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# Principal and Agent: Apparent Authority: Sales of Stock and Agreements to Repurchase

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PRINCIPAL AND AGENT—APPARENT AUTHORITY—SALES OF STOCK AND AGREEMENTS TO REPURCHASE.—The defendant corporation, through its agent, who was duly authorized to sell stock, sold the plaintiffs, husband and wife aged 74 and 76 years respectively, 26 shares of preferred stock in the corporation at $100 a share. Each time the agent discussed the transaction with the plaintiffs he agreed with them that the corporation would repurchase the stock at any time the plaintiffs so desired, and their money would be returned in 10 days or two weeks after the repurchase was requested, less $2 per share on all stock turned in within one year and less $1 per share on all stock turned in within two years. This agent brought plaintiffs a letter written on the corporation's letterhead, addressed to the plaintiffs, and signed by the defendant corporation's investment representative. This letter was to the effect that the defendant had always maintained a market for its stock at the figures named by the agent and expected to do so indefinitely. Plaintiffs purchased the stock and their $2600 payment was turned over to the defendant by the agent. Three years later the plaintiffs tendered a return of all their stock to the defendant for repurchase and the defendant refused on the ground that this repurchase agreement had been made by their agent, and acknowledged by their investment representative, without any authority from the defendant. Plaintiff, in need of funds, sold the stock for $43 a share and brought action to recover the loss of $57 a share. The trial court gave judgment for the full amount sued for. On appeal, *held*, judgment affirmed; defendant's acceptance of the plaintiff's money was a sufficient ratification of the agent's agreement to repurchase. *Wright* v. *Iowa Power & Light Co.,* (Iowa 1937) 274 N.W. 892.

For the purposes of this discussion the corporation shall be considered solvent and not acting *ultra vires.* See 2 R.C.L. Supp. 405 & 431. The question presented by the instant case is whether a corporation can, after accepting and retaining the purchaser's money, repudiate a repurchase agreement made by their agent having actual authority to sell the stock, but being unauthorized to enter into any agreement binding the corporation to repurchase. In *Seifert* v. *Union Brass & Metal Manufacturing Company,* 191 Minn. 362, 254 N.W. 273 (1934), the defendant corporation's president without authorization made a written agreement that the corporation would repurchase any stock the plaintiff purchased and afterwards wished to resell, and the defendant accepted and retained the purchase money and subsequently refused to repurchase on the ground that the president was unauthorized to make such agreement. The court, deciding for the plaintiff, stated that since the agreement failed it was clear there was no contract and to prevent the defendant's unjust enrichment the plaintiff should recover the purchase price. There the court, unlike the court in the instant case, turned away from the difficult question of the defendant's liability under the unauthorized repurchase agreement, and by deciding that there was no contract of purchase was able to reach what it felt was the equitable decision by using the argument of unjust enrichment. In *Grace Securities* v. *Roberts,* 158 Va. 792, 164 S.E. 700 (1932), where the defendant corporation's vice-president entered into the repurchase agreement with the plaintiff buyer, and two years after accepting the plaintiff's money the defendant refused to repurchase, contending that such agreement was unauthorized, the court decided for the plaintiff on the ground that while the vice-president had no formal authority from the defendant, his agreement was known to the individual directors of the corporation and the defendant would not be allowed to repudiate such agreement on the ground that this agent was unauthorized. In a case where the facts are directly comparable to those of the instant case, *Murray* v.

*Standard Pecan Co.,* 309 Ill. 226, 140 N.E. 834 (1923), the court, reversing a judgment for the plaintiff purchaser, founded its reasoning upon the argument that the agent, making the repurchase agreement, was only a special agent having power to sell the stock, but was unauthorized to do more, and so far as the principal was concerned the sale was not conditional, and the court felt that retaining the purchase money was not a ratification of the agent's unauthorized agreement.

In comparing these three cases with the instant case it becomes evident that each case is characterized not only by its facts but by the reasoning used by the courts in each to reach what they feel is the equitable decision. The courts which found for the plaintiff purchaser seemingly were influenced by facts which were not "legally" important to the problem at hand. In the instant case the advanced age of the plaintiff's was a motivating factor in the court's decision, and in the two cases in which the repurchase agreement was made with the plaintiff by important officers of the defendant corporation the court took this point into consideration and decided that the plaintiff was entitled to recover what he had paid for stock in the defendant corporation. The "argumentative tools" used by the courts in all of the cases are varied, and this variance in the use of these tools, such as "special agent," "unjust enrichment," and "ratification," brings forth the point that the courts will decide where the equities lie and will then bolster the decision through the use of the "standardized" legal terminology. It should be noted that in the case where the court reached its decision through the strictest adherence to the usual legal arguments the resulting decision is in the minority.

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PRINCIPAL AND SURETY—APPLICATION OF PAYMENTS—LIABILITY OF SURETY.—This action is by a subcontractor upon a statutory bond intended to afford protection to materialmen and laborers who furnished materials or performed labor in the construction of a public building. The plaintiff sued the surety on the bond, the contractor, and its receiver to recover for services performed on school "No. 69." He had also done work for the same contractor on school "No. 49." The bond for that job was underwritten by another surety. It was contended by the defendant that the plaintiff had received money in payment for the work done on school "No. 69," and had wrongfully applied the money so received upon the payment of the prior account. The trial court entered a judgment on the verdict in the amount of $1,692.33 which was the amount determined to be still due and owing upon job "No. 69." On appeal, *held,* judgment affirmed. In the event of failure by debtor to designate, the creditor has the right to apply payments received to whatever debt he may choose. The finding of the jury that no direction was made by the debtor, is binding in absence of evidence grossly to the contrary. *Western & Southern Indemnity Co.* v. *Cramer,* (Ind. 1937) 10 N.E. (2d) 440.

The general rule is that where a debtor owes distinct accounts or debts and makes a voluntary payment of money, he may direct its application. Upon his failure to so designate the creditor may, and in the absence of either party to so designate, the law will apply it justly, usually in extinguishment of the first debt. *Born* v. *Union Elevator Co.,* 67 Ind. App. 97, 118 N.E. 973 (1918); *Stone* v. *Talbot,* 4 Wis. 422 (1855); *Milwaukee Boston Store* v. *Katz,* 153 Wis. 492, 140 N.W. 1038 (1913). Unless an agreement exists to the contrary payments in absence of designation must be applied to extinguishment of the indebtedness