

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

December 8, 1020

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**RE: Lighthouse Village Condominium Association, Inc. v. Cummins  
Electric, LLC and Sean Cummins  
C.A. No. S08C-04-008-ESB  
State Farm Fire & Casualty Company v. Cummins Electric, LLC and  
Lois Dustin  
C.A. No. S08C-09-012-ESB**

Dear Counsel:

This is my decision on the Motion for Summary Judgment filed by defendants Cummins Electric, LLC and Sean Cummins against plaintiffs Lighthouse Village Condominium Association, Inc. and State Farm Fire & Casualty Company in this case involving water damage to a number of condominium units in the Lighthouse Village Condominiums caused by a worker for the defendants.

**STATEMENT OF THE CASE**

Lighthouse filed a complaint against the defendants seeking compensation for property damage caused by Michael Hicks. Hicks worked for Cummins Electric. He was

installing cable television outlets in Lois Dustin's condominium unit when his drill punctured a water sprinkler line, causing water to flood Dustin's condominium unit and other condominium units in the Lighthouse Village Condominiums. Lighthouse alleges that Hicks was acting as an agent for Cummins Electric and Sean Cummins.

Dustin wanted several extra cable television outlets installed in her condominium unit. She approached a Cummins Electric van parked in a nearby townhouse development and asked the driver, who was Hicks, if he would install several cable television outlets in her condominium unit. Hicks said that he would. He gave Dustin a Cummins Electric business card and asked her to call him at his home number, which was handwritten on the card, to arrange for the installation. The van had the Cummins Electric name and phone number on the side. When Dustin called Hicks to schedule the installation, Hicks told her that he had discussed the installation with his boss, Sean Cummins, and that his boss had approved the work at the price of \$125 per outlet. Dustin agreed to the price. Hicks later came to Dustin's condominium unit wearing a Cummins Electric t-shirt to install the extra cable television outlets.

Hicks allegedly worked as an independent contractor for Cummins Electric. He worked under the direct supervision of Sean Cummins and was not permitted to work for himself or anyone else. Sean Cummins denied giving Hicks a Cummins Electric t-shirt and business card, but he did admit that the t-shirts and business cards may have been in the Cummins Electric van that he allowed Hicks to drive home. Sean Cummins also denied talking to Hicks about the work at Dustin's condominium unit.

## STANDARD OF REVIEW

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.<sup>1</sup> Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.<sup>2</sup> The Court views the evidence in a light most favorable to the non-moving party.<sup>3</sup> Where the moving party produces an affidavit or other evidence sufficient under Superior Court Civil Rule 56 in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.<sup>4</sup> If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.<sup>5</sup> If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.<sup>6</sup>

## DISCUSSION

The defendants argue that Hicks lacked both the actual and apparent authority to

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<sup>1</sup> *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

<sup>2</sup> *Id.* at 681.

<sup>3</sup> *Id.* at 680.

<sup>4</sup> Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

<sup>5</sup> *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 504 U.S. 912 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

<sup>6</sup> *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

bind them. Actual authority is that authority which a principal expressly or implicitly grants to an agent.<sup>7</sup> The defendants argue that Hicks had no actual authority to enter into a contract on their behalf with Dustin to install cable television outlets in her condominium unit. Their argument is based on deposition testimony given by Sean Cummins. He testified that Hicks was an independent contractor who had no authority to act on behalf of the defendants. The plaintiffs argue that Hicks had the actual authority to bind the defendants. Their argument is based on a statement made by Hicks to Dustin. He allegedly told her that he had discussed the installation with his boss, Sean Cummins, and that his boss had approved the installation at the price of \$125 per outlet. This would create a material issue of fact, making summary judgment inappropriate, if Hicks' statement is admissible. The plaintiffs have tried to locate Hicks for a deposition, but have been unable to find him. Both parties agree that Hicks' statement to Dustin is hearsay. The plaintiffs argue that it is an exception to the hearsay rule under Delaware Rule of Evidence 804(b)(3). I have concluded that it is not. This exception covers statements against interest. Hicks' statement is not against his own interest. It is against the defendants' interests because, if believed, it would subject the defendants to liability for Hicks' actions. Therefore, Hicks' statement to Dustin is inadmissible, leaving the only evidence on this issue being Sean Cummins' statement. He stated that Hicks had no authority to act on behalf of the defendants and that he never discussed with Hicks or authorized him to do the work in Dustin's condominium unit. Therefore, I will grant the defendants' motion for summary judgment on the issue of actual authority.

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<sup>7</sup> *Lind v. Schenley Industries, Inc.*, 278 F.2d 79 (3<sup>rd</sup> Cir. 1960).

The concept of apparent agency or authority focuses not upon the actual relation of a principal and agent, but the apparent relationship.<sup>8</sup> Manifestations by the alleged principal which create a reasonable belief in a third party that the alleged agent is authorized to bind the principal create an apparent agency from which spring the same legal consequences as those which result from an actual agency.<sup>9</sup> The manifestations may be made directly to the third party, or may be made to the community in general, for example, by way of advertising.<sup>10</sup> In order to establish a chain of liability to the principal based upon apparent agency, a litigant must show reliance on the indicia of authority originated by the principal,<sup>11</sup> and such reliance must have been reasonable.<sup>12</sup>

There is certainly enough evidence in the record to suggest that Hicks was an agent of the defendants. The defendants let Hicks drive a van to his house with the Cummins Electric name and phone number on the side. They left Cummins Electric t-shirts and business cards in the van, making it possible for Hicks to use them. This is ample evidence of indicia of authority suggesting that Hicks was an agent of the defendants because, as a practical matter, Hicks had all of the indicia of authority that Sean Cummins, the owner of Cummins Electric, had. There is also enough evidence in the record to

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<sup>8</sup> *Billops v. Magness Const. Co.*, 391 A.2d 196, 197 (Del. 1978).

<sup>9</sup> *Finnegan Construction Co. v. Robino-Ladd Co.*, 354 A.2d 142 (Del. Super. 1976).

<sup>10</sup> *Gizzi v. Texaco, Inc.*, 437 F.2d 308 (3<sup>rd</sup> Cir. 1971), *cert. den.*, 404 U.S. 829, 92 S.Ct. 65, 30 L.Ed. 2d 57 (1971); Restatement 2d Agency §§ 8, 8B, 27 (1957).

<sup>11</sup> *Bowman v. Home Life Ins. Co. of America*, 260 F.2d 521 (3<sup>rd</sup> Cir. 1958); Restatement 2d, Agency § 267.

<sup>12</sup> *Finnegan Const. Co.*, 354 A.2d 142.

establish that Dustin's reliance was reasonable. Hicks was, as I noted, driving a Cummins Electric van, dressed in a Cummins Electric t-shirt, carrying a Cummins Electric business card, and doing the kind of work that Cummins Electric does. Questions of apparent authority are questions of fact and are, therefore, for the jury to decide.<sup>13</sup> A reasonable person certainly could differ as to whether or not the defendants cloaked Hicks with apparent authority or whether Dustin's reliance thereon was reasonable.<sup>14</sup> Therefore, I will deny the defendants' motion for summary judgment on the issue of apparent authority.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office

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<sup>13</sup> *Billops*, 391 A.2d at 199.

<sup>14</sup> *Id.*