(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of ski jumping, [~~and snowboarding~~] using skis, sled, tube, snowboard, or any other device.

(4) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle, or other type of ski jumping, and snowboarding.

(5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

808 P.2d 1037
Supreme Court of Utah.

Margaret CLOVER and Richard S. Clover,
Plaintiffs and Appellants,
v.
SNOWBIRD SKI RESORT, dba Plaza Restaurant,
a Utah corporation; and Chris Zulliger,
Defendants and Appellees.

No. 890070. | March 1, 1991.

Guest brought action against ski resort to recover for injuries sustained in skiing accident allegedly caused by resort employee. The Third District Court, Salt Lake County, James S. Sawaya, J., entered summary judgment against guest, and she appealed. The Supreme Court, Hall, C.J., held that: (1) material fact issues existed in connection with guest's respondeat superior, negligent design and maintenance, and negligent supervision claims, and (2) inherent risk of skiing statute did not foreclose claim based on resort's negligent design and maintenance.

Reversed and remanded for further proceedings.

Attorneys and Law Firms

***1038** Richard D. Burbidge, Stephen B. Mitchell, Peter L. Rognlie, Salt Lake City, for plaintiffs and appellants.
Jay E. Jensen, Todd S. Winegar, Salt Lake City, for defendants and appellees.

Opinion

HALL, Chief Justice:

Plaintiff Margaret Clover sought to recover damages for injuries sustained as the result of a ski accident in which Chris Zulliger, an employee of defendant Snowbird Corporation ("Snowbird"), collided with her. From the entry of summary judgment in favor of defendants, Clover appeals.

Many of the facts underlying Clover's claims are in dispute. Review of an order granting summary judgment requires that the facts be viewed in a light most favorable to the party opposing summary judgment.[1] At the time of the accident, Chris Zulliger was employed by Snowbird as a chef at the Plaza Restaurant. Zulliger was supervised by his father, Hans Zulliger, who was the head chef at both the Plaza, which was located at the base of the resort, and the Mid–Gad Restaurant, which was located halfway to the top of the mountain. Zulliger was instructed by his father to make periodic trips to the Mid–Gad to monitor its operations. Prior to the accident, the Zulligers had made several inspection trips to the restaurant. On at least one occasion, Zulliger was paid for such a trip. ***1039** He also had several conversations with Peter Mandler, the manager of the Plaza and Mid–Gad Restaurants, during which Mandler directed him to make periodic stops at the Mid–Gad to monitor operations.

On December 5, 1985, the date of the accident, Zulliger was scheduled to begin work at the Plaza Restaurant at 3 p.m. Prior to beginning work, he had planned to go skiing with Barney Norman, who was also employed as a chef at the Plaza. Snowbird preferred that their employees know how to ski because it made it easier for them to get to and from work. As part of the compensation for their employment, both Zulliger and Norman received season ski passes. On the morning of the accident, Mandler asked Zulliger to inspect the operation of the Mid–Gad prior to beginning work at the Plaza.

Zulliger and Norman stopped at the Mid–Gad in the middle of their first run. At the restaurant, they had a snack, inspected the kitchen, and talked to the personnel for approximately fifteen to twenty minutes. Zulliger and Norman then skied four runs before heading down the mountain to begin work. On their final run, Zulliger and Norman took a route that was often taken by Snowbird employees to travel from the top of the mountain to the Plaza. About mid-way down the mountain, at a point above the Mid–Gad, Zulliger decided to take a jump off a crest on the side of an intermediate run. He had taken this jump many times before. A skier moving relatively quickly is able to become airborne at that point because of the steep drop off on the downhill side of the crest. Due to this drop off, it is impossible for skiers above the crest to see skiers below the crest. The jump was well known to Snowbird. In fact, the Snowbird ski patrol often instructed people not to jump off the crest. There was also a sign instructing skiers to ski slowly at this point in the run. Zulliger, however, ignored the sign and skied over the crest at a significant speed. Clover, who had just entered the same ski run from a point below the crest, either had stopped or was traveling slowly below the crest. When Zulliger went over the jump, he collided with Clover, who was hit in the head and severely injured.

Clover brought claims against Zulliger and Snowbird, alleging that (1) Zulliger's reckless skiing was a proximate cause of her injuries, (2) Snowbird is liable for Zulliger's negligence because at the time of the collision,

IV. NEGLIGENT SUPERVISION

14 **15** The trial court dismissed Clover's negligent supervision claim on the ground that an employer does not have a duty to supervise an employee whose actions are outside the scope of employment. Although we have held that Zulliger's actions were not, as a matter of law, outside the scope of employment, it is important to note that the trial court misstated the law. Regardless of whether an employer can be held vicariously liable for its employee's actions under the doctrine of respondeat superior, an employer may be directly liable for its own negligence in hiring or supervising employees.[59] In the instant case, Clover claims that Snowbird was negligent in not supervising its employees in regard to the practice of reckless skiing. In support of this contention, Clover provides evidence that Snowbird furnished its employees with ski passes as partial compensation for employment, was aware of the dangerous condition created by the jump, and was aware that its employees often took the jump, but did not take any measures to alleviate the danger. This evidence is sufficient to raise a genuine issue of material fact in regard to Clover's negligent supervision claim.

In light of the genuine issues of material fact in regard to each of Clover's claims, summary judgment was inappropriate.

Reversed and remanded for further proceedings.

HOWE, Associate C.J., STEWART and DURHAM, JJ., and JACKSON, Court of Appeals Judge, concur.

ZIMMERMAN, J., having disqualified himself, does not participate herein; JACKSON, Court of Appeals Judge, sat.

Footnotes

1 *Culp Constr. Co. v. Buildmart Mall*, 795 P.2d 650, 651 (Utah 1990).

2 Utah R.Civ.P. 56(c); *see, e.g., Utah State Coalition of Senior Citizens v. Utah Power & Light Co.*, 776 P.2d 632, 634 (Utah 1989).

3 *Payne ex rel. Payne v. Myers*, 743 P.2d 186, 187–88 (Utah 1987); *see also, e.g., Owens v. Garfield*, 784 P.2d 1187, 1188 (Utah 1989).

4 *Blue Cross & Blue Shield v. State of Utah*, 779 P.2d 634, 636 (Utah 1989); *Bonham v. Morgan*, 788 P.2d 497, 499 (Utah 1989).

5 *See* W. Keeton, *Prosser and Keeton on the Law of Torts* § 70, at 502 (5th ed. 1984). *See generally, e.g., Whitehead v. Variable Annuity Life Ins.*, 801 P.2d 934, 935 (Utah 1989); *Birkner v. Salt Lake County*, 771 P.2d 1053, 1056–59 (Utah 1989).

6 771 P.2d 1053 (Utah 1989).

7 *Birkner v. Salt Lake County*, 771 P.2d at 1056 (quoting W. Keeton, *Prosser and Keeton on the Law of Torts* § 70, at 502 (5th ed. 1984)).

8 *Carter v. Bessey*, 97 Utah 427, 93 P.2d 490, 493 (1939).

9 *Birkner v. Salt Lake County*, 771 P.2d at 1057.

10 *See* Restatement (Second) of Agency § 228 (1958); W. Keeton, *Prosser and Keeton on the Law of Torts* § 70, at 502 (5th ed. 1984).

11 *Birkner v. Salt Lake County*, 771 P.2d 1053, 1056–57 (Utah 1989); *see also Keller v. Gunn Supply Co.*, 62 Utah 501, 220 P. 1063, 1064 (1923).

12 *Birkner v. Salt Lake County*, 771 P.2d at 1057; *see also Cannon v. Goodyear Tire & Rubber Co.*, 60 Utah 346, 208 P. 519, 520–21 (1922).

13 *Birkner v. Salt Lake County*, 771 P.2d at 1057; *see also, e.g., Whitehead v. Variable Annuity Life Ins.*, 801 P.2d at 936; *Stone v. Hurst Lumber Co.*, 15 Utah 2d 49, 386 P.2d 910, 911 (1963); *Combes v. Montgomery Ward & Co.*, 119 Utah 407, 228 P.2d 272, 274 (1951).

14 *See Whitehead v. Variable Annuity Life Ins.*, 801 P.2d at 937 (applying the dual purpose rule); *see infra* notes 18–23 and accompanying text.

15 *See, e.g., Carter v. Bessey*, 93 P.2d at 492–93 (applying the substantial deviation test); *see infra* notes 24–31 and accompanying text.

16 *Birkner v. Salt Lake County*, 771 P.2d at 1057.

17 *Id.*

18 801 P.2d 934 (Utah 1989).

19 *Id.* at 937.

20 *Id.* (citing *Martinson v. W–M Ins. Agency*, 606 P.2d 256, 285 (Utah 1980)).

21 *Id.*

22 *Id.*

23 *Id.*

24 *See Carter v. Bessey*, 93 P.2d at 491–93; *Burton v. La Duke*, 61 Utah 78, 210 P. 978, 979–82 (Utah 1922); *Cannon v. Goodyear Tire & Rubber Co.*, 208 P. at 519–22.

25 *Compare Cannon v. Goodyear Tire & Rubber Co.*, 208 P. at 521 (substantial deviation from employment) *with Burton v. La Duke*, 210 P. at 981–82 (distinguishing *Cannon*).

26 *See Carter v. Bessey*, 93 P.2d at 493; *Burton v. La Duke*, 210 P. at 981.

27 *See Burton v. La Duke*, 210 P. at 979–81.

28 *See id.* 210 P. at 981; *see also Birkner v. Salt Lake County*, 771 P.2d at 1057.

29 *Burton v. La Duke*, 210 P. at 981.

30 60 Utah 346, 208 P. 519 (1922).

31 *See id.* 208 P. at 520–21.

32 *See Bushey & Sons, Inc. v. United States*, 398 F.2d 167, 171 (2d Cir.1968); *Hinman v. Westinghouse Elec. Co.*, 2 Cal.3d 956, 471 P.2d 988, 990, 88 Cal.Rptr. 188, 190 (1970).

33 *See Soldier Creek Coal v. Bailey*, 709 P.2d 1165, 1166 (Utah 1985).

34 1 A. Larson, *The Law of Workmen's Compensation* § 15.11 (1990).

35 *See id.* at § 15.15 (rationale for expansions of the premises rule different than rationale of respondeat superior).

36 *See Pypers v. Workmen's Compensation Appeal Bd.*, 105 Pa.Cmwlth. 448, 524 A.2d 1046, 1049 (1987) (when employee remains on premises for party, injury received while leaving not compensable).

37 The Passenger Tramway Act, Utah Code Ann. § 63–11–37 (Supp.1986), also provides protections to ski area operators. This statute allows actions to recover for injuries caused by unnecessary hazards in design, construction, and operation of tramways but not for injuries caused by "the hazards inherent in the sports of mountaineering, skiing and hiking." The protections ski area operators possess under section 63–11–37 are not more expansive than the protections they possess under sections 78–27–51 to –54. Therefore, a separate analysis of section 63–11–37 is unnecessary in this context.

38 Because we interpret Utah Code Ann. §§ 78–27–51 to –54 as not prohibiting legitimate negligence claims, we do not reach Clover's argument that the statute violates article I, sections 1 and 11 of the Utah Constitution and the 14th amendment of the federal constitution.

39 When dealing with unclear statutes, this court renders interpretations that will avoid "absurd consequences." *Curtis v. Harmon Electronics*, 575 P.2d 1044, 1046 (Utah 1978).

40 *Utah County v. Orem City,* 699 P.2d 707, 708 (Utah 1985).

41 *Peay v. Board of Ed. of Provo City Schools,* 14 Utah 2d 63, 377 P.2d 490, 492 (Utah 1962).

42 *Osuala v. Aetna Life & Casualty,* 608 P.2d 242, 243 (Utah 1980) (footnotes omitted).

43 *Curtis v. Harmon Electronics,* 575 P.2d at 1046.

44 *See, e.g., Wright v. Mt. Mansfield Lift,* 96 F.Supp. 786, 791 (D.Vt.1951); *see also* Feuerhelm, *From Wright to Sunday and Beyond: Is the Law Keeping Up With the Skiers?,* 1985 Utah L.Rev. 885; Comment, *Utah's Inherent Risk of Skiing Act: Avalanche from Capitol Hill,* 1980 Utah L.Rev. 355 (authored by W. Faber).

45 *See* Feuerhelm, *supra* note 44; Comment, *supra* note 44. In fact, Snowbird in its brief and at oral argument contended that the statute was intended to reassert the doctrine of primary assumption of risk as it relates to ski accident cases.

46 *See, e.g., Moore v. Burton Lumber & Hardware,* 631 P.2d 865, 869–71 (Utah 1981); *Jacobsen Constr. v. Structo–Lite Eng'g,* 619 P.2d 306, 309–12 (Utah 1980). In contract law, the term is used in connection with provisions in which one party "expressly contracts not to sue for injury or loss which may thereafter be occasioned by the acts of another." *Jacobsen Constr. v. Structo–Lite Eng'g,* 619 P.2d at 310. In the law of torts, the term has been used to describe two different concepts. In its most common context, secondary assumption of risk, the term refers to the unreasonable encounter of a known and appreciated risk. Secondary assumption of risk is, in reality, an aspect of contributory negligence. Primary assumption of risk involves relationships where the defendant owes no duty of care to the plaintiff. *Id.*

47 *Jacobsen Constr. v. Structo–Lite Eng'g,* 619 P.2d at 310.

48 *See* Utah Code Ann. §§ 78–27–37 to –43 (Supp.1986); *Moore v. Burton Lumber & Hardware,* 631 P.2d at 870.

49 *Acculog, Inc. v. Peterson,* 692 P.2d 728, 730 (Utah 1984).

50 *Moore v. Burton Lumber & Hardware,* 631 P.2d at 869–71.

51 *Mulherin v. Ingersoll–Rand,* 628 P.2d 1301, 1303 (Utah 1981).

52 Ski area operators which invite skiers onto their property for business purposes owe a duty of reasonable care for the protection of their patrons. *See Stevens v. Salt Lake County,* 25 Utah 2d 168, 478 P.2d 496, 498 (Utah 1970); *see also Wright v. Mt. Mansfield Lift Inc.,* 96 F.Supp. 786 (D.Vt.1951).

53 Ski area operators, however, should use reasonable care to inform their patrons of the degree of difficulty of their runs.

54 *See supra* notes 44–45 and accompanying text.

55 96 F.Supp. 786 (D.Vt.1951).

56 *Id.* at 790.

57 *See id.* at 790–92.

58 *See id.* In fact, the *Wright* court found that in 1951, requiring a ski resort to be aware of the type of hazard that caused the injury "would be to demand the impossible." *Id.* at 791. In contrast in this case, Clover claims that Snowbird had actual knowledge of the danger that caused her injury.

59 *See, e.g., Birkner v. Salt Lake County,* 771 P.2d 1053, 1059 (Utah 1989); *Stone v. Hurst Lumber Co.,* 15 Utah 2d 49, 386 P.2d 910, 911–12 (1963); *see also* W. Keeton, *Prosser and Keeton on the Law of Torts* § 70, at 501–02 (5th ed. 1984).

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MEMORANDUM RE "INHERENT RISKS OF SKIING" JURY INSTRUCTIONS

To: John Young, Tim Shea and Francis Carney
Date: 12/21/2011
From: Gainer Waldbillig
Re: Ski Instructions

---

1. The Utah Legislature has specifically, completely and expressly defined the nature of ski area liability and what are inherent risks of skiing.

2. The Utah Supreme Court upheld the Legislature's complete determination of that liability and the encompassing nature of the Statute.

3. Any jury instructions other than the statutory language itself will be contrary to the Statute, unwarranted and confusing to juries

In UTAH CODE ANN. 78B-4-401-404 (amended 2006), the Utah Legislature significantly amended Utah's Inherent Risk of Skiing Act by further enumerating the definition of "inherent risks of skiing" and adding additional specific types of inherent risks. (See section 78B-4-402). The amendment occurred over 10 years after both Clover and White decisions from the Utah Supreme Court. See White v. Deseelhorst, 879 P.2d 1371 (Utah 1994); Clover v. Snowbird Ski Resort, 808 P.2d 1037 (Utah 1991). The Legislature was certainly intending to clarify and extend the definition and to declare as a matter of law what those risks were. The purpose of the current version of the Inherent Risk of Skiing Act specifically and unambiguously states:

> It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, **to establish as a matter of law that certain risks are inherent in that sport**, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from those inherent risks." UTAH CODE ANN. §78B-4-401. (Emphasis added).

The Utah Legislature has specifically and expressly defined what an "inherent risk of skiing" is by statute. The definition is as follows:

78B-4-402. Definitions.
As used in this part:
(1) **"Inherent risks of skiing" means those dangers or conditions which are an integral part of the sport of recreational, competitive, or professional skiing, including, but not limited to:**
(a) changing weather conditions;
(b) snow or ice conditions as they exist or may change, such as hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, or machine-made snow;
(c) surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;
(d) variations or steepness in terrain, whether natural or as a result of slope design, snowmaking

or grooming operations, and other terrain modifications such as terrain parks, and terrain features such as jumps, rails, fun boxes, and all other constructed and natural features such as half pipes, quarter pipes, or freestyle-bump terrain;
(e) impact with lift towers and other structures and their components such as signs, posts, fences or enclosures, hydrants, or water pipes;
(f) collisions with other skiers;
(g) participation in, or practicing or training for, competitions or special events; and
(h) the failure of a skier to ski within the skier's own ability. (Emphasis added)

In addition, in the more recent Rothstein decision, the Utah Supreme Court repeatedly provided statements and conclusions concerning the intent of the Legislature contained in the statute–which is to completely set forth a ski area's liability within the statute. Rothstein v. Snowbird, 2007 UT 96, 175 P.3d 560. For example, the Rothstein Court states:

> It is rather a statute that is intended to clarify those inherent risks of skiing to which liability will not attach so that ski resort operators may obtain insurance coverage to protect them from those risks that are not inherent to skiing." Rothstein at ¶ 15, 564.

> When, however, the Legislature clearly articulates public policy, and the implications of that public policy are unmistakable, we have the duty to honor those expressions of policy in our rulings. Such is the case here." Rothstein at ¶ 10, 563.

> The bargain struck by the Act is both simple and obvious from its public policy provision: ski area operators would be freed from liability for inherent risks of skiing so that they could continue to shoulder responsibility for noninherent risks by purchasing insurance. By extracting a preinjury release from Mr. Rothstein for liability due to their negligent acts, Snowbird breached this public policy bargain. Rothstein at ¶ 16, 564.

Therefore, because the express intent and purpose of the statute is to establish as a matter of law that certain risks are inherent, use of additional instructions concerning the statute or the definition of inherent risks is unwarranted and misleading. Our Supreme Court has found that the statute is the final word on ski area liability. Further attempts at defining a statutory definition will lead to conflicting descriptions of the law and confusion for juries.

Gainer Waldbillig

Tab 3

(1) CV2018 Aggravation of symptomatic pre-existing conditions.

A person who has a [physical, emotional, or mental] condition before the time of [describe event] is not entitled to recover damages for that condition or disability. However, the injured person is entitled to recover damages for any aggravation of the pre-existing condition that was caused by [name of defendant]'s fault, even if the person's pre-existing condition made [him] more vulnerable to physical [or emotional] harm than the average person. This is true even if another person may not have suffered any harm from the event at all.

When a pre-existing condition makes the damages from injuries greater than they would have been without the condition, it is your duty to try to determine what portion of the [specific harm] to [name of plaintiff] was caused by the pre-existing condition and what portion was caused by the [describe event].

If you are not able to make such an apportionment, then you must conclude that the entire [specific harm] to [name of plaintiff] was caused by [name of defendant]'s fault.

References

Robinson v. All-Star Delivery, 992 P.2d 969, 972 (Utah 1999).

Tingey v. Christensen, 1999 UT 68, 987 P.2d 588 (Utah 1999).

Brunson v. Strong, 17 Utah 2d 364, 412 P.2d 451 (1966).

Harris v. ShopKo Stores, Inc., 2011 UT App 329.

Florez v Schindler Elevator, 2010 UT App 254 (Absence of life expectancy evidence does not preclude award of future medical costs as damages.)

MUJI 1st Instruction

27.6.

Committee Notes

This instruction is not intended to suggest that the verdict form include a line-item allocation of what part of the harm can be apportioned to the pre-existing condition, and what part to the defendant's fault. That question is answered by the jury's award of damages and should not be confused with allocation of comparative fault.

(2) CV2019 Aggravation of dormant pre-existing condition.

A person who has a [physical, emotional, or mental] condition before the time of [describe event] is not entitled to recover damages for that pre-existing condition or disability.

However, if a person has a pre-existing condition that does not cause pain or disability, but [describe event] causes the person to suffer [describe the specific harm], then [he] may recover all damages caused by the event.

References

Harris v. ShopKo Stores, Inc., 2011 UT App 329.

Ortiz v. Geneva Rock Products, Inc., 939 P.2d 1213, (Utah App. 1997).

Turner v. General Adjustment Bureau, Inc., 832 P.2d 62, (Utah App. 1992).

Biswell v. Duncan, 742 P.2d 80 (Utah App. 1987).

MUJI 1st Instruction

27.7.

Committee Notes

Unlike Instruction CV2018, Aggravation of symptomatic pre-existing conditions, this instruction is designed for asymptomatic conditions that are aggravated by an injury.

(3) Suggested by Harris v. ShopKo Stores, Inc., 2011 UT App 329 (fn 2).

~~A person who has a latent, dormant or asymptomatic condition, or a condition to which the person is predisposed, may recover the full amount of damages that proximately result from injuries that aggravate the condition. In other words, when~~ If a latent condition does not cause pain, but that condition plus the injury brings on pain by aggravating the ~~preexisting, dormant or asymptomatic~~ latent condition, then it is the injury, not the ~~dormant or asymptomatic~~ latent condition, that ~~is the proximate~~ causes ~~of~~ the pain ~~and disability~~.

Ortiz v. Geneva Rock Products

Tab 4

Vicarious Liability Instructions

(1) CV 2801. Corporation acts through its agents.

[Name of party] is a [corporation, partnership, joint venture] and acts or fails to act when [name of defendant]'s officers, employees, or agents act or fail to act while performing within the scope of their duties or authority.

References

"Corporations can only act through agents, be they officers or employees." Orlob v. Wasatch Management, 2001 UT App 28, ¶ 18, 33 P.3d 1078. See also Davis v. Payne & Day, Inc., 348 P.2d 337, 339 (Utah 1960)

"Under agency law, an agent cannot make its principal responsible for the agent's actions unless the agent is acting pursuant to either actual or apparent authority. Actual authority incorporates the concept of express and implied authority. Express authority exists whenever the principal directly states that its agent has the authority to perform a particular act on the principal's behalf. Implied authority. . . , embraces authority to do those acts which are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent." Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094-95 (Utah 1988).

MUJI 1st Instruction

25.1.

Committee Notes

If the jury must decide whether the defendant is a corporation, partnership, or joint venture, then this instruction should not be given. Or phrased as "If you find that [name of defendant] is …."

(2) CV 2802. Liability of principal for authorized acts or acts within the scope of authority.

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of defendant] authorized [name of officer/employee/agent] to act for it; or

(2) [name of officer/employee/agent]'s conduct was within the scope of [his] duties or authority.

References

"an agent's actual authority originates with expressive conduct by the principal toward the agent by which the principal manifests assent to action b the agent with legal consequence for the principal." Restatement (Third) of Agency § 3.01

“elements which go to show the existence of an employer-employee relationship. . . , are as follows . . . : “‘(1) Exercise of control over the details of the work, (2) payment of compensation, (3) power of appointment, (4) power of dismissal, and (5) for whose benefit the given work was done.’” Buhler v. Maddison, 176 P.2d 118, 273 (Utah 1947).

MUJI 1st Instruction

25.2.

Committee Notes

(3) CV 2804. Scope of actual authority.

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove that:

(1) [name of principal] granted [name of officer/employee/agent] the authority to [describe actual authority]; and

(2) [name of officer/employee/agent]’s conduct was necessary, usual, proper or incidental to the conduct that [name of principal] actually authorized.

References

Implied authority embraces authority to do those acts which are incidental to, or are necessary, usual, and proper to accomplish or perform, the main authority expressly delegated to the agent.

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1094 (Utah 1988)

This authority may be implied from the words and conduct of the parties and the facts and circumstances attending the transaction in question.

Zions First Nat. Bank v. Clark Clinic Corp., 762 P.2d 1090, 1095 (Utah 1988)

Whenever the performance of certain business is confided to an agent, such authority carries with it, by implication, authority to do collateral acts which are the natural and ordinary incidents of the main act or business authorized.

Bowen v. Olsen, 576 P.2d 862, 864 (Utah 1978)

As stated in Mechem on Agency, Section 1781: ‘Wherever the doing of a certain act or the transaction of a given affair or the performance of certain business is confided to an agent, the authority to so act will, in accordance with a general rule often referred to, carry with it by implication the authority to do all of the collateral acts which are the natural and ordinary incidents of the main act or business authorized. The speaking of words,-the making of statements, representations, declarations, admission, and the like,-may as easily be such an incident as the doing of any other sort of act.’

Further, ‘Since the authority for the doing of these incidental acts, however, springs from the authority to do the main act it must ordinarily end with it. The incidental thing must be a part of the main thing. It must occur before the main act is completely ended: it must take place while that is still going on.’

Park v. Moorman Mfg. Co., 121 Utah 339, 349, 241 P.2d 914, 919 (1952)

In this regard plaintiff relies upon a proposition of law that where a principal (defendants) entrusts a duty to his agent or employee, the latter is clothed with implied authority to do those things which are within the scope of assigned duties or reasonably and necessarily incident thereto.

B & R Supply Co. v. Bringhurst, 28 Utah 2d 442, 444, 503 P.2d 1216, 1217 (1972)

MUJI 1st Instruction

25.4.

Committee Notes

(4) CV 2803. Apparent authority.

Under development.

MUJI 1st Instruction

25.3.

Committee Notes

(5) CV 2805. Approval of conduct.

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of third party] because [name of principal] approved of [name of third party]’s conduct after the fact. To succeed on this claim, [name of plaintiff] must prove that [name of principal] knew of [name of third party]’s conduct; and expressly or impliedly approved of it.

[Name of plaintiff] may prove that [name of principal] approved of [name of third party]’s conduct by any acts, words, or conduct, including silence, which, under the circumstances, indicate approval.

References

“It is well-established under Utah law that [s]ubsequent affirmance by a principal of a contract made on his behalf by one who had at the time neither actual nor apparent authority constitutes a ratification, which in general is as effectual as an original authorization.” Bullock v. Utah, Dep't of Transp., 966 P.2d 1215, 1218 (Utah

Ct.App.1998) (alteration in original) (citations and internal quotation marks omitted). “A principal may impliedly or expressly ratify an agreement made by an unauthorized agent.” Bradshaw v. McBride, 649 P.2d 74, 78 (Utah 1982).

“Ratification[,] like original authority[,] need not be express. Any conduct which indicates assent by the purported principal to become a party to the transaction[,] or which is justifiable only if there is ratification[,] is sufficient. Even silence with full knowledge of the facts may manifest affirmance and thus operate as a ratification. The person with whom the agent dealt will so obviously be deceived by assuming the professed agent was authorized to act as such, that the principal is under a duty to undeceive him.... So a purported principal may not be wilfully ignorant, nor may he purposely shut his eyes to means of information within his possession and control and thereby escape ratification if the circumstances are such that he could reasonably have been expected to dissent unless he were willing to be a party to the transaction.”

Moses v. Archie McFarland & Son, 119 Utah 602, 230 P.2d 571, 574 (1951) (quoting 1 Samuel Williston & George J. Thompson on Contracts 805 (Rev. Ed. 1936)).

“Ratification is premised upon the knowledge of all material facts and upon an express or implied intention on the part of the principal to ratify.” City Elec. v. Dean Evans Chrysler–Plymouth, 672 P.2d 89, 91 (Utah 1983); see also Zions First Nat'l Bank, 762 P.2d at 1098 (“Ratification requires the principal to have knowledge of all material facts and an intent to ratify.”). “A deliberate and valid ratification with full knowledge of all the material facts is binding and cannot afterward be revoked or recalled.” Zions First Nat'l Bank, 762 P.2d at 1098.

Franklin Credit Mgmt. Corp. v. Hanney, 2011 UT App 213

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25.5.

Committee Notes

(6) CV2806. Scope of duties.

[Name of plaintiff] claims that [name of principal] is liable for [describe act or omission] by [name of officer/employee/agent]. To succeed on this claim, [name of plaintiff] must prove all of the following:

(1) [name of officer/employee/agent]’s conduct was of the general kind [he] was [employed/authorized] to do; in other words, [he] was doing [name of principal]’s work as opposed to being wholly involved in a personal matter; and

(2) [name of officer/employee/agent]’s conduct occurred substantially within working hours and within the normal work area; and

(3) [name of officer/employee/agent]'s conduct was motivated, at least in part, by the purpose of serving [name of principal]'s interest.

References

Helf v. Chevron U.S.A., Inc., 2009 UT 11, ¶ 48, 203 P.3d 962.

Clover v. Snowbird Ski Resort, 808 P.2d 1037 (Utah 1991).

Birkner v. Salt Lake County, 771 P.2d 1053 (Utah 1989).

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25.6.

Committee Notes