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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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PELLEGRINO, J., dissenting. I respectfully disagree with the conclusion of the majority that the trial court's finding, that ''[the defendant, Schaller Subaru, Inc. (Schaller)] was the agent of [the defendant, Subaru Auto Leasing, Ltd. (Subaru Leasing)] for the limited purpose of executing the leasing documents,'' was clearly erroneous. Because the trial court's interpretation of the power of attorney provision in the dealership agreement is a wholly plausible one that finds further support in the surrounding facts and circumstances evident from the record, I believe that the majority improperly has substituted its judgment for that of the trial court in contravention of the highly deferential standard of review governing appellate resolution of this issue. Moreover, for reasons explained herein, I do not agree with the majority's reliance on decisional law from other jurisdictions, which I believe has limited applicability to the matter at hand.

I begin by reemphasizing the applicable standard of review. It is not disputed that Schaller was Subaru Leasing's agent for at least some purpose. Rather, it is the precise scope of Schaller's authority to act on Subaru Leasing's behalf that is at issue. ''The nature and extent of an agent's authority is a question of fact for the trier where the evidence is conflicting *or where there are several reasonable inferences which can be drawn*.'' (Emphasis added; internal quotation marks omitted.) *Updike, Kelly & Spellacy, P.C.* v. *Beckett*, 269 Conn. 613, 636, 850 A.2d 145 (2004). Additionally, when making its findings as to Schaller's agency, the trial court focused in substantial part on the power of attorney provision in the dealership agreement between Schaller and Subaru Leasing, which, it seems fair to say, is to some degree ambiguous. Where contract language is ambiguous, the question of its meaning similarly is a factual one for the trier.[1] *Cantonbury Heights Condominium Assn., Inc.* v. *Local Land Development, LLC*, 273 Conn. 724, 738, 873 A.2d 898 (2005); see also *Gingras* v. *Avery*, 90 Conn. App. 585, 590, 878 A.2d 404 (2005) (''[w]hen . . . contract provision[s] are internally inconsistent, a question of fact is involved'' [internal quotation marks omitted]). Accordingly, regardless of whether the trial court's finding is viewed as a determination of the scope of the agency at issue, or of the intent underlying a contractual term, this court reviews it only for clear error.

The law governing this limited appellate review is clear. ''A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.

. . . Because it is the trial court's function to weigh the evidence and determine credibility, we give great deference to its findings.'' (Internal quotation marks omitted.) *McBurney* v. *Cirillo*, 276 Conn. 782, 815–16, 889 A.2d 759 (2006). In reviewing factual findings, ''[w]e do not examine the record to determine whether the [court] could have reached a conclusion other than the one reached.'' (Internal quotation marks omitted.) *In re Jeisean M.*, 270 Conn. 382, 397, 852 A.2d 643 (2004). Instead, we make ''every reasonable presumption . . . in favor of the trial court's ruling.'' (Internal quotation marks omitted.) Id.

In rejecting the trial court's interpretation of the power of attorney provision in the dealership agreement, which expressly defines the scope of Schaller's authority to act on behalf of Subaru Leasing, the majority faults the court for focusing exclusively on the initial part of the provision, while purportedly disregarding qualifying language in the latter portion thereof. The majority then proceeds, however, to employ a similarly limited analysis by looking only to the qualifying language without exploring whether that language sensibly can be read to apply to the entire power of attorney provision, in particular, to the part the trial court found controlling.

The power of attorney clause, in its entirety, provides as follows: ''[Subaru Leasing] hereby appoint[s] and grant[s] to [Schaller] Power of Attorney *to execute and file on [Subaru Leasing's] behalf Leases approved by and sold to [Subaru Leasing],* and any and all statements or other documents required to b[e] filed under the Uniform Commercial Code, or any other law or regulation, *in connection with the title of [Subaru Leasing] in or to any Lease and Vehicle subject thereto*.'' (Emphasis added.) Pursuant to the majority's holding, the actions that are enumerated as within Schaller's delegated powers are authorized only when performed in conjunction with the titling of a vehicle. Put otherwise, the second italicized phrase is held to qualify all that is stated previously, including the first italicized phrase. In my view, such a reading of the power of attorney provision is not reasonable. If read as the majority suggests, Schaller's authority to execute leases would apply only in connection with titling vehicles. Leases are not required to be executed for the titling of vehicles. Rather, the only leases contemplated in the course of this litigation are those executed by Schaller and its customers, such as the named plaintiff, Steven Wesley.[2] Clearly, the execution of those leases occurs wholly apart from the titling of vehicles, which renders illogical the interpretation of the provision advanced by the majority.

In light of that circumstance, I would defer to the perfectly reasonable construction of the power of attorney provision at which the trial court arrived. Implicit

in that construction is the court's determination that the qualifying language at the end applies only to the second portion of the provision. With numbers inserted for clarity, the provision would read as follows. "[Subaru Leasing] hereby appoint[s] and grant[s] to [Schaller] Power of Attorney to execute and file on [Subaru Leasing's] behalf, [1] Leases approved by and sold to [Subaru Leasing], and [2] any and all statements or other documents required to b[e] filed under the Uniform Commercial Code, or any other law or regulation, in connection with the title of [Subaru Leasing] in or to any Lease and Vehicle subject thereto." Stated simply, I would conclude that the power of attorney provision authorized Schaller to execute leases with customers following Subaru Leasing's approval and then file those leases with Subaru Leasing after assignment, and to complete and submit all of the legally required paperwork when titling leased vehicles. I observe that this interpretation of the power of attorney provision is fully consistent with the testimony of Charles Smith, lease operations manager for Subaru Leasing.[3]

The majority finds additional support for reversing the trial court's factual finding by analyzing the course of dealing between Subaru Leasing and Schaller. Relying in part on testimony not explicitly credited by the trial court, it reasons that Schaller was not obligated to assign the lease executed by Steven Wesley to Subaru Leasing, but in fact was free to approach any competing financing company for that purpose. In my view, the majority's focus is on an irrelevant stage of the lease transaction. I agree that, at the very outset of a proposed transaction with a customer, Schaller is not required to approach Subaru Leasing for the financing of a lease of a Subaru vehicle. Pursuant to the terms of the dealership agreement, however, once Subaru Leasing approves a proposed lease transaction (as was the case here, at the pertinent time), Schaller agrees to assign that lease to Subaru Leasing and Subaru Leasing is required to accept it, provided certain conditions are satisfied.

Specifically, pursuant to the second paragraph of the dealership agreement, which governs lease procedures, Schaller must have all prospective lessees complete Subaru Leasing's credit application and submit it to a designated office. At that point Subaru Leasing, "in its sole and exclusive discretion, [may] approve the application of any proposed Lessee submitted by [Schaller] and which conforms to the terms and conditions established by [Subaru Leasing] ('Approval'). [Subaru Leasing] incurs no obligation to [Schaller] *until such Approval is given*." (Emphasis added.) The paragraph provides further that "*[u]pon receipt of the Approval, [Schaller] shall have Lessee execute a Lease* and all other documents requested by [Subaru Leasing], which conform in form and substance to the transaction con-

templated by the Approval, *and sell such Lease and related Vehicle to [Subaru Leasing]*.'' (Emphasis added.)

This court has held that the use of the word ''shall'' in a contract signifies a mandatory directive. *A. Dubreuil & Sons, Inc.* v. *Lisbon*, 215 Conn. 604, 610–11, 577 A.2d 709 (1990). Thus, pursuant to the aforementioned provision, once Subaru Leasing approved Steven Wesley's credit application, Schaller was required to have him execute a lease and, thereafter, to sell that lease to Subaru Leasing. ''An essential ingredient of agency is that the agent is doing something at the behest and for the benefit of the principal.'' *Leary* v. *Johnson*, 159 Conn. 101, 105–106, 267 A.2d 658 (1970). Further, a fair implication of the statement that Subaru Leasing ''incurs no obligation to [Schaller] until . . . Approval [of a lease] is given,'' is that after approval for a particular lease *is* given, Subaru Leasing was obligated to do something, namely, to purchase that lease once all of the requisite documentation is supplied. It necessarily follows that, once Subaru Leasing approved Steven Wesley's credit, Schaller was acting on Subaru Leasing's behalf in having him execute the leasing documents. It bears emphasizing that, under the unusual facts of this case, at the time Steven Wesley executed the document that he seeks to reform via this litigation, his lease already had been approved.[4]

Finally, I do not agree with the majority's reliance on case law from other jurisdictions to justify its resolution of an issue that is notoriously fact sensitive.[5] In particular, there is no indication from any of the cited decisions that a power of attorney provision similar to the one in the dealership agreement here governed the relations between the various dealers and financing companies. As one federal District Court has noted, in explaining the reluctance of other federal courts to grant class certification to plaintiffs wishing to pursue claims against defendant lenders and financing companies based on the actions of their purported agents, certification generally is inappropriate in that context ''because such an action would require a multitude of individualized, factual inquiries to determine whether an agency relationship existed in each particular case.''[6] *Coleman* v. *General Motors Acceptance Corp.*, 220 F.R.D. 64, 92 (M.D. Tenn. 2004); see also *Barboza* v. *Ford Consumer Finance Co.*, United States District Court, Docket No. 94-12352-GAO, 1998 U.S. Dist. LEXIS 14170, *13 (D. Mass. January 30, 1998) (''the nature of the [agency] relationship is not universally established but rather is set by the actual dealings between the individual borrower and individual broker'').[7] Because proof of an agent-principal relationship is highly dependent on the specific facts of each particular case, the decisions cited by the majority are of limited utility for resolving the claim of agency here.

Given the foregoing, I do not share the majority's ''definite and firm conviction that a mistake has been committed.'' (Internal quotation marks omitted.) *McBurney* v. *Cirillo*, supra, 276 Conn. 815–16. Accordingly, I would affirm the judgment.

[1] I assume the majority shares my assessment of the dealership agreement as ambiguous, because it does not state explicitly that it is construing that agreement as a matter of law. See, e.g., *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, 267 Conn. 279, 290, 838 A.2d 135 (2004) (''[w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law'' [internal quotation marks omitted]).

[2] I recognize that the lease at issue was made between Schaller, as lessor, and Steven Wesley, as lessee, and only thereafter was assigned to Subaru Leasing as lessor. Although, ''[a]s a general rule, a lease made by an agent of the lessor should be made in the name of his or her principal . . . if it appears from the contract that the agent is acting for the principal, the contract will be so construed.'' 2A C.J.S. 512, Agency § 228 (2003). Here, there are several indications on the face of the lease agreement that it was intended to be assigned to Subaru Leasing, and in fact such an assignment did occur, with the assignment process commencing simultaneously with the execution of the leasing documents.

[3] On redirect examination, the following colloquy occurred between the plaintiffs' counsel and Smith:

''[Plaintiffs' Counsel]: The question about the power of attorney, I understand your understanding of paragraph nine of the dealer agreement, that indicates that the dealer can register the cars and title them, but the dealer is also authorized to fill in the forms, the lease form itself and the credit application, among other forms, that you supply the dealer, isn't that right?

''[Smith]: Yes.

''[Plaintiffs' Counsel]: And in that connection, that would be those documents the dealer is authorized to fill in and execute and then file with you under the dealer agreement?

''[Smith]: Correct. The dealer completes the forms, the lease contract—

''[Plaintiffs' Counsel]: I just want to clarify that paragraph nine on the power of attorney is not limited only to registration, it's also involving the preparation of the Subaru lease form and the Subaru credit application, that they're authorized to do that and submit them to you if they choose to go through your leasing program?

''[Smith]: Correct. They would be the ones to complete the form, yes.''

Given this testimony, the court's interpretation of the power of attorney provision cannot be said to lack support in the record. I note further that ''[t]he existence of an agency relationship may be proved by the alleged principal's testimony, and the declarations of the alleged principal may be sufficient to establish the fact of agency or justify an inference thereof.'' 3 C.J.S. 98, Agency § 571 (2003).

[4] In this regard, the majority's chronology of the facts is imprecise and somewhat misleading. The opinion implies that Steven Wesley reviewed and signed the credit application *prior* to Subaru Leasing's approval of his credit, and that following approval, he executed the remaining lease documents. The court found, however, that the lease was approved before Steven Wesley returned to sign the associated paperwork on October 24, 2000, and the documentary evidence and testimony supports that finding. A faxed approval from Subaru Leasing to Schaller dated October 23, 2000, and bearing the date stamp ''10/23/00'' in the facsimile header, is part of the record, and Smith confirmed that approval had been faxed to Schaller on that date. Steven Wesley's signature on the credit application, which previously had been completed by Schaller's employees and sent to Subaru Leasing to secure the approval, is dated October 24, 2000.

[5] I note also that those cases, although accurately described by the majority as '' 'nearly universal in finding that auto dealers are not agents of auto financing companies' ''; quoting *Coleman* v. *General Motors Acceptance Corp.*, 220 F.R.D. 64, 93 (M.D. Tenn. 2004); are not especially numerous. My independent research has revealed little case law addressing this issue beyond the five cases discussed by the majority.

[6] A federal class action brought pursuant to rule 23 (b) (3) of the Federal Rules of Civil Procedure may not be maintained unless ''the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members . . . .''

[7] For the same reason, and also because of the narrow scope of agency found by the trial court and the unusual factual circumstances of the case, I believe that the concerns raised in the amicus curiae brief filed by the Association of International Automobile Manufacturers, Inc., over the effects that would flow from an affirmance of the court's judgment are exaggerated and overwrought.