

STATE OF MICHIGAN
COURT OF APPEALS

ANDERSONS, INC.,

Plaintiff-Appellee,

V

CHAD CROTSEY,

Defendant-Appellant.

UNPUBLISHED

November 27, 2001

No. 226095

St. Joseph Circuit Court

LC No. 97-000646-CK

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant, a grain farmer, appeals as of right the trial court's order granting plaintiff grain purchaser's motion for summary disposition with respect to its complaint seeking an order compelling defendant to arbitrate a dispute. We affirm.

This case involves two separate contracts between plaintiff and defendant that obligated defendant to deliver a total of 14,000 bushels of corn. Plaintiff's agent, William Beier, negotiated the contracts' essential terms via telephone with Robert Fisher, defendant's agent. Shortly after each contract's telephone negotiation, plaintiff mailed defendant confirmations of the parties' agreements, which confirmations contained additional terms that the parties had not discussed, including that any contract-related disputes must be arbitrated before the National Grain and Feed Association. At plaintiff's urging, Rex Crotser, defendant's father, signed these confirmations on defendant's behalf.

Defendant contends that the trial court erred in granting plaintiff's motion for summary disposition because genuine issues of material fact exist regarding the enforceability of the arbitration provisions within plaintiffs' confirmation forms. We review de novo the trial court's summary disposition ruling. In reviewing a motion pursuant to MCR 2.116(C)(10),¹ we consider the pleadings and all relevant documentary evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant trial, or whether

¹ We note that because the trial court apparently considered evidence beyond the parties' pleadings, the trial court incorrectly cited subrule (C)(8), in addition to subrule (C)(10), in its order granting plaintiff summary disposition. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

the moving party is entitled to judgment as a matter of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

Defendant argues that genuine issues of material fact existed regarding whether (1) Fisher had authority to make representations to Beier that would bind defendant, (2) defendant's father had authority to sign the confirmations on defendant's behalf, and (3) defendant's father signed the confirmations under duress.

Defendant suggests that neither Fisher nor his father had authority to act on his behalf because he "never expressly or even impliedly communicated to [plaintiff] that anyone else had authority to sign contracts for him," and thus the purported agents' acts alone could not have established their apparent authority to act on defendant's behalf. An agency relationship may arise where there is a manifestation by the principal that the agent may act on the principal's behalf. Where no actual agency exists, a principal may be bound by the actions of an agent under the doctrine of apparent authority. Apparent authority arises where the acts of the purported agent lead a third party to reasonably believe that an agency relationship exists. However, apparent authority must be traced to the principal and cannot be established only through the acts of the agent. *Stokes v Millen Roofing Co*, 245 Mich App 44, 61; 627 NW2d 16 (2001).

After reviewing the record, we find that undisputed facts established that both Fisher and defendant's father had at least apparent authority to contract on defendant's behalf. Regarding Fisher's authority to act for defendant, both defendant and his father testified that at the time the instant contracts were entered Fisher routinely negotiated with plaintiff for both of them. Defendant's father paid Fisher for his services, and neither defendant nor his father ever disputed Fisher's authority to negotiate contracts for the sale of their crops. Fisher's authority is further evidenced by the facts that his name appears on the confirmations as the individual who negotiated with Beier, and by Beier's recollection that he regularly dealt with Fisher when negotiating contracts involving defendant and his father. We simply find no evidence whatsoever tending to establish that Fisher lacked the actual, or at least apparent, authority to negotiate with Beier on defendant's behalf.

Regarding defendant's father's authority to act for defendant, in addition to the two confirmations at issue in this case, defendant's father signed a third confirmation of a separate contract between plaintiff and defendant. Defendant fully performed under this third contract, the confirmation of which was dated only three days after the confirmation of the second contract involved in the instant dispute. Defendant also made a partial delivery of corn pursuant to one of the instant contracts, never questioning its enforceability on the basis of his father's confirmation signature, only indicating to Beier that defendant had insufficient production. Even after his father signed the confirmations of the two instant contracts, defendant obtained plaintiff's agreement to certain amendments of the contracts, but never took this opportunity to object to his father having signed the confirmations for him. Furthermore, Beier understood that defendant and his father had a marketing partnership.² Defendant and his father confirmed that they both

² Beier averred in his affidavit that "[d]uring the crop year in question, Rex Crotser's grain represented 90%, and Chad Crotser's grain represented 10%, of the total amount marketed by Robert Fisher for the Crotseres." The instant disputed contracts between plaintiff and defendant

(continued...)

discussed with Fisher the marketing of their crops, and that Fisher negotiated crop sales for both of them. Defendant's father paid Fisher for his services, while defendant in exchange performed various farm-related tasks for his father. Defendant and his father shared machinery and a business address, and at the time the parties entered the instant contracts defendant lived at home with his father. While defendant's father now asserts that he lacked authority to sign the confirmations, the record indicates that at no time did defendant's father notify plaintiff that he lacked this authority. Given these undisputed facts, we conclude as a matter of law that plaintiff reasonably believed that an agency relationship existed between defendant and his father.

Defendant next argues that his father's confirmation signatures were obtained by duress because plaintiff threatened to cease conducting business with defendant and his family unless someone signed the confirmations.³ Even accepting defendant's characterization of plaintiff's threats, defendant's claim of duress fails as a matter of law because absolutely no indication exists that plaintiff acted illegally in urging defendant's father to sign the confirmations. *Farm Credit Services of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 681-682; 591 NW2d 438 (1998) (holding that "[b]ecause defendants have not alleged that plaintiff acted illegally, their claim of duress is meritless," and explaining that "[f]ear of financial ruin alone is insufficient to establish economic duress").

We conclude that because unrebutted evidence demonstrated that defendant's father's confirmation signatures manifested defendant's acceptance of the additional arbitration terms contained therein, the trial court properly granted plaintiff summary disposition pursuant to subrule (C)(10) regarding plaintiff's demand for arbitration.⁴

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter

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reflected this arrangement; defendant pledged to deliver quantities of corn representing ten percent of the total amounts involved in the contracts between plaintiff and defendant and contemporaneously executed agreements between plaintiff and defendant's father.

³ To the extent that defendant repeatedly claims in his brief on appeal that plaintiff threatened to breach its existing contracts with defendant absent signatures on the confirmations, we note that this argument has absolutely no support in the trial court record.

⁴ In light of our conclusion, we need not address defendant's improperly presented arguments challenging the alternate basis for the trial court's decision, MCL 440.2207. See *Hilliard v Schmidt*, 231 Mich App 316, 318; 586 NW2d 263 (1998) (finding review of an issue inappropriate because the plaintiff failed to raise the issue in her statement of questions presented), overruled in part on other grounds in *Molloy v Molloy*, ___ Mich App ___; ___ NW2d ___ (Docket No. 224179, issued September 4, 2001).