

516.05 AGENCY IN CONTRACT—AUTHORITY OF GENERAL AGENT—ACTUAL OR APPARENT.

NOTE WELL: This instruction applies when there is an issue as to the authority of an agent to bind the principal as to a particular matter. It should be used only in those cases where the existence of some form of agency has been established (either by stipulation, admission or a finding of fact) but a question remains as to the authority of the agent to bind the principal on the particular matter.

This (*state number*) issue reads:

“Was (*name agent*) authorized to (*describe act, e.g., contract for the purchase of a building*) on behalf of (*name principal*)?”¹

The burden of proof on this issue is on the plaintiff. This means that the plaintiff must prove that in (*describe act*) (*name agent*) was acting within the scope of actual authority or apparent authority.

[It has been [stipulated] [admitted] [established] [agreed]] [If you have answered the preceding (*state number*) issue “Yes”, it has been established]² that (*describe stipulated or judicially admitted facts or facts established from preceding issue in just enough detail to show an agency; e.g., “John Jones was employed by the defendant as the general manager of his furniture plant”*).] In this situation the relationship between (*name agent*) and (*name principal*) is called an “agency.” An agency is a relationship where one person is empowered to take certain action on behalf of the other person.³ In such situations the person granting the authority to another to act on [his] [her] behalf is called the “principal.” And the person who is authorized to act on behalf of such principal is called the “agent.” When an agent acts on behalf of the principal, then the principal is bound by such act, so long as the agent

has not exceeded [his] [her] authority. The act of the agent is treated in law as the act of the principal. However, a principal is not bound by the act of an agent unless that act falls within the scope of authority, actual or apparent, granted by the principal to the agent.⁴ In order to determine the authority of an agent, it is necessary to look to the conduct and declarations of the principal. An agent may not extend [his] [her] authority by [his] [her] own conduct standing alone and in the absence of conduct or acquiescence on the part of the principal.

The authority of the agent to act with respect to a particular matter may be actual, or it may be apparent.

“Actual authority” exists where the principal has actually authorized the agent to act on the principal’s behalf with respect to a particular matter. It is that authority which the agent reasonably thinks the agent possesses, conferred either intentionally or by want of ordinary care by the principal.⁵ It may be granted by the principal by word of mouth, or by writing, or it may be implied by conduct of the principal amounting to consent or acquiescence, or by the nature of the work that the principal has entrusted to the agent.⁶

“Apparent authority,” on the other hand, is the authority which the principal has held out the agent as possessing, or which the principal has permitted the agent to hold [himself] [herself] out as possessing.⁷ The scope of the agent’s apparent authority will be governed by what authority the third person, in the exercise of reasonable care, was justified in believing that the principal had conferred upon the agent.⁸ It includes all authority that is usually conferred upon an agent employed to transact the particular business. It includes the authority implied as usual and necessary to the proper

performance of the work entrusted to the agent, and it may be further extended by reason of acts indicating authority which the principal has permitted the agent to do in the course of employment.⁹ When the agent acts on behalf of the principal and within the scope of this apparent authority, the principal is bound even though the principal may not have intended to authorize the specific acts in question.¹⁰

However, the law of apparent authority applies only if the person dealing with the agent, such as the plaintiff in this case, reasonably relied upon the appearance of authority in the agent. Apparent authority does not exist where the person dealing with the agent knows of a limitation on the agent's actual authority.¹¹ It also does not exist if the circumstances are such as would cause a person of reasonable business prudence to make inquiry as to the agent's authority. (And if a [contract] [(*describe other action*)] is so clearly of an unusual or extraordinary character as to put a person of reasonable business prudence on inquiry, then the doctrine of apparent authority would not apply.)¹² "Reasonable business prudence" means that degree of care which a prudent person gives to important business.¹³

Finally, I instruct you on this (*state number*) issue on which the plaintiff has the burden of proof, that if you find by the greater weight of the evidence¹⁴ either: (1) that (*name principal*), by (*describe word, deed or implication*) granted (*name agent*) actual authority which included the authority to (*describe act*); or (2) that (*name principal*) (*describe evidence of extending authority*) and thereby held (*name agent*) out, or permitted (*name agent*) to hold [himself] [herself] out, as possessing authority which included the authority to (*describe act*) on behalf of (*name principal*), and that the plaintiff reasonably relied upon this appearance of authority in (*describe act, e.g.,*

"entering into the contract"), then it would be your duty to answer this issue, "Yes," in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue, "No," in favor of the defendant.

1. If there is no evidence of actual authority, or if there is evidence of actual authority but none as to apparent authority, make appropriate modifications to this instruction to fit the evidence in the case.

2. Use this language only if the jury is required to answer a preliminary issue of fact as to whether the principal employed or otherwise engaged the agent.

3. Where appropriate, substitute "corporation" or other term for "person."

4. See *Sullivan v. Pugh*, ___ N.C. App. ___, ___, 814 S.E.2d 117, 120 (2018) ("A principal will only be held liable to a third person for the actions of his agent 'when the agent acts within the scope of his or her actual authority; when a contract, although unauthorized has been ratified; or when the agent acts within the scope of his or her apparent authority . . .'" (quoting *First Union Nat'l Bank v. Brown*, 166 N.C. App. 519, 527, 603 S.E.2d 808, 815 (2004))). For an instruction on ratification, see N.C.P.I.-Civil 516.15 ("Agency-Ratification").

5. *Manecke v. Kurtz*, 222 N.C. App. 472, 475, 731 S.E.2d 217, 220 (2012) (quoting *Leiber v. Arboretum Joint Venture, LLC*, 208 N.C. App. 336, 346, 702 S.E.2d 805, 812 (2010)); see also *Harris v. Ray Johnson Constr. Co., Inc.*, 139 N.C. App. 827, 830, 534 S.E.2d 653, 655 (2000).

6. See *Manecke*, 222 N.C. App. at 475, 731 S.E.2d at 220 ("Actual authority may be implied from the words and conduct of the parties and the facts and circumstances attending the transaction in question." (quoting *Leiber*, 208 N.C. App. at 346, 702 S.E.2d at 812)); see also *Munn v. Haymount Rehab. & Nursing Ctr., Inc.*, 208 N.C. App. 632, 637–38, 704 S.E.2d 290, 295 (2010); *Phillips v. Rest. Mgmt. of Carolina, L.P.*, 146 N.C. App. 203, 217, 552 S.E.2d 686, 695 (2001); *Harris*, 139 N.C. App. at 830, 534 S.E.2d at 655.

7. See *Manecke*, 222 N.C. App. at 477, 731 S.E.2d at 221 (quoting *Branch v. High Rock Realty, Inc.*, 151 N.C. App. 244, 250, 565 S.E.2d 248, 253 (2002)) ("[Apparent authority] is that authority which the principal has held the agent out as possessing or which he has permitted the agent to represent that he possesses."); see also *Munn*, 208 N.C. App.

at 639, 704 S.E.2d at 295; *Heath v. Craighill, Rendleman, Ingle & Blythe, P.A.*, 97 N.C. App. 236, 242, 388 S.E.2d 178, 182 (1990).

8. *Manecke*, 222 N.C. App. at 477, 731 S.E.2d at 221 (quoting *Branch*, 151 N.C. App. at 250, 565 S.E.2d at 253) (“Pursuant to the doctrine of apparent authority, the principal’s liability is to be determined by what authority a person in the exercise of reasonable care was justified in believing the principal conferred upon his agent.”).

9. *Morpul Research Corp. v. Westover Hardware Inc.*, 263 N.C. 718, 721, 140 S.E.2d 416, 418 (1965).

10. The principal may be bound under the doctrine of apparent authority even if the principal has expressly forbidden the agent to do the act in question. *Id.* at 721, 140 S.E.2d at 419 (Under the doctrine of apparent authority, “the principal cannot restrict his liability for acts of his agent within the scope of his apparent authority by limitations thereon of which the person dealing with the agent has not notice.”).

11. See *Sullivan v. Pugh*, ___ N.C. App. ___, ___, 814 S.E.2d 117, 120 (2018), citing *Commercial Solvents v. Johnson*, 235 N.C. 237, 242, 69 S.E.2d 716, 720 (1952), for its limitation of the doctrine of apparent authority:

[The doctrine] may not be invoked by one who knows, or has good reason for knowing, the limits and extent of the agent’s authority. In such case, the rule is: Any apparent authority that might otherwise exist vanishes in the presence of the third person’s knowledge, actual or constructive, of what the agent is, or what he is not, empowered to do for his principal.

12. *Morpul*, 263 N.C. at 721, 140 S.E.2d at 418; *Chessom v. Richmond Cedar Works*, 172 N.C. 32, 32, 89 S.E. 800, 801 (1916).

13. *Cf. Holcombe v. Bowman*, 8 N.C. App. 673, 676, 175 S.E.2d 362, 364 (1970).

14. The burden of proving agency is upon the person attempting to hold the principal liable. Once agency is shown, the burden is upon the principal to show that the principal thereafter terminated or limited the agency. *Harvel’s Inc. v. Eggleston*, 268 N.C. 388, 394, 150 S.E.2d 786, 792 (1966); *Pac. Southbay Indus., Inc. v. Sure-Fire Distrib., Inc.*, 49 N.C. App. 172, 173, 270 S.E.2d 515, 516 (1980).

