

## UNDISCLOSED PRINCIPAL

### Dr. AbdelGadir Warsama Ghalib

Legally a principal may appoint an agent to finalize certain transactions on his behalf. Rules of agency applies to govern this relationship between the parties. Normally, the principal is known to the person (3rd party) dealing with the agent and the process is completed and each party is responsible as per the agency contract. However, in some instances, the principal may not wish to be known for certain reasons as he deems necessary. Herein, this principal is known as “undisclosed principal”.

A very old English case, *Watteau vs. Fenwick*, addresses the liability of an undisclosed principal. As per the facts, the plaintiff, *Watteau*, supplied cigars to certain party named the "Victoria". This establishment was operated by a man named *Humble*. Prior to that, he had operated the business on his own account, but in that year, he had assigned his interest to the defendants, *Fenwick*. However, *Humble* remained the manager and continued to operate the business as before and the license was held in his name.

The plaintiff supplied cigars to *Humble*. He was at all times unaware of *Fenwick's* involvement. Indeed, *Fenwick* had never given *Humble* any authority to act on their behalf. But when *Watteau* was not paid, he sued *Fenwick*.

The Court held that the defendants had held *Humble* out to the world as having general authority, and that they were therefore liable for the claim because of the implied authority thereby granted. The defendants appealed, Lord *Coleridge*, Chief Justice, dismissed the appeal. The Court held that once it is established that the defendant was the principal, then the ordinary rules of principal and agent apply, notwithstanding the fact that the relationship was unknown to the plaintiff. The principal is liable for acts of the agent, as long as those are usually confided to an agent of that character. This is true even though the agent was acting outside the scope of his actual authority.

Generally speaking, in agency law, an undisclosed principal is a person who uses an agent for negotiations with a third party who has no knowledge of the identity of the agent's principal. Often in such situations, the agent pretends to be acting for himself. As a result, the third party does not know to look to the real principal in a

dispute. In English law, the legal principle is that, where an agent acts for an undisclosed principal the position is "in much the same way as one who is disclosed".

The undisclosed principal concept often arises in the context of real estate transactions, where a buyer risks a seller being less inclined to sell land, risks a seller demanding a higher price, or risks a seller becoming a holdout if the seller knows or can guess the identity of the buyer or the buyer's intended purpose for the land which would afford the land a higher value.

The purchase of the land required to build the Walt Disney World resort in Florida was accomplished with agents working for Walt Disney Productions as their undisclosed principal. Over months, agents secretly working for Disney attorneys purchased 27,400 acres of Florida ranchland, swamp, scrub woods and road frontage for an average price of only R5.20 per acre (\$5 million total). It is unlikely that Disney would have been able to acquire the land except at prohibitively high prices of hundreds of thousands of dollars per acre had the sellers known their buyer's identity, given the prices at which nearby land sold after Disney completed its acquisitions and publicly announced its plan.

Under US law, an undisclosed principal may still be held liable to a third party who justifiably is induced to make a detrimental change in position, even if the agent lacked actual authority to act on behalf of the principal, so long as the undisclosed principal had notice of agent's conduct and that it might induce the third party to change its position, and the principal did not take reasonable steps to notify the third party of the facts. Even where an undisclosed principal has previously forbidden the agent to take some action or incur some debt, the undisclosed principal may be liable for the action or debt so long as the third party would reasonably believe the agent would have had the authority to take the action or incur the debt under the same circumstances had the principal been disclosed, i.e. so long as the transaction is in the usual course of business engaged in by the agent.

The law is clear with reference to the liability of the principal being disclosed or undisclosed for any reason whatsoever. Some people, may not like to be disclosed to take some advantage at the cost of the other, however, use to gut to know with whom you are dealing and who is behind him. This may turn the advantage to your benefit.