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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-463

Filed: 19 January 2016

Martin County, No. 12 CVS 508

LUCAS & BEACH, INC., Plaintiff,

v.

AGRI-EAST GROUP, INC., Defendant.

Appeal by Plaintiff from Order & Judgment entered 12 December 2014 by Judge Wayland J. Sermons, Jr., in Martin County Superior Court. Heard in the Court of Appeals 7 October 2015.

Blanchard, Miller, Lewis & Isley, P.A., by E. Hardy Lewis, for Plaintiff.

Hornthal, Riley, Ellis & Maland, LLP, by M. H. Hood Ellis and Donald C. Prentiss, for Defendant.

STEPHENS, Judge.

Plaintiff Lucas & Beach, Inc. ("L&B") filed a complaint in Martin County Superior Court alleging claims for breach of contract or, alternatively, recovery in *quantum meruit*, against Defendant Agri-East Group, Inc. ("Agri-East"), based on Agri-East's failure to pay L&B a commission on the sale of certain real property in Beaufort County after allegedly entering into an oral agreement with L&B for brokerage services. The trial court entered an Order & Judgment granting summary

judgment in favor of Agri-East on both claims, from which L&B now appeals. We affirm the trial court's Order & Judgment.

Factual Background

Plaintiff L&B is a North Carolina-licensed real estate brokerage corporation based in Hamilton, and its owner and principal is William C. Beach. Defendant Agri-East is a North Carolina corporation that was formed in 1989 by the employees of a Greenville-based grain dealer, Fred Webb, Inc., to purchase a 6,464-acre tract of farmland that was previously known as the A.D. Swindell Farms and a grain elevator in Pantego, Beaufort County ("the Beaufort Property"). The Beaufort Property was Agri-East's only asset, and for approximately two decades, the funds it generated through leasing arrangements with local farmers served as a retirement plan for its shareholders. As the years passed, several of the original shareholders sold their interests to other shareholders, and by 2009, 99% of Agri-East's stock was owned by its officers—president Jeff Edwards, vice president Rick Webb, and secretary-treasurer Jim King—with the remaining 1% interest owned by the Beaufort Property's on-site manager Steve Fletcher. In addition, Edwards, Webb, and King subsequently formed Agri-South Group, LLC, a similar single-purpose, single-asset entity through which they acquired a 30% interest in a tract of farmland in Louisiana ("the Louisiana Property") in 2005.

In the summer or fall of 2010, Beach and his associate Robert L. James visited Agri-East's president Edwards at his office in Everetts and asked whether Agri-East might be interested in selling the Beaufort Property. Edwards told them, "[N]o, we don't have any interest in selling the farm," and later explained in his deposition testimony, "We didn't. This [was] our retirement plan."

In late 2010, Beach and James visited Agri-East's vice president Webb at the Fred Webb, Inc., office in Greenville to inquire whether he might have any property L&B could sell for a commission. Their initial conversation focused on the Louisiana Property, and Webb made clear that he and his partners in Agri-South "weren't going to list anything with a broker, but that if we got the right price that there was a chance that we would sell the property." Beach returned to visit Webb approximately six to eight times over a two-year period, and during their meetings, they discussed the possibility of L&B marketing various other properties in which Webb held an interest, including the Beaufort Property and several shopping centers. Regarding the Beaufort Property, Beach later testified that Webb told him, "We don't have anything for sale, but it is for sale. It's not publicly for sale, but if you bring something that we can't refuse, we want to look at it." According to Beach, Webb stated at some point during these conversations that Agri-East would pay L&B a commission of 4% of the sale price if L&B procured a buyer for the Beaufort Property or, alternatively, that if L&B found a buyer willing to pay over $4,500 an acre, Agri-East would pay

L&B the excess. However, Webb later testified that he and Beach never discussed any specific amount of compensation for L&B and that he told Beach that the amount would have to be negotiated after a buyer was procured. Beach testified that Webb refused to sign any listing or fee agreements because, as he told Beach, "We can't sign anything because we don't want it on—the market to know. You've got to do this quietly. Do not worry, I will make sure you get paid." James later testified that although he was aware Webb was not Agri-East's only principal, he and Beach dealt primarily with Webb because Webb told them he "had a trump card" over Edwards since "[Webb's] father made [Edwards] and that if we had a deal that was good enough, [Webb] would see that it was done."

On 21 October 2010, Webb gave permission by fax to Beach and James to obtain non-public crop information about the Beaufort Property. Webb also referred Beach to Agri-East's secretary-treasurer King in order to obtain tax and lease income information about the Beaufort Property. King kept an office at Fred Webb, Inc., in Greenville, and subsequently testified that he was present for portions of several of Webb's meetings with Beach but had very little involvement in their discussions about the Beaufort Property. According to King, the information he provided to L&B was publicly available and came from a spreadsheet he had previously prepared for other purposes and simply printed off after Beach approached him. King testified that although he was aware that L&B wanted to market the Beaufort Property, he would

never have authorized such an agreement and that he did not expect the information he provided to be used in preparing a sales package because "[Agri-East] didn't allow anybody to prepare [sales] packages. That was something we said you couldn't do, because then if you had a package out there, it would get out that the farm might be for sale."

In December 2010, L&B entered into an oral co-brokerage agreement to market both the Beaufort Property and the Louisiana Property with the owner and principal of Albemarle Land & Timber Services, Mark A. Williams. Williams never met with or spoke to any of Agri-East's officers, but he understood from his conversations with Beach that there was a 4% commission which they would split equally if they procured a buyer. Using maps, aerial photographs, and the information L&B had obtained from Webb and King, Williams compiled a sales package for marketing the Beaufort Property at $4,500 per acre, which he sent to several prospective buyers, including a contact at John Hancock Insurance Corporation. On 22 December 2010, at Williams' request, Beach sent an email to Webb "registering John Hancock as a prospective buyer" for both the Louisiana Property and the Beaufort Property.

On 23 February 2011, Williams sent a sales package to Bluestone Farms, whose owner James C. Justice, II, had recently purchased several tracts of farmland in Pasquotank County through his company, Alabama Carbon, LLC. Williams never

received any response from Justice or verification that he ever received the sales package, and later testified that it likely ended up "in the trash can." For his part, Justice testified that he never saw the sales package and confirmed that the person responsible for opening his mail likely threw it away immediately. Beach and James both testified that they subsequently emailed Webb to register Justice as a prospective buyer but, due to an alleged computer crash, neither could produce any such email during discovery and Webb had no record of receiving it.

On 18 March 2011, Jeremy King, who served as attorney for both Agri-East and Agri-South, sent an email, on which Edwards, Webb, and King were copied, to Beach and another real estate broker in order to clear up "misconceptions" surrounding Agri-South's "relationships with any brokers or agents on any proposed sale of any property in Louisiana." In his email, King explained that:

> To my knowledge, no entity has ever seriously considered entering into any listing agreement with regards to [the Louisiana Property]. This property has never been considered "for sale" and any representations to the contrary would be inaccurate. My clients have been approached numerous times by a variety of different brokers/realtors/agents/buyers/joint venture partners since they bought this land in 2005 and the response has always been the same: we will listen to reasonable offers and if we move forward on an offer and an agent is the procuring cause of the sale, we would protect the agent in the transaction. This is not the same as listing the property with an agent or having an exclusive right to sell. I have been operating under the impression that any broker is bringing a buyer and as such commission terms will be negotiated along with the contract.

> For any entity to enter into a binding agreement to sell their land, it would require a resolution of the members of the LLC. I know, because I drafted the LLC agreements and have drafted every single resolution since the entities were formed, including a unanimous resolution for each and every sale of land over the past six years. So for any entity to enter into a listing agreement, or a purchase and sale agreement, it will require an agreement executed by (in this case at least) a supermajority of members of each entity. That is a problem with the contract that was submitted on Tuesday. It cannot be binding by being signed by one member of the LLC. I think there will need to be at [least] 4 separate contracts—one for each entity. We would tie them together, of course. However, I digress. My point is that this property is not subject to any listing agreement that I know about and if anyone believes differently, they would be well advised to produce a written document that has been properly executed by the members of the entities—and that execution better be in compliance with the operating agreements of each entity, because I have no records of anything that would support that and I have specific evidence to the contrary. A central part of due diligence in any brokerage arrangement is determining who the principal is and who has authority to act on behalf of the principal. I do not mean any disrespect, I just think there is some kind of misinformation out there that this property has been listed for sale—and that would cause serious problems for most of the people copied on this email.

The same day, Beach replied to King's email in order to "inform all parties that we have never implied to anyone we had a listing agreement on part or any of [the Louisiana Property]." Beach later testified that he understood the same process for obtaining a brokerage agreement would apply to any dealings involving Agri-East and its principals Edwards, Webb, and King regarding the Beaufort Property.

Also in March 2011, Beach and James returned to Edwards' office, where they dropped off several listing and fee agreements with his secretary for Edwards to sign. Beach would later testify that these documents only pertained to the Louisiana Property, but Edwards testified that they also included a listing agreement for the Beaufort Property. In any event, Edwards grew irritated, refused to sign the agreements, told Beach and James that they were unprofessional and not "worthy enough to sell his property," and showed them the door. Beach later testified that he called Webb shortly thereafter, who assured him, "He's Jeffrey just being Jeffrey. Don't worry about it. I'll handle it."

Several months passed, and by late October or early November 2011, Williams had nearly given up on selling the Beaufort Property when he received a call from Elizabeth City resident Everett Larabee. Williams and Larabee had previously been involved in several real estate transactions together, and in early 2011, when Larabee had mentioned he was looking for property to purchase, Williams had sent him a sales package for the Beaufort Property consisting of information he received from Beach including aerial photographs, maps of the location, and rates for rents and taxes. At that time, Larabee had told Williams he was uninterested because the Beaufort Property was "too large" for his purposes. Larabee subsequently sold some of his family's land to a company controlled by Justice, whom Williams had unsuccessfully attempted to contact in February 2011. Larabee's primary point of

communication with Justice had been Jon Crouse, who had become acquainted with Justice after Justice purchased his father-in-law Jimmy Winslow's farm in 2010. Although Crouse was not a licensed real estate broker, he subsequently assisted Justice in purchasing properties for his burgeoning farming operation in and around Pasquotank County. When Crouse asked Larabee in late October 2011 if he knew of any farmland for sale in the area, Larabee contacted Williams to see if the Beaufort Property was still for sale. After getting in touch with Beach, who confirmed that the Beaufort Property remained available but the price had increased due to various factors including rising farm commodity prices and a possible windmill generator siting project, Williams sent Larabee an updated sales package, which Larabee then delivered to Crouse.

In early November, Crouse called Williams to ask about some of the information in the sales package that seemed out of date. Crouse subsequently informed Williams that Justice was interested in purchasing the Beaufort Property and wanted to schedule a tour. Williams was out of town, so he contacted Beach to see if he could contact Webb to arrange a visit, but Beach was unable to do so at that time. James later testified that he eventually reached Webb and asked him to grant permission for Justice to tour the Beaufort Property. Webb told him he could not do that and instead asked James to send him the request via email.

On 5 November 2011, without having obtained prior permission, Crouse and Winslow, who was already familiar with the Beaufort Property, took Justice to ride around it. During this Saturday afternoon tour, they were stopped by the on-site manager Steve Fletcher's son, Stephen, who was concerned they might be there to hunt without permission. After Winslow introduced himself and assured him they were not hunters, Fletcher left them alone. That night, Fletcher mentioned the encounter to his father, who in turn called Edwards, Webb, and King to see if they knew what Winslow was doing on the property.

The following Monday, 7 November 2011, James sent an email to Webb informing him that:

> As I stated, we have a prospective buyer for the [Beaufort Property]. The price put on the table to the buyer was $6,500 per acre. He is requesting the following information:
>
> 1) What is the status of the windmill contracts?
> 2) What is the status of the farm lease(s)?
> 3) Is there any wheat planted? He will be happy to pay the farmer(s) for all acreage planted to the date of contract being signed.
>
> If all checks out as expected and an agreement is reached, closing can be within 30 days. His agent is requesting a 4% commission.

That same day, Edwards called Winslow, his longtime friend and business associate, to ask why he had been on the Beaufort Property two days earlier. Winslow told Edwards they had been showing the land to Justice and then put Crouse on the line,

at which point Edwards told Crouse that the Beaufort Property was neither listed for sale nor for sale.

On 8 November 2011, after Webb had forwarded him a copy of James's email, Edwards sent a reply to James, with a copy to Beach, stating:

> I was quite disturbed when I received a copy of this email you sent Rick Webb. You know very well as has been conveyed many times to you and Mr. Beach, [Agri-East] and our various other related parties in Louisiana, have no interest having you represent us in any manner what soever [sic]. We do not now, and have never had any of our real estate listed for sale. We again request that you immediately cease any and all false misrepresentations on our behalf. Any continued contact or false representations made by you, will leave us no choice but to file a complaint with the North Carolina Real Estate Commission and we are also prepared to bring any and all necessary legal action against you to protect our company.

Upon receipt of this email, Beach sent a reply to Webb stating: "Rick, I think you need to inform your partners that we were following your instructions." Several days later, Beach called Webb and told him, "Rick, if you all sell that property to Jim Justice and don't pay me, I'm going to sue you."

Meanwhile, Crouse called Williams and said he had heard from Edwards that the Beaufort Property was not listed for sale or for sale. Williams then called Beach, who told him he had just received an email from Edwards to the same effect. At that point, Williams called Crouse back, told him "there's some discrepancy" as to the property's status, and said he personally would have to stop any sales efforts to

comply with Agri-East's owners' wishes. When Crouse asked Williams what he should do regarding Justice's interest in the Beaufort Property, Williams advised him "do what you've got to do" and "go for it."

After receiving the green light to proceed on his own, Crouse set up a meeting with Edwards. During that meeting, Edwards again made clear that the Beaufort Property was not listed for sale or for sale. Undeterred, Crouse pressed Edwards to write down a number that he thought would be sufficient to change Agri-East's owners' minds. Eventually, Edwards wrote down what he later described as a "pie in the sky" number of $43 million on a sticky-note and handed it back to Crouse. Crouse relayed this number to Justice and, shortly thereafter, returned to Edwards with an offer and contract, although due to a mistake, the figures in these documents did not match the amount Edwards had written down. Crouse and Justice corrected the mistake and returned to Edwards with a new offer and contract that matched his request. Edwards accepted this offer and, after several weeks of negotiations with Crouse on Justice's behalf regarding the termination of existing leases, entered into an agreement for the sale of the Beaufort Property to Justice's company, Alabama Carbon, LLC, on 19 November 2011. The sale closed on 19 December 2011 for $43 million, which amounted to a price of $6,650 per acre.

Procedural History

On 13 December 2012, five days before Agri-East filed articles of dissolution with the North Carolina Secretary of State, L&B filed a complaint in Martin County Superior Court alleging that Agri-East breached its contract to pay L&B a 4% commission on the sale of the Beaufort Property. In the alternative, L&B sought recovery in *quantum meruit* for the fair value of its services. On 26 February 2013, Agri-East filed its answer in which it denied any liability to L&B.

During discovery, all three of Agri-East's officers were deposed, during which they each testified that neither Webb nor any other individual corporate officer was authorized to bind the corporation to a contract with L&B or any other broker. In addition, Justice testified during his deposition that Jon Crouse was responsible for bringing the Beaufort Property to his attention. Justice also testified that he had never met, spoken to, heard of, or communicated in any other way with L&B, Beach, James, or Williams. In their own depositions, Beach and Williams both acknowledged that they never set foot on the Beaufort Property, never showed it to any prospective buyers, and never entered into any negotiations to sell it. During his testimony, Williams acknowledged that although he told Crouse the Beaufort Property was not for sale and he was ceasing any efforts to market it after the fallout from the 8 November 2011 email from Edwards, he also encouraged Crouse to "do what you've got to do" on behalf of Justice. However, Beach nevertheless contended during his

deposition that Agri-East had entered into a valid agreement with L&B to provide brokerage services for the Beaufort Property, that Webb had promised him a 4% commission, and that L&B was the procuring cause of the eventual sale given that "[t]he definition of 'procuring cause' in real estate [is] if you present the information to people that causes a group to buy or sell—if you present the information. I was responsible for getting the information to the buyer that bought the property" because he furnished information about the Beaufort Property to Williams and "Williams got it to Larabee who got it to Crouse who Crouse picked up the information and got it to [Justice]." Beach also testified that L&B incurred no out-of-pocket expenses associated with its claim for a commission as the procuring cause.

On 3 February 2014, Agri-East filed a motion for summary judgment. On 28 February 2014, L&B filed a motion to amend its complaint to add the individual officers of Agri-East as named defendants and to add claims for a fraudulent transfer and for unfair and deceptive trade practices. After a hearing held on 21 July 2014, the trial court denied this motion by order entered 7 August 2014. On 12 December 2014, after a hearing held on 1 December 2014, the trial court entered its Order & Judgment granting Agri-East's motion for summary judgment. L&B filed notice of appeal to this Court on 30 December 2014.

Analysis

A. Breach of contract claim

L&B argues first that the trial court erred in granting Agri-East's motion for summary judgment as to its breach of contract claim because the evidentiary forecast demonstrated that the parties entered into a valid brokerage services agreement. Specifically, L&B contends that by virtue of his capacity as an officer and agent of Agri-East, Webb had the authority to bind the corporation to an enforceable contract, and did so as a result of his alleged representations and conduct during his meetings with Beach. We disagree.

"The standard of review on appeal from summary judgment is whether there is any genuine issue of material fact and whether the moving party is entitled to a judgment as a matter of law." *Hyatt v. Mini Storage on Green*, __ N.C. App. __, __, 763 S.E.2d 166, 169 (2014) (citation, internal quotation marks, and brackets omitted). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." *Id.* (quoting N.C. Gen. Stat. § 1A-1, Rule 56). This Court applies a *de novo* standard of review to orders granting or denying a motion for summary judgment. *Id.*

Under North Carolina law, it is well established that a corporation is liable as a principal for the acts of its agents in the same manner and to the same extent as are individuals under like circumstances. *See, e.g.*, *Dickerson v. Atl. Ref. Co.*, 201 N.C. 90, 97, 159 S.E. 446, 451 (1931). There are three situations in which a principal is liable upon a contract duly made by its agents: "when the agent acts within the scope of his or her actual authority; when the agent acts within the scope of his or her apparent authority, and the third person is without notice that the agent is exceeding actual authority; and when a contract, although unauthorized, has been ratified." *Wachovia Bank of N.C., N.A. v. Bob Dunn Jaguar, Inc.*, 117 N.C. App. 165, 170, 450 S.E.2d 527, 531 (1994) (citations omitted). "Actual authority is that authority which the agent reasonably thinks he possesses, conferred either intentionally or by want of ordinary care by the principal." *Harris v. Ray Johnson Constr. Co., Inc.*, 139 N.C. App. 827, 830, 534 S.E.2d 653, 655 (2000) (citations omitted). "Actual authority may be implied from the words and conduct of the parties and the facts and circumstances attending the transaction in question." *Id.* (citation omitted). By contrast, apparent authority "is that authority which the principal has held the agent out as possessing or which he has permitted the agent to represent that he possess[es]." *Wachovia Bank of N.C., N.A.*, 117 N.C. App. at 171, 450 S.E.2d at 531 (citation omitted). "Whether the agent acts within the apparent scope of his authority is determined by what the principal does, not by the unauthorized acts and contentions of the agent." *Id.* at 172,

450 S.E.2d at 531-32 (citation omitted). "Where a third party in good faith and with reasonable prudence deals with an agent having apparent authority, the principal is bound by the agent's acts." *Foote & Davies, Inc. v. Arnold Craven, Inc.*, 72 N.C. App. 591, 595, 324 S.E.2d 889, 892 (1985) (citation omitted).

> Apparent authority includes authority to do whatever is usual and necessary to transact the business an agent is employed to transact. The law of apparent authority usually depends upon the unique facts of each case, such as the ordinary course of business, the nature and reasonableness of the contract, the officer negotiating it, the size of the corporation, and the number of shareholders. Thus, in a case where the evidence is conflicting, or susceptible to different reasonable inferences, the nature and extent of an agent's authority is a question of fact to be determined by the trier of fact. Where different reasonable and logical inferences may not be drawn from the evidence, the question is one of law for the court.

Id. at 595, 324 S.E.2d at 892-93 (citations omitted).

In the present case, L&B argues that the record clearly demonstrates that Webb was acting within his authority as vice president of Agri-East when he allegedly authorized L&B to market the Beaufort Property by: (a) telling Beach that, "We don't have anything for sale, but it is for sale. It's not publicly for sale, but if you bring something that we can't refuse, we want to look at it[;]" (b) faxing permission for Beach to obtain non-public information about the Beaufort Property; and (c) reassuring Beach not to worry about Edwards' express refusal to enter into any contract for L&B's services. L&B argues further that the fact that Agri-East's

secretary-treasurer King provided L&B with a spreadsheet containing publicly available information about the Beaufort Property means that two-thirds of Agri-East's officers were responsible for authorizing and facilitating the alleged brokerage services agreement. In support of this argument, L&B relies heavily on selective quotations from *Zimmerman v. Hogg & Allen, P.A.*, 286 N.C. 24, 209 S.E.2d 795 (1974), in which our Supreme Court recognized that the officers of closely held corporations like Agri-East are broadly empowered with apparent authority to bind the corporation and also observed that "only in rare instances have courts failed to hold a close corporation bound by *inter vivos* contracts entered into by any officer of the corporation." *Id.* at 34, 209 S.E.2d at 801 (citation omitted).

As an initial matter, we note that in light of King's testimony that he was minimally involved in Webb's discussions with Beach and never would have authorized a brokerage agreement or allowed L&B to prepare a sales package based on corporate policy, we find wholly unpersuasive L&B's argument that King somehow approved of the alleged agreement based on the fact that he provided a spreadsheet containing publicly available information. Consequently, our analysis focuses solely on Webb's authority to bind Agri-East.

L&B does not cite any facts or circumstances that would support a conclusion that Webb had actual authority to enter into an agreement with L&B to market or sell Agri-East's only corporate asset. Indeed, during discovery, Edwards, Webb, and

King each testified that Webb did not have actual authority to bind the corporation to such an agreement.

Turning next to the question of Webb's apparent authority, we find L&B's reliance on *Zimmerman* unavailing. Although the *Zimmerman* Court recognized that the officers of a closely held corporation are broadly empowered to bind the corporation to contracts, this Court's subsequent cases have made clear that the apparent authority of an officer in a closely held corporation "only extends to matters that are within the corporation's ordinary course of business" and that when an officer's act "relates to material matters that are outside the corporation's ordinary course of business, in the absence of express authorization for such an act . . . , the corporation is not bound." *First Union Nat'l Bank v. Brown*, 166 N.C. App. 519, 528, 603 S.E.2d 808, 815 (2004) (quoting *Zimmerman*, 286 N.C. at 32, 209 S.E.2d at 800); *see also Bell Atl. Tricon Leasing Corp. v. DRR, Inc.*, 114 N.C. App. 771, 775, 443 S.E.2d 374, 376 (1994) ("The law of this state is clear as to the apparent authority of the president of a closely held corporation to enter into contracts for the corporation. The president of the corporation is the head and general agent of the corporation and may act for it in matters that are within the corporation's ordinary course of business or incidental to it.") (citation omitted); *Sentry Enters., Inc. v. Canal Wood Corp. of Lumberton*, 94 N.C. App. 293, 297, 380 S.E.2d 152, 155 (1989) ("The president of a corporation has the apparent authority to bind the corporation to contracts which are

within the corporation's ordinary course of business.") (citation omitted). Here, the evidence in the record demonstrates that Agri-East was a single-asset corporation and that the Beaufort Property was its sole asset, which it leased to local farmers as a retirement plan for the corporation's shareholders. L&B cites no evidence whatsoever to suggest that *selling* the Beaufort Property was a part of Agri-East's ordinary course of business. We therefore conclude that Webb lacked apparent authority to unilaterally bind Agri-East to an agreement to sell or market the Beaufort Property.

Moreover, even assuming *arguendo* that it was initially reasonable for L&B to rely on Webb's alleged representations to the contrary, by March 2011, L&B was put on notice that such reliance was no longer reasonable. On the one hand, in March 2011, L&B received Agri-East's attorney's email clarifying that none of the corporation's individual officers had actual authority to contract with brokers to market or sell the corporation's property. Although L&B argues that this email is wholly irrelevant because it was sent in reference to Agri-South's interest in the Louisiana Property, rather than any sale of Agri-East's Beaufort Property, the evidence in the record makes clear that L&B was attempting to enter brokerage contracts relating to both of these properties and that Beach understood that both corporate entities shared the same officers and followed the same approval processes. On the other hand, L&B received further notice in March 2011 that any reliance on

Webb's apparent authority would not be reasonable when Agri-East's president Edwards unequivocally stated (for the second time) that the Beaufort Property was not for sale, refused to sign any listing or fee agreement with L&B, and kicked Beach and James out of his office. Because we do not believe that the evidence in the record gives rise to conflicting reasonable inferences as to the extent of Webb's apparent authority, or the reasonableness of any reliance by L&B thereupon, *see Foote & Davies, Inc.*, 72 N.C. App. at 595, 324 S.E.2d at 892-93, we hold that the trial court did not err in granting Agri-East's motion for summary judgment.

L&B also argues that by entering into a contract for the sale of the Beaufort Property to Justice with full knowledge of L&B's efforts to bring him to the table as a buyer, Agri-East ratified the alleged brokerage agreement with L&B. "Ratification is defined as the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *Bell Atl. Tricon Leasing Corp.*, 114 N.C. App. at 776, 443 S.E.2d at 377 (citation and internal quotation marks omitted). "Ratification requires intent to ratify plus full knowledge of all material facts." *Id.* "Ratification may be express or implied, and intent may be inferred from failure to repudiate an unauthorized act or from conduct on the part of the principal which is inconsistent with any other position than intent to adopt the act." *Id.* at 776-77, 443 S.E.2d at 377 (citation, internal quotation marks, and ellipsis omitted).

In the present case, while all of Agri-East's officers were aware of L&B's desire to market the Beaufort Property by the time Agri-East entered into a sales contract with Justice and his company, Alabama Carbon, LLC, in December 2011, the record is replete with evidence—such as the 8 November 2011 email by Edwards threatening to report L&B to the North Carolina Real Estate Commission if it continued to represent itself as Agri-East's broker—that Agri-East expressly refused to enter into or ratify any agreement for L&B's services. L&B's argument to the contrary depends upon the validity of its related contention that L&B was the procuring cause of the Beaufort Property's eventual sale. As our Supreme Court has explained:

> Ordinarily, a broker with whom an owner's property is listed for sale becomes entitled to his commission whenever he procures a party who actually contracts for the purchase of the property at a price acceptable to the owner. If any act of the broker in pursuance of his authority to find a purchaser is the initiating act which is the procuring cause of a sale ultimately made by the owner, the owner must pay the commission provided the case is not taken out of the rule by the contract of employment. The broker is the procuring cause if the sale is the direct and proximate result of his efforts or services. The term *procuring cause* refers to a cause originating or setting in motion a series of events which, without break in their continuity, result in the accomplishment of the prime object of the employment of the broker, which may variously be a sale or exchange of the principal's property, an ultimate agreement between the principal and a prospective contracting party, or the procurement of a purchaser who is ready, willing, and able to buy on the principal's terms.

S & W Realty & Bonded Commercial Agency, Inc. v. Duckworth & Shelton, Inc., 274 N.C. 243, 250-51, 162 S.E.2d 486, 491 (1968) (citations and internal quotation marks omitted; italics in original) (hereinafter, "*S & W Realty*").

Here, the record demonstrates that L&B incurred no out-of-pocket expenses in marketing the Beaufort Property and neither Beach nor Williams actually showed the Beaufort Property to any prospective buyers or ever met with or spoke to Justice, who testified that he learned of the Beaufort Property's potential availability exclusively through Crouse. Nevertheless, L&B argues that it was the procuring cause of the sale based on the fact that Justice first learned of the Beaufort Property's availability from Crouse in November 2011, who learned of its availability from Larabee based on the updated sales package Larabee requested from Williams, who subsequently told Crouse that the Beaufort Property was not for sale or listed for sale and that he was ceasing all his efforts to market it, but encouraged Crouse to move forward on his own for Justice. This argument fails. *S & W Realty* references listing agreements and the "act[s] of the broker *in pursuance of his authority*" from the principal, which demonstrates that one of the necessary preconditions to a finding that a broker was the procuring cause of a real estate transaction is the existence of a principal-agent relationship with the property's owner. *See id.* at 251, 162 S.E.2d at 491 (emphasis added). As discussed *supra*, we find no such relationship here. Moreover, in light of the evidence in the record that it was Crouse who made inquiries

on Justice's behalf, showed Justice around the Beaufort Property, brought Justice to the table, and assisted Justice in negotiating sale terms with Agri-East and the termination of existing leases, we do not believe that Williams' mere act of updating and re-sending the Beaufort Property sales package in November 2011 was sufficient to set in motion the continuous series of unbroken events that directly and proximately resulted in a sale, as *S & W Realty* explicitly requires. *See id.* We therefore conclude that L&B was not the procuring cause of the sale of the Beaufort Property. In light of that conclusion, we conclude further that L&B's argument that Agri-East ratified L&B's unauthorized attempts to market the Beaufort Property is without merit.

B. Quantum Meruit

L&B also argues that the trial court erred in granting Agri-East's motion for summary judgment regarding its alternative claim for recovery in *quantum meruit*. We disagree.

"In order to prevent unjust enrichment, a plaintiff may recover in *quantum meruit* on an implied contract theory for the reasonable value of services rendered to and accepted by a defendant." *Horack v. S. Real Estate Co. of Charlotte, Inc.*, 150 N.C. App. 305, 311, 563 S.E.2d 47, 52 (2002) (citation omitted). "To recover in *quantum meruit,* [the] plaintiff must show (1) services were rendered to [the] defendants; (2) the services were knowingly and voluntarily accepted; and (3) the services were not

given gratuitously." *Scott v. United Carolina Bank*, 130 N.C. App. 426, 429, 503 S.E.2d 149, 152 (1998) (citation omitted), *disc. review denied*, 350 N.C. 99, 528 S.E.2d 584 (1999).

In the present case, L&B argues that it should be entitled to recover its 4% commission in *quantum meruit* because, by entering into a contract for the sale of the Beaufort Property to Justice and his company, Alabama Carbon, LLC, Agri-East knowingly and voluntarily accepted L&B's services. This argument fails, however, because it presumes the validity of L&B's argument that it was the procuring cause of the sale, which we have already rejected for the reasons discussed *supra*. Moreover, Beach testified during discovery that he did not incur any out-of-pocket expenses associated with L&B's claims in this matter, and neither L&B's complaint nor its brief offer any other indication of the reasonable value of the services it provided. We therefore conclude that the trial court did not err in granting summary judgment to Agri-East on this claim.

Accordingly, the trial court's Order & Judgment is

AFFIRMED.

Judges STROUD and DAVIS concur.

Report per Rule 30(e).