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VICTORIA PARK GOLF CLUB INC V BRISBANE CITY COUNCIL [2001] QSC 225

Supreme Court of Queensland – 29 June 2001

FACTS

The Council was the owner (on trust) of land used for a golf course. The golf club operated a clubhouse on the land and its members had entitlements to use the golf course. During the early 1990's the Council and the members of the golf club wanted to formalise their legal relationship. In April 1996 the Council adopted a recommendation that negotiations be conducted with the golf club for a lease of the land from the Council to the club and a separate agreement that the members of the club have some exclusive rights to use the golf course.

During 1999 a Mr. S acted on behalf of the Council in negotiations for the relevant contracts. The Council sent a document titled "Proposed Lease and Block Playing Times" to the club in September 1999 and a member of the club signed this document to state that the proposal would be put to members of the club. Other matters delayed a final decision about the future of the golf course but eventually in 2000 the Council decided to withdraw the document of September 1999.

The golf club sued for specific performance of agreements allegedly outlined in the document of September 1999.

ISSUES

Did Mr. S have authority to bind the Council and make a contract with the golf club?

The golf club argued that Mr. S had actual authority to bind the Council and if he did not have actual authority he had ostensible or apparent authority to bind the Council.

FINDING

The Council's recommendation of April 1996 only authorised Council officers to negotiate with the golf club and therefore Mr. S did not have actual authority. Also there was no evidence that the Council indicated to the golf club that Mr. S had authority to bind the Council and therefore Mr. S did not have ostensible or apparent authority to bind the Council.

The Court also found that the document of September 1999 was not sufficient evidence of a concluded agreement.

QUOTE

Moynihan J said:

"...[O]stensible or apparent authority arises from a representation made or permitted by a principal to a third party that an agent has authority.

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The agent is essentially an agent to the transaction. ...

This case is not an example of a corporate principal permitting an employee or officer to enter into contracts in the ordinary course of its business so founding an inference that he is authorised to do so."

IMPACT

The golf club failed to prove that it was reasonable for it to believe or assume that Mr. S had authority to bind the Council. Relevant factors included: (1) that this was not the case of a corporate principal permitting its officers to enter into contracts in the ordinary course of business; (2) the unusual and important nature of the transaction.

Readers will be aware that corporate principals (particularly large companies) often develop internal procedures to prevent officers entering into contracts above specified amounts (e.g. without first seeking the approved of the contracts manager). If an errant officer enters into a contract outside those procedures, the company may nevertheless be exposed. The other party may be able to claim that the officer had ostensible authority to enter into the contract.

Companies should always be vigilant to this prospect and ensure that officers are kept regularly informed of authority limits and the potential consequences of exceeding them (e.g. through regular training).

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