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Judgment: approved by the Court for handing down | *Delivered:* **14/4/2011**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (COMMERCIAL)

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UNITED FEEDS LIMITED

Plaintiff;

-v-

NELSON TRIMBLE

First Defendant;

and

DENIS NELSON

Second Defendant.

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WEATHERUP J

[1] The plaintiff claims against the first defendant for £55,145.16, being the balance due and owing from the first defendant to the plaintiff in respect of animal feed supplied by the plaintiff to the first defendant. The plaintiff's claim against the second defendant was for damages for breach of the contract of employment between the plaintiff and the first defendant. The plaintiff obtained judgment against the second defendant in default of appearance on 2 December 2009. The action therefore proceeded against the first defendant. Mr Millar appeared for the plaintiff and Mr Bentley QC appeared for the first defendant.

[2] The plaintiff is the supplier of animal feeds. The second defendant was a salesman employed by the plaintiff. The first defendant is a farmer who purchased animal feeds from the plaintiff. The second defendant engaged with the first defendant in relation to the supply of and payment for the animal feeds. Invoices were issued by the plaintiff and given to the second defendant who furnished them to the first defendant. Payments were made by the first defendant to the second defendant, with receipts being attached to the invoices by the second defendant and the payments being transmitted to the plaintiff. Statements of account were also prepared by the plaintiff, given to the second defendant and furnished to the first defendant.

[3] By his defence the first defendant denies liability to the plaintiff in respect of any outstanding debt for the supply of animal feeds. The first defendant contends that in calculating the sum due the plaintiff has failed to take into account certain discounts that are said to have been agreed between the first named defendant and the second defendant, as an employee and agent of the plaintiff. Further the first defendant contends that he has paid in full for all the animal feed supplied by the plaintiff in accordance with the price agreed between the first defendant and the second defendant on behalf of the plaintiff and that no balance is due to the plaintiff. In addition the first defendant contends that the actions of the plaintiff from October/November 2003, when the second defendant began to apply certain discounts to the account of the first defendant, with the plaintiff accepting the payments made by the first defendant, amounted to ratification of the agreement as to the discounts allowed by the second defendant and accordingly that the plaintiff is estopped from claiming any further sums from the first defendant.

[4] Bowstead and Reynolds on Agency 19th Edition states a number of propositions in relation to apparent (or ostensible) authority.

First of all, where a person, by words or conduct, represents or permits it to be represented that another person has authority to act on his behalf, he is bound by the acts of that other person with respect to anyone dealing with him as an agent on the faith of any such representation, to the same extent as if such other person had the authority that he was represented to have, even though he had no such actual authority (paragraph 8-013).

Secondly, an act of an agent within the scope of his apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interests (paragraph 8-063). It is not alleged in the present case that the second defendant as the agent was perpetrating a fraud on the plaintiff by securing a financial advantage.

Thirdly, no act by an agent in excess of his actual authority is binding on the principal with respect to persons having notice that in doing the act the agent is exceeding his authority (paragraph 8-049). There can be no doubt that

in many situations where it is relevant to know whether one person has knowledge of facts, including those raising the doctrine of apparent authority, the court may infer from the circumstances that the person concerned must have known of the facts in question or at least must have been suspicious to the extent that further inquiries would have been appropriate in the context. It seems that the proper approach in commercial cases is to apply the objective interpretation which one person is entitled to put on another's words and conduct (paragraph 8-050).

[5] The plaintiff contends that the first defendant had knowledge that the second defendant had no authority to offer the discounts that were said to have been agreed between the second defendant and the first defendant. This knowledge is alleged to have been based on –

(1) the negotiations that took place between the plaintiff's representatives and the first defendant's son, Richard Trimble;

(2) the receipt of monthly statements by the first defendant from the plaintiff setting out the state of account between the parties and demonstrating from time to time that there was a debt due and owing by the first defendant to the plaintiff; and

(3) the first defendant being aware of inaccuracies in the entries made in the discount boxes on the receipts attached to the invoices, which entries would have shown that the amounts being discounted by the second defendant were not being recorded on the receipts.

[6] The second defendant did have authority to give specified discounts to customers. An example appears in a memo from the plaintiff to its sales staff, including the second defendant, dated 19 May 2006 referring to pricing allowances that were available through the salesmen. In respect of what is described as bulk bag allowance there was the prospect of an allowance of £15 per ton. Anything higher had to be referred to a manager. In respect of cash discounts there was stated to be a maximum of £2 per ton. There was a £2 per ton milk cheque loyalty bonus to be paid at the end of the financial year which was dependent upon a 11 month consistent purchase of feed.

[7] By way of illustration of the payment records, an invoice dated 2 July 2005 shows a balance due of £3,923.18 in respect of deliveries made on 16 May 2005. Attached is a receipt that indicates a payment made by the first defendant on 29 July 2005. The receipt indicates a discount of £3.18, in other words the bill was rounded down. The receipt also acknowledges payment of £2,000 and accordingly the balance due on that invoice was £1,920. Thus the

first defendant had not discharged the full amount. An invoice dated 30 July 2005 refers to the earlier invoice of 2 July 2005, to the payment of the £2,000 on 29 July and to the balance due of £1,920. The attached receipt showed that on 27 August 2005 the first defendant paid £1,900 and secured an additional discount of £20. Thus there was a further rounding down and the discharge of the balance due with a total discount of £23.18.

[8] The issue that arose between the parties was in respect of items which were described as bespoke products which were specially prepared for the first defendant from 2003. An invoice dated 23 May 2006 refers to a bespoke product as the Trimble HGM blend. The invoice gives the weight and unit price for this blend at £148 and the amount due for the quantity delivered was £3,948.46. There is also handwritten text on the invoice written by the second defendant where another calculation shows a total due of £14,033.15 in respect of deliveries of bespoke products. Although the unit price is not stated the calculation represents a unit price of £128, whereas the price quoted on the invoice for the blend is £148. The second defendant was giving a discount to the first defendant of an extra £20 per ton on the invoice price and it appears that the plaintiff was unaware of this arrangement.

[9] In addition to the calculation in the hand of the second defendant appearing on the invoice there is a receipt attached and it shows that on 28 June 2006 the first defendant paid £14,000 and was allowed a discount of £33.15, being a rounding down of the total. I would draw attention to two matters. First there were disclosed discounts on the receipts attached to the invoices and in the above instance that was £33.15. Secondly, there were undisclosed discounts that were not stated on the receipts, namely the reduction on the unit price of the bespoke products to £128.

[10] The first defendant was paying for the bespoke product at £128 and the invoices were charging £148. The prices varied from time to time on the plaintiff's invoices. As a result there was obviously a shortfall in the discharge of the amount invoiced to the first defendant and an increasing balance due to the plaintiff on the monthly statements.

[11] Prior to 2003 arrangements between the plaintiff and the first defendant did not create any difficulties. In 2003 the first defendant's son, Richard Trimble, and Gareth Boyd, the plaintiff's Chief Executive Officer, reached agreement for the supply of two bespoke products. Mr Boyd's evidence was that when the agreement was entered into in relation to the composition of the bespoke products the prices were agreed with Richard Trimble at £145 and £149 for the two products. There were changes to the ingredients and changes to the prices from time to time and Mr Boyd's evidence was that agreement was reached with Richard Trimble as variations arose.

[12] The first defendant's evidence was that agreement on the prices of supplies was a matter for him and not for his son. He understood that the price of the general products was in the range of £133 to £135 and that was also to be the price of the bespoke products. The discussion between Mr Boyd and his son had been about the ingredients for the bespoke products. A new ingredient was being introduced that he believed was free of charge and therefore did not alter the price that previously applied. Mr Millar for the plaintiff pointed to the invoices issued from time to time in 2003 which showed the price which Mr Boyd said he had agreed with Richard Trimble. The first defendant said that this was the wrong price, that it was far too high, that he had shown it to his son who had agreed that it was the wrong price and that he had never agreed that price. He had agreed with the salesman, the second defendant, the price that was paid. Mr Boyd had led his son and thus himself to believe that the price would be the same as before. The first defendant described how in 2004 there had been an overall reduction in prices of £7 per ton and therefore he sought from the second defendant the same reduction in respect of the bespoke products, which brought the price down to £128. This reduction was agreed by the second defendant.

[13] Richard Trimble's evidence was that, while he had discussed the bespoke blends with Gareth Boyd in 2003, he had not discussed and had not agreed any price. He denied that Gareth Boyd had quoted him £144 and £149 for the bespoke products. He understood that the price would be that applied to the general products. That was the price agreed with the second defendant for the bespoke products. When the invoices stated the higher prices he thought that the invoices were wrong and that an ingredient, which he described as biofat, was being added into the invoice price by the plaintiff, this being an accounting exercise by the plaintiff that did not impact on the price agreed with the second defendant.

[14] The first defendant paid the reduced price for the bespoke products to the plaintiff in 2003 and this was accepted by the second defendant on behalf of the plaintiff and no issue was raised by the plaintiff. This continued into 2004 when the first defendant and the second defendant agreed the further reduction of £7 per ton in line with the general reduction in prices. From that time the first defendant paid the reduced price for the bespoke products and this was accepted by the second defendant on behalf of the plaintiff and the plaintiff appears to have been unaware of the arrangement until 2006.

[15] The burden is on the plaintiff to prove the case on the balance of probabilities. I am not satisfied that there was an agreement reached in 2003 when the bespoke products were introduced that the prices would be £145 and £149 per ton. This may have been mentioned but I am satisfied that the first defendant agreed with the second defendant that payment would be made and accepted at the discounted rate, being the same price as other products of £135

per ton, subsequently reduced in 2004 to £128 per ton by further agreement with the second defendant.

[16] An added feature of the discussions about the bespoke products may have been that tests were being carried out by the plaintiff, although the plaintiff's representative stated that the testing was in 2005/2006 and did not impact on the arrangements for the bespoke products. Whether as a test ingredient or otherwise I am satisfied that the first defendant believed that there was a free of charge ingredient being included in the bespoke blends. I am satisfied that Richard Trimble did not agree any price that may have been mentioned as he left it to his father to agree the prices for the supplies. I am satisfied that the first defendant did not agree the invoiced prices and indeed it is not suggested that the prices were discussed with him. I am satisfied that there was confusion occasioned by the roundabout arrangements for the supply of the bespoke products. Ultimately the first defendant agreed the price with the second defendant. When the invoices came in with the higher price the first defendant agreed with the salesman that the price that they had agreed was the price that was to be paid and that is the price that was paid. When prices changed in 2004 it was agreed with the second defendant that the price would be £128 per ton.

[17] The second defendant was giving discounts on the price that the plaintiff invoiced. The first defendant was entitled to believe that the second defendant had authority to agree to the discounts that were being offered. The second defendant was marking the adjusted totals on the invoices and the first defendant was entitled to believe that they were being processed by the plaintiff as indeed they must have been. No issues were raised with the first defendant. Statements were being issued showing the full amount that was due and I am satisfied that at some stage some of those statements were produced to the first defendant and they reflected the difference between the invoiced price and the price paid.

[18] In 2005 the extent of disclosed discounts emerged as an issue for the plaintiff. The second defendant agreed that he had been giving the first defendant cash discounts, as noted on the receipts, which were beyond the permitted discounts. The second defendant did not at that stage reveal to the plaintiff that he was also giving the additional undisclosed discounts and that remained undiscovered by the plaintiff for a further year.

[19] When the disclosed discounts issue emerged in 2005 the plaintiff also queried with the second defendant the state of the first defendant's account. The account was of course in debit as the first defendant had been paying less per ton than the plaintiff had invoiced, as agreed with the second defendant. The second defendant's explanation to the plaintiff was that the first defendant was making payments on account and he, the second defendant, undertook to

arrange with the first defendant for the account to come into balance and that was accepted by the plaintiff at that time.

[20] In September 2005 Gareth Boyd visited Richard Trimble. His evidence was that he discussed the bespoke blend price of £142 per ton. The breakdown of the price was said to have been given in relation to cost, haulage and profit. Richard Trimble did not tell Mr Boyd that the second defendant had agreed that the price was actually £128 per ton. On the other hand Richard Trimble's evidence was that there was no meeting at which the price of the bespoke products was discussed. The full price may have been mentioned but as it was believed that there was a free of charge ingredient and the price had been agreed with the second defendant I am not satisfied that any such exchanges were such as would have alerted Richard Trimble to the plaintiff's position.

[21] The plaintiff's year end for accounting purposes is 30 September. In 2006 the first defendant had run up a large deficit and the plaintiff decided that the account should be suspended. I am satisfied that the first defendant was not told that his account had been suspended. The account was shortly reinstated. Around this time the second defendant disclosed to the plaintiff that he had been giving the additional discounts to £128 per ton. The second defendant was suspended from his employment with the plaintiff. There was an employment disciplinary hearing on 18 October 2006. Ultimately the second defendant left the plaintiff's employment.

[22] In October 2006 Gareth Boyd and Keith Agnew, as representatives of the plaintiff, attended at the first defendant's farm in order to investigate what they had now discovered about the discounts given by the second defendant. The visit was described by Mr Boyd as an exploratory visit and they sought to reconcile the figures in the first defendant's account. The plaintiff issued a written confirmation in October 2006 that the higher price which had previously been invoiced for the bespoke blends was the price that would be charged. There was a further meeting on the farm on 4 December 2006 which Gareth Boyd and Stephen Burrell attended. At that meeting there was discussion about the monthly statements that had been provided by the plaintiff to inform the first defendant that there was a growing deficit on the account. The first defendant said he was not aware that there had been any statements provided. He produced a bundle of papers relating to the plaintiff. Included in the papers were some statements and Mr Boyd said he noted a statement of February 2006 which had a balance due to the plaintiff in excess of £30,000. Mr Burrell also gave evidence that he was present when this happened and that the first defendant's son held his head in his hands when he saw the statement. Mr Burrell interpreted that action as an indication that Richard Trimble was distressed about being found out about the true state of the account. He said that the papers included a statement of February 2005, a different year to that noted by Mr Boyd, with a deficit of £37,000. Undoubtedly the first defendant and his son were shocked when this was revealed, whether

because they had been found out, as the plaintiff thought, or because they had not known the true state of the account, as they suggest.

[23] The second defendant left the plaintiff's employment and joined another feed supplier, McLarnons, and remarkably the same exercise developed with McLarnons in that the second defendant began to give unauthorised discounts to the first defendant. The second defendant lost his job at McLarnons. Checks were made by the plaintiff as to whether the second defendant had conducted this exercise with any other client. He had not. Checks were made by McLarnons to find out whether the second defendant had undertaken such an exercise with any of their other client. He had not.

[24] The second defendant's explanation to the plaintiff for the discounts agreed with the first defendant was that he felt under commercial pressure. The first defendant was a large customer of the plaintiff. The second defendant did not want to lose his custom. The first defendant obviously tried to obtain the best deal he could from the feed supplier. The second defendant did not suggest to the plaintiff that there was any improper pressure applied by the first defendant to achieve the agreement that was reached on the discounted price per ton. The plaintiff's Counsel asked the first defendant if there was any reason why the second defendant should afford him this particular discount and only him. None was suggested by the first defendant and none was suggested to the first defendant by the plaintiff. There is no evidence of any irregular relationship between the second defendant and the first defendant. I proceed on the basis that legitimate commercial pressures were applied by the first defendant in the sense that he tried to obtain the best price he could for the supply of the bespoke products and that he was in a strong position because he was a very substantial customer.

[25] I am satisfied that the first defendant was entitled to conclude that the second defendant had apparent authority for the discounts agreed with the first defendant and that while those discounts were unauthorised they were not known to be so by the first defendant.

[26] The question arises as to whether there was a point at which the first defendant had notice or ought to have known that the second defendant had no authority to agree the discounts. I am satisfied that when the ingredients were agreed and the bespoke products were supplied from 2003 the first defendant did not know and ought not to have known that the second defendant did not have authority to agree the price that was agreed and the plaintiff is bound by the agreements reached at that time. I am satisfied that the position is the same when the first defendant and the second defendant agreed the further reduction in the price of the bespoke products in 2004.

[27] The first defendant had payment receipts from the second defendant which included discount boxes that did not record the reduced price per unit.

The discount boxes did show the rounding down of the totals due. I do not accept that the entries on the receipts were such that they ought to have alerted the first defendant to any lack of authority for the reduced price per unit being agreed with the first defendant.

[28] In addition the first defendant had statements from the plaintiff. I am satisfied that he did receive some statements from the second defendant if not all of them. The practice of sending the monthly statements through the salesman is obviously a weakness in the system and I understand that it is no longer the practice that is followed. It may well be the case that the second defendant did not furnish all the statements to the first defendant. However I am satisfied that the first defendant received a statement of February 2006 which stated a debt due to the plaintiff of £37,000. Mr Burrell gave evidence that the statement revealed at the meeting was for February 2005 but I am not satisfied that that was the date and conclude that it was a statement of February 2006 showing a debt of £37,000. That was a very substantial debt. It would have been received by the first defendant at the end of March 2006. The first defendant stated that he did not read the statement and he relied on his agreement with the second defendant. I am satisfied that in March 2006 when the first defendant received a statement that showed a deficit on the account of £37,000 that he must have turned a blind eye to the statement if he did not demand some explanation. The first defendant stated that he believed that there was no debt due to the plaintiff. Further inquiries were essential. I find that at this point the first defendant knew or ought to have known that the second defendant had no authority to authorise these discounts and if he had asked any questions of the plaintiff he would have found that out.

[29] Accordingly I find the first defendant to be liable for the full cost of the deliveries that were discounted to £128 per ton after 1 April 2006 namely the date on which I conclude that he ought to have made further inquiries about the account, having received the statement showing that he was in debit to the sum of £37,000. I will award interest on the amount calculated as due to the plaintiff.