

STOKOLOSA V WEEKS PEACOCK QUALITY HOMES PTY LTD [2000] SASC 266

Supreme Court of SA – 11 August 2000

FACTS

Stokolosas' reached an agreement with Pinnington (an employee of Weeks Peacock) to build a house on the Stokolosas' land to designs prepared by Pinnington.

Pinnington told Stokolosa that he had obtained the approval of Weeks Peacock to build the house for the agreed price of \$115,000. Stokolosas' therefore signed a building contract for the house and made two advance payments. Pinnington kept one advance payment for himself.

Rowland from Weeks Peacock later told the Stokolosas that there had been no contract as Pinnington was acting without authority to enter into a contract and that the house could only be built for a price of \$125,000.

Stokolosas accepted the repudiation of the contract made by Weeks Peacock and had another builder build a similar house.

ISSUES

1. Was the act of Pinnington within the scope of an agent acting with apparent or ostensible authority?
2. Would the contract entered by Pinnington be binding on Weeks Peacock notwithstanding the allegation of fraud?
3. Should the court award damages for loss of expectation despite the Stokolosas having mitigated the damage?

FINDINGS

Pinnington acting as sales consultant for Weeks Peacock was given authority to obtain approval of the management where necessary and enter into contracts with its customers. Since Pinnington's actions were within the scope of the role of a sales consultant he had apparent or ostensible authority to enter into contract with the Stokolosas to build their house.

There was a conditional contract formed between the parties. The fact that Stokolosa had made certain changes to the plan to build their house that was based on a display house did not constitute a counter offer.

Since the Stokolosas had a binding contract to build the house for \$115 000 but they were later told that the house could only be built for \$125,000 they were awarded \$10,000 for loss of bargain.

QUOTE

Gray J said:

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“An act of an agent within the scope of his actual or apparent authority does not cease to bind his principal merely because the agent was acting fraudulently and in furtherance of his own interests.”

IMPACT

A contract entered by an agent which is within the scope of his actual or apparent authority notwithstanding fraud or acts made in furtherance of his own benefit shall be binding on the principal.

The principal will therefore be liable for damages for loss of expectation and/or bargain if the terms of the contract are later changed to the detriment of the other party.

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