STATE OF MICHIGAN

COURT OF APPEALS

SHELDON SHACKET and SHEL DEVELOPMENT COMPANY, INC.,	UNPUBLISHED April 27, 2001
Plaintiffs-Appellants,	
v	No. 218791 Oakland Circuit Court
GERALDINE SHACKET and THE GERALDINE SHACKET TRUST,	LC No. 96-527143-CH
Defendants-Appellees.	

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the stipulated judgment for plaintiffs, which was entered pursuant to a settlement reached between the parties. Plaintiffs sought to prevent enforcement of the settlement on the ground that plaintiffs' attorney lacked authority to settle the case. We affirm.

The parties in this breach of contract action reached a proposed settlement, the terms of which were placed on the record in open court. At that hearing, plaintiffs' attorney informed the court that he had authority to agree to the terms of the proposed settlement. In reliance on this representation, the trial court indicated that it would accept the settlement. Plaintiffs subsequently retained new counsel and challenged the settlement, arguing that their first attorney was without actual authority to agree to it.[1] The trial court nevertheless entered judgment on the settlement, holding that plaintiffs' attorney had apparent authority in the matter.

An attorney does not have, by virtue of a general retainer, actual authority to settle a case on behalf of a client. *Henderson v Great Atlantic & Pacific Tea Co*, 374 Mich 142, 147; 132 NW2d 75 (1965); *Nelson v Consumers Power Co*, 198 Mich App 82, 85; 497 NW2d 205 (1993). Likewise, an attorney does not have implied authority to settle a case simply because the attorney

[1] Plaintiffs challenged the settlement by filing an objection to entry of the stipulated judgment. Our review of that pleading reveals that plaintiffs did not claim that their original attorney lacked authority to settle the case. Rather, plaintiffs claimed that the attorney lacked authority to approve specific settlement terms.

has been retained in the matter. *Wells v United Savings Bank of Tecumseh*, 286 Mich 619, 622; 282 NW 844 (1938). However, authority may be either actual or apparent. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 528; 529 NW2d 318 (1995). Apparent authority is defined as "the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons." Restatement Agency, 2d, § 8, p 30. Apparent authority arises where the principal's actions and conduct lead a third party to reasonably believe that the agent has actual authority. *Alar*, *supra* at 528.

This Court has recognized that an attorney may possess apparent authority to settle a case even where the attorney lacks actual authority to do so. In *Nelson*, *supra* at 84, the plaintiff sought to prevent enforcement of a settlement on the ground that the plaintiff's attorney lacked authority to agree to the settlement. This Court did not reach the issue whether the attorney had actual authority to settle the case. *Id*. at 87. Rather, this Court held that the attorney had apparent authority to settle the case, such that the defendant was entitled to rely on that apparent authority. *Id*. This Court adopted the following holding from *Capital Dredge & Dock Corp v Detroit*, 800 F2d 525, 530-531 (CA 6, 1986):

> Generally, when a client hires an attorney and holds him out as counsel representing him in a matter, the client clothes the attorney with apparent authority to settle claims connected with the matter. Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney for professional malpractice. The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement. [*Nelson*, *supra* at 89-90 (citations omitted), quoting *Capital Dredge*, *supra* at 530-531.]

On the basis of *Nelson*, the trial court in the instant case held that plaintiffs, by holding their attorney out as counsel to represent them in the matter, clothed him with apparent authority to settle the case. We review the trial court's factual finding regarding the scope of an agency relationship for clear error. *Michigan Nat'l Bank of Detroit v Kellam*, 107 Mich App 669, 678-679; 309 NW2d 700 (1981). We conclude that the trial court did not clearly err. Although plaintiffs' attorney may have lacked actual authority to enter the settlement agreement, that dispute need not be resolved in the instant case. Plaintiffs' remedy, if any, would be an action for professional malpractice. By holding their attorney out as counsel in this matter, plaintiffs clothed him with apparent authority to agree to the proposed settlement.

We recognize that the settlement approved by plaintiffs' former attorney may have run counter to plaintiffs' best interests and that enforcement of the settlement may appear inequitable. However, that appearance does not outweigh the interests served by the apparent authority doctrine. Allowing plaintiffs to rescind the settlement agreement approved by the former attorney would generally undermine the practice of settling disputes because it would encourage other dissatisfied litigants to similarly allege that their attorneys lacked authority to

settle claims. This "would result in an unworkable situation." *Capital Dredge*, *supra* at 532. Without the ability to rely on apparent authority, "[f]ear of a later claim that counsel lacked authority to settle would require litigants to go behind counsel to the opposing party in order to verify authorization for every settlement offer." *Id*. at 531. Thus, the apparent authority rule is consistent with Michigan's policy favoring settlement of disputes, *Stefanac v Cranbrook Educational Community (After Remand)*, 435 Mich 155, 163; 458 NW2d 56 (1990), and outweighs the equitable concerns raised by plaintiffs in the present case.

Plaintiffs argue that any apparent authority was negated when the court was informed that plaintiffs had not given their attorney actual authority to agree to the settlement. If a party has notice of a lack of authority, then that party may not rely on apparent authority to settle. *Nelson*, *supra* at 90, quoting *Capital Dredge*, *supra* at 530-531. However, at the time the settlement was agreed to and placed on the record, neither defendants nor the court were aware of any question about the attorney's authority. Thus, plaintiffs' argument is misplaced.

Finally, plaintiffs argue that the settlement is unenforceable due to the unconscionable advantage defendants had over plaintiffs, as well as misrepresentations made by plaintiffs' attorney to plaintiffs regarding the terms of the settlement. Plaintiffs' argument is based on an exception to the rule that a settlement agreement placed on the record in open court is binding. MCR 2.507(H); *Groulx v Carlson*, 176 Mich App 484, 488-489; 440 NW2d 644 (1989). However, because the trial court did not rely on that court rule, whether the settlement was binding pursuant to MCR 2.507(H) is not dispositive.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald