

Mooting Brief

In the matter of ACME v. XYZ

Counsel: [REDACTED] and Tyler Trott for the Defendant

1. Introduction

- 1.1. May it please the Court, we are counsel for the Defendant, in this moot trial.
- 1.2. In this brief we will rely on law and argument to support our submission. In our submission, the Defendant's case should be granted because of the lack of disclosed agency, occurrence of vicarious performance, and privity of contract.
- 1.3. We will provide the moot court with a basis in fact and law for our submission.
- 1.4. Following our discussion of fact and law, we will apply the law to the facts in our argument section.
- 1.5. Following argument, we will conclude our submission.
- 1.6. A list of authorities we are relying upon is provided at the end of this brief.

2. Facts

- 2.1. The ACME Sheet Metal Company ("ACME") planned to add a new product to its line and required new, custom made equipment.
- 2.2. ACME contacted Ralph Evans, who advertised himself as an independent dealer in industrial machinery.
- 2.3. Evans told ACME representatives that he was a sales agent for XYZ Machinery Incorporated ("XYZ") and was able to order the equipment that ACME needed.
- 2.4. ACME signed an agreement with Evans, subject to confirmation by XYZ for the manufacture, sale and installation of the equipment.
- 2.5. ACME gave Evans a deposit for part of the price and a promissory note for the remainder.
- 2.6. Evans delivered the deposit money, the agreement, and the promissory note to XYZ.

- 2.7. The deposit and funds were accepted as payment by XYZ and the contract was approved by XYZ.
- 2.8. Delivery of the equipment was delayed beyond the time mentioned in the agreement and XYZ never indicated that it did not consider itself bound by the terms of agreement signed by ACME.
- 2.9. The machinery was eventually delivered and installed by XYZ.
- 2.10. The equipment was found to be unsatisfactory and unable to perform to the specifications.
- 2.11. ACME contacted XYZ to repair or replace the equipment, but XYZ claimed it had no contract with ACME.
- 2.12. XYZ claimed to only have a contract with Evans.
- 2.13. XYZ accepted responsibility for business dealings with Evans and denied any liability to ACME.

3. Law

3.1. Contract

3.1.1. The elements of a valid contract are:

- 1. “An intention to create a legal relationship
- 2. Offer
- 3. Acceptance
- 4. Consideration
- 5. Capacity to contract
- 6. Legality”¹

3.2. Disclosed Agency

3.2.1. In Chapter 12 of Contemporary Canadian Business Law: Principles and Cases, it states, “[T]he agent must clearly indicate to the third party that he or she is acting only as an agent, and will usually identify the principal for whom he or she acts. This is normally done by the agent signing the principal’s name on the agreement and adding his or her own, together with words to indicate that the signature is that of the agent only.”²

3.3. Vicarious Performance

- 3.3.1. In Chapter 12 of Contemporary Canadian Business Law: Principles and Cases, it states that vicarious performance is “a performance of a contract by a third party, where the contracting party remains liable for the performance.”³
- 3.3.2. In all cases, the primary liability rests with the contractor if the work is done improperly. The unsatisfied party to the contract would not sue the person who actually performed the work, but would sue the contractor.

3.4. Condition precedent

- 3.4.1. Condition precedent is “a condition that must be satisfied before a contract may come into effect.”⁴

3.5. Privity of contract

- 3.5.1. “A person cannot incur liability under a contract to which he or she is not a party.”⁵

4. Argument

4.1. Lack of Disclosed Agency

- 4.1.1. Given the facts (section 2), Ralph Evans indicates to ACME that he is acting only as an agent stating, ‘he was a sales agent for XYZ Machinery Incorporated (“XYZ”) and was able to order the equipment that ACME needed’. However, what was not noted or brought to the light upon signing this agreement was if Ralph Evans utilised any form of *per procurationem*, which means “on behalf of another”, or in agency law, “by his agent”.
- 4.1.2. It was not specifically stated in the agreement that Ralph Evans is only acting as an agent for another. The counsel for the plaintiff has no evidence to support the claim of Disclosed Agency. Upon signing this agreement, Evans assumed all responsibility for the performance and delivery of the equipment to ACME, regardless of principal.

4.2. Vicarious Performance

- 4.2.1. Detailed earlier in section 2, ACME signed an agreement with Ralph Evans. This agreement being the production, sale and installation of custom-made equipment (subject to confirmation by XYZ Machinery Incorporated). Ralph Evans, as an independent dealer, was in no way capable of producing this custom-made equipment himself, requiring him to utilise a third party to carry out this task for him. Evans delivered the deposit money, the agreement, and the promissory note

to XYZ, which were all accepted, in addition to approving the contract between themselves and Evans.

- 4.2.2. Entering into the agreement with XYZ gave Ralph Evans primary liability as he is the original contractor who agreed to perform certain work with ACME. Through vicarious performance, this deems him responsible for the task being carried out by XYZ. This responsibility includes ensuring that the equipment being manufactured was produced at a satisfactory level according to ACME's guidelines/expectations, in addition to ensuring the timely delivery of the equipment. What this means is that XYZ is not liable for the quality of equipment produced and the timely manner in which it was delivered.

4.3. Privity of Contract

- 4.3.1. XYZ had never signed a contract with ACME. The offeree, ACME, signed an agreement with the offeror, Mr. Evans, which contained the condition precedent that XYZ must approve the manufacture, sale and installation of the equipment. The contract that ACME signed with Mr. Evans remained in a state of suspension until confirmation was received from XYZ. It was at this point that the contract between Mr. Evans and ACME was legally binding between only those two parties. Since XYZ is not a party to this contract, they cannot incur any liability for obligations in the agreement, which is outlined by the common law doctrine of privity of contract.
- 4.3.2. The deposit money, agreement, and promissory note that Mr. Evans gave to XYZ was necessary for XYZ to decide if they would sell, manufacture and install their equipment for Mr. Evans. This fact does not make them a party to a contract with ACME.

5. Conclusion

The defendant, XYZ Machinery Incorporated, will win this case for the three reasons presented in our arguments. To summarise these points:

- 5.1. Ralph Evans, an independent dealer, indicated he was acting as an agent for XYZ Machinery Incorporated. However, the agreement between himself and ACME didn't explicitly clarify if he was acting "on behalf of another" (per procuracionem). This lack of specification makes Evans assume full responsibility for performance and delivery, regardless of principal.

- 5.2. Evans agreed with ACME for custom-made equipment pending XYZ's confirmation. While Evans couldn't produce the equipment, his involvement with XYZ to facilitate this led to primary liability. This meant he was responsible for ensuring satisfactory production and timely delivery, with XYZ not directly liable.
- 5.3. ACME signed an agreement with Evans, pending XYZ's approval for manufacturing, sale, and installation. Until this confirmation, the contract between Evans and ACME remained in suspension. Since XYZ didn't directly contract with ACME and their approval was a condition precedent, they are not a party and therefore not liable under the doctrine of privity of contract. For these reasons, the defending counsel respectfully urges the Court to see the law be applied suitably and find XYZ free from any liability in this case.

6. List of Authorities

1. *Contemporary Canadian Business Law, Principles and Cases*, Willes, John A., Q.C., and Willes, John H., 12th edition, p. 135.
2. Ibid. p. 321
3. Ibid. p. 253
4. Ibid. p. 214
5. Ibid. p. 246