth below, the court will deny the motion.

**I. BACKGROUND**

Accura Zeisel and R.R.I.C. are both in the business of buying and selling industrial machinery. (Third Party Compl. ¶¶ 4 & 5.) Exact filed the instant action seeking damages resulting from its purchase of two Wickman bar automatic screw machines (the "machines"). (Pl.'s Ans. to Def.'s Mot. for Summ. J. at unnumbered p.1.) The two machines Exact purchased were previously owned by Accura Zeisel. Exact viewed the machines, which were housed in a warehouse rented by Accura Zeisel, in

---

<sup>1</sup> Third party defendant R.R.I.C. Associates, Inc. ("R.R.I.C.") joined Accura's motion for summary judgment on June 30, 1999.

March 1998. (Pl.'s Brief in Opp. to Third Party Def.'s Mot. for Summ. J. at unnumbered p.1.) Exact was accompanied by defendant Henry Zeisel, Chief Executive Officer of Accura Zeisel and Lee Miller, a.k.a. Daryll Hoon ("Miller"). (Id.; Zeisel Dep. at 13.) Miller worked for R.R.I.C.. On March 26, 1998, Accura Zeisel issued a written quotation to R.R.I.C. for the sale of the machines.<sup>2</sup> (Third Party Compl. ¶ 6.) R.R.I.C. accepted Accura Zeisel's offer the same day, agreeing to pay \$130,000 for the machines. (Id. ¶ 7; Pl.'s Ans. to Def.'s Mot. for Summ. J. ¶ 3(b).) Also on March 26, 1998, R.R.I.C. issued an invoice to Exact to purchase the machines for \$155,000 and Exact issued a purchase order to R.R.I.C. for that amount. (Def.'s Mot. for Summ. J. ¶ 3(e).) On April 30, 1998, R.R.I.C. issued a check to Accura Zeisel for \$130,000. Id. ¶ 3(c). On May 1, 1998, R.R.I.C. delivered the machines to Exact. (Compl. ¶ 9.) Until the machines were delivered to Exact, they remained housed in the warehouse that Accura Zeisel rented. Shortly after delivery, Exact discovered that the machines did not conform. Id. ¶¶ 10, 11 & 12.

On August 10, 1998, Exact filed its Complaint against Accura Zeisel, alleging that R.R.I.C. misrepresented the capabilities of the machine. (Compl. ¶¶ 6, 7, 12 & 13.) Accura Zeisel filed its Third Party Complaint against R.R.I.C. on November 13, 1998.

---

<sup>2</sup> Accura Zeisel had also provided a price quotation to R.R.I.C. for the sale of the machines some time before March 1998. (Zeisel Dep. at 9-10 & 20-21.)

On June 2, 1999, Accura Zeisel filed a motion for summary judgment to which Exact filed a response on June 7, 1999. On June 30, 1999, R.R.I.C. joined Accura Zeisel's motion for summary judgment.

## **II. LEGAL STANDARD**

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A factual dispute is material only if it might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Whether a genuine issue of material fact is presented will be determined by asking if "a reasonable jury could return a verdict for the non-moving party." Id. In considering a motion for summary judgment, "[i]nferences should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992) (citation omitted).

## **III. DISCUSSION**

Accura Zeisel asserts that it is entitled to judgment as a matter of law because R.R.I.C. was not its agent. (Def.'s Mot.

for Summ. J. ¶ 6.) Accura Zeisel argues that because R.R.I.C. was not its agent, any representations R.R.I.C. made about the capabilities of the machines are not binding on it. Id. Accura Zeisel asserts that there is no privity of contract between it and Exact and that it is entitled to judgment as a matter of law. Exact responds that there exists a genuine issue of material fact as to whether R.R.I.C. served as an agent of Accura Zeisel.

The burden of establishing agency rests on the party asserting it. Goodway Mktg., Inc. v. Faulkner Adver. Assocs., Inc., 545 F. Supp. 263, 267 (E.D. Pa. 1982). Whether an agency relationship exists and the nature of the relationship is decided from the facts of each case. Brock v. Real Estate Land Title & Trust Co., 178 A. 146, 148-49 (Pa. 1935)(citations omitted). Generally, the question of whether an agency relationship exists is a question for the jury. Refuse Management Sys., Inc. v. Consol. Recycling and Transfer Sys., Inc., 671 A.2d 1140, 1147 (Pa. Super. Ct. 1996) (stating that agency is "ordinarily . . . decided by the trier of fact"). However, where the facts regarding the existence and nature of the agency relationship are not in dispute, the question of agency is for the court. Id. Where agency may be inferred from the conduct of the parties or from circumstances, questions regarding the existence and nature of the agency relationship are properly determined by the jury. Brock, 178 A. at 149 (citations omitted). Likewise, where there is conflicting evidence or where the determinative facts depend upon the credibility of witnesses, the question of agency should

be submitted to the jury.

An agency relationship exists where there is a manifestation by the principal that the agent shall act for him, the agent's acceptance of the undertaking and the understanding of the parties that the principal is to be in control of the undertaking. Refuse, 671 A.2d at 1147. An agency relationship may be shown by express contract or the relationship may be an implied one, "inferred from the circumstances." Pirilla v. Bonucci, 467 A.2d 821, 824 (Pa. Super. Ct. 1983). The parties need not explicitly state their intention to create an agency relationship, however, their intention "must be clear from their conduct." Goodway, 545 F. Supp. at 265. The relation of principal and agent may also arise from the habits and course of dealing of the parties and from the general conduct of the parties in relation to the subject matter of the agency. Reel v. Adams Express Co., 27 Pa. Super. 77, 81 (Pa. Super. Ct. 1905)(finding agency may be inferred from fact that agent wore uniform and drove wagon bearing principal's name). However, agency is not "assumed from the mere fact that one does an act for another." Clayton, 670 A.2d at 714 (citations and internal quotations omitted). Nonetheless, an agency relationship may be found even where the putative principal merely controls the result, and the agent tenders its performance to achieve that result by means within its own discretion. Basile v. H & R Block, Inc., 729 A.2d 574, 580-81 (Pa. Super. Ct. 1999) (finding that tax return preparer's completion of tax returns, with

understanding that taxpayers always maintained ultimate right of control over tax return, created agency relationship). Thus, a principal and agent relationship may be found whether the parties act in the roles of master and servant or simply in the status of two independent contractors. Id. (stating that control over means of performance is not test for agency, but is test of relationship of master and servant); see also Juarbe v. City of Philadelphia, 431 A.2d 1073, 1075-76 (Pa. Super. Ct. 1981) (stating that principal and agent can be in relationship of master and servant, or simply in status of two independent contractors).<sup>3</sup>

One need not furnish direct proof of specific authority to establish agency, "provided it can be inferred from the facts that at least an implied intention to create the relationship of principal and agent existed." Commonwealth v. Maker, 716 A.2d 619, 623 (Pa. Super. Ct. 1998). Thus, the existence of an agency relationship may be inferred from the acts of the agent and their recognition by his principal. Id. Likewise, existence of the relationship may be found in acquiescence or failure to disavow.

---

<sup>3</sup> Once the agency relationship is established, authorization for the agent to act on behalf of the principal can either be expressly or impliedly granted or acquired by apparent authority. Refuse, 671 A.2d at 1147. Apparent authority arises from a manifestation by the principal that another is his agent. Id. (citations omitted). Apparent authority "exists where the principal, by words or conduct, leads persons with whom the alleged agent deals to believe that the principal has granted the agent the authority with which the agent purports to exercise." Id. Apparent authority may be derived from the course of dealing or by a single transaction between the parties. Id.

Id. (finding that agency relationship existed despite lack of proof that purported agents received a stipend for services).

Both Accura Zeisel and R.R.I.C. contend that their relationship was not an agency relationship. (Third Party Def.'s Mem. of Law in Support of Def.'s Mot. for Summ. J. at 1; Def.'s Mot. for Summ. J. ¶ 6.) However, an express denial is not determinative of the question of agency. Myers v. Holiday Inns, Inc., et al., No. 87-2438, 1987 WL 16887, at \*1 (E.D. Pa. Sept. 9, 1987)(stating that "the mere fact that there is an express denial of the agency relationship is not itself determinative of whether an agency relationship actually exists").

An agency relationship may be implied or inferred from the circumstances. Pirilla, 467 A.2d at 824. Here, Henry Zeisel, Accura Zeisel's Chief Executive Officer, admitted that he relied "[t]o a great extent" on R.R.I.C.'s description of what the machines could do. (Zeisel Dep. at 13.) Henry Zeisel accompanied R.R.I.C. and Exact when Exact viewed the machines which were warehoused in Accura Zeisel's lot. (Pl.'s Brief in Opp. to Third Party Def.'s Mot. for Summ. J. at unnumbered p.1; Zeisel Dep. at 13.) Where agency may be inferred from the conduct of the parties or from circumstances, questions regarding the existence and nature of the agency relationship are properly determined by the jury. Brock, 178 A. at 149 (citations omitted).

An agency relationship may be found where the putative principal merely controls the result. Basile, 729 A.2d at 580-

81. In this case, the parties dispute whether Accura Zeisel retained control of the undertaking and whether R.R.I.C. tendered its performance to achieve the result sought by Accura Zeisel. The evidence shows that Accura Zeisel initially owned the machines and provided a price quotation for the sale of the machines to R.R.I.C. some time before March 1998. (Zeisel Dep. at 9-10 & 20-21.) Nonetheless, the sale of the machines did not take place between Accura Zeisel and R.R.I.C. until the day Exact issued a purchase order to R.R.I.C.. (Def.'s Mot. for Summ. J. ¶ 3.) Henry Zeisel was present when Exact viewed the machines in Accura Zeisel's warehouse. (Pl.'s Brief in Opp. to Third Party Def.'s Mot. for Summ. J. at unnumbered p.1; Zeisel Dep. at 13.) In addition, although Accura Zeisel contends that title to the machines was transferred to R.R.I.C. prior to R.R.I.C.'s sale of the machines to Exact, Exact asserts that Accura Zeisel did not transfer title of the machines to R.R.I.C.. (Pl.'s Ans. to Def.'s Mot. for Summ. J. ¶ 3(d).) In support of its assertion that Accura Zeisel retained title, Exact points to the fact that until they were delivered to Exact, the machines remained in Accura Zeisel's warehouse. Id. Thus, Exact argues that Accura Zeisel retained possession and control of the machines. Id. There is a dispute as to whether R.R.I.C. received a commission from Accura Zeisel on the sale of the machines. Id. ¶ 5. Accura Zeisel contends that there was a separate sale between Accura Zeisel and R.R.I.C. prior to R.R.I.C.'s sale of the machines to

Exact. Exact alleges that R.R.I.C. acted as a broker<sup>4</sup> and agent for Accura Zeisel, and points to Miller's deposition testimony in which Miller agreed to the proposition that he received payment for his services "[j]ust as real estate people are paid on commission." (Id. ¶ 5; Miller Dep. at 47-48.) The court finds that there is a factual dispute as to whether there was a title transfer from Accura Zeisel to R.R.I.C. and whether Accura Zeisel retained control of the undertaking. Viewing the evidence in the light most favorable to Exact, the court finds that a genuine issue of fact exists as to whether R.R.I.C. acted as an agent for Accura Zeisel. Thus, the court will deny Accura Zeisel's motion for summary judgment.

#### **IV. CONCLUSION**

For the reasons set forth above, Accura Zeisel's motion for summary judgment will be denied.

An appropriate Order follows.

---

<sup>4</sup> The broker-client relationship is "primarily that of principal and agent." Eckrich v. DiNardo, 423 A.2d 727, 729 (Pa. Super. Ct. 1980). A broker is defined as one who is engaged for others, on a commission, to negotiate contracts relative to property, the custody of which he has no concern. Jones v. City of Pittsburgh, 106 A.2d 892, 894 (Pa. Super. Ct. 1954).

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

EXACT PRECISION, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
ACCURA ZEISEL MACHINERY CORP.	:	
	:	
v.	:	
	:	
R.R.I.C. ASSOCIATES, INC.	:	NO. 98-4168

**ORDER**

AND NOW, TO WIT, this            day of December, 1999, upon consideration of defendant Accura Zeisel Machinery Corp.'s motion for summary judgment, plaintiff Exact Precision, Inc.'s response thereto, and defendant R.R.I.C. Associates Inc.'s motion in support of Accura Zeisel Machinery Corp.'s motion for summary judgment, it is hereby ORDERED that said motions are DENIED.

---

LOUIS C. BECHTLE, J.