

IN THE SUPREME COURT OF THE STATE OF IDAHO

<p>PRIMERA BEEF, LLC, a Texas Limited Liability Company,</p> <p>Plaintiff/Appellant,</p> <p>v.</p> <p>ALLAN WARD, an individual,</p> <p>Defendant/Respondent.</p>	<p>Supreme Court Docket No. 46595-2018 Cassia County District Court CV-2017-290</p>
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APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

HONORABLE MICHAEL P. TRIBE
District Judge Presiding

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I. STATEMENT OF THE CASE

A. *Nature of the case.*

This case arises from the breach of a contract between the Plaintiff/Appellant Primera Beef, LLC (“Primera”) and Defendant/Respondent Allan Ward (“Ward”). On March 13, 2017, Primera filed its Complaint and Demand for Jury Trial in which it asserted a claim that Ward had breached a contract that had been executed by the parties.

B. *Course of Trial Court Proceedings and Disposition.*

On March 13, 2017, Primera filed its Complaint and Demand for Jury Trial in this matter. (“Complaint”). Primera’s Complaint’s set forth one cause of action for Breach of Contract. R., pp. 0012-0015. Primera’s Complaint asserted that Ward through his attorney had revealed the terms of a confidential Settlement Agreement to a third party who was not a party to the Settlement Agreement. *See* R., pp. 0012-0015.

On May 3, 2018, Ward filed a Motion for Summary Judgment (“MSJ”) seeking dismissal of Primera’s claim. *See* R., pp. 0034-0036. The District Court granted the motion for summary judgment on July 20, 2018, setting forth its reasoning in its Memorandum Decision Granting Defendants’ Motion for Summary Judgment (“Decision”). *See* R., pp. 0095-0103. As set forth in the District Court’s Decision, the motion for summary judgment was granted because of the District Court’s determination that Ward’s attorney was not acting within the scope of his authority when he made the disclosure of the confidential terms of the Settlement Agreement. R., pp. 0101-0102.

On August 21, 2018, Primera filed a Motion for Reconsideration. *See R.*, pp. 0104-0105. Primera sought reconsideration of the District Court's opinion that Ward's attorney was not acting within the scope of his authority when he disclosed the terms of the confidential Settlement Agreement. *R.*, pp. 0106-0110. On September 13, 2018, the District Court denied Primera's Motion for Reconsideration, holding that although Ward's attorney was representing him as criminal defense attorney at the time of the disclosure, the attorney was not acting within the scope of his authority when he made the disclosure. *See R.*, pp. 0120-0126.

Judgment was entered in favor of Ward on October 24, 2018. *See R.*, pp. 0127-0124. Primera timely filed the Notice of Appeal in this matter on December 4, 2018. An Amended Judgment was filed on December 27, 2018 and the Amended Notice of Appeal was filed on December 31, 2018. *See R.*, pp. 0155-0156, 0157-0180.

C. Statement of Facts.

The facts in this matter are undisputed. Both parties agree that in November of 2016 the parties executed a Settlement Agreement in conjunction with a prior litigation between the same parties. *See R.*, pp. 0037-0038; Appeal Volume 1 – Confidential Exhibit pp. 0001-0011. The Settlement Agreement contained a confidentiality clause. *See R.*, pp. 0037-0038; Appeal Volume 1 – Confidential Exhibit pp. 0001-0002; 0008. Ward's attorney for that prior civil matter was R. Keith Roark of the Roark Law Firm, LLP. *See R.*, pp. 0037-0038; Appeal Volume 1 – Confidential Exhibit pp. 0001-0002. Mr. Roark also signed the Settlement Agreement as Mr. Ward's attorney. *See R.*, p. 0038. After entering into the Settlement Agreement Ward continued to engage Mr. Roark as defense counsel in a related criminal matter then pending in Cassia

County. *See R.*, pp. 0037-0038; Appeal Volume 1 – Confidential Exhibit pp. 0001-0002.

After the Settlement Agreement had been executed, Mr. Roark communicated with the Cassia County Prosecuting Attorney in an attempt to have the criminal charges against Ward dismissed. *See R.*, p. 0038; Appeal Volume 1 – Confidential Exhibit pp. 0001-0002. On January 9, 2017 Mr. Roark sent a letter to the Cassia County Prosecuting Attorney which disclosed in detail the terms of the Settlement Agreement. *See R.*, pp. 0049-0053. Ward asserts that he did not specifically authorize Mr. Roark's disclosure of the terms of the settlement. *See R.*, Appeal Volume 1 – Confidential Exhibit p. 0002, ¶ 8. Primera maintains that the confidential settlement terms were disclosed in the course of Mr. Roark's legal representation of Ward and fall within the scope of Mr. Roark's express authority to act on behalf of Ward in the criminal matter. *See R.*, pp. 0069-0070; 0106-0109.

II. ISSUE PRESENTED ON APPEAL

Did the District Court err by finding that Ward's attorney was not acting within the scope of his authority at the time he disclosed the terms of the confidential Settlement Agreement?

III. ATTORNEY'S FEES ON APPEAL

Appellant requests that costs be awarded pursuant to Idaho Code § 12-107. Additionally, Appellant requests that attorney's fees be awarded pursuant to Idaho Code § 12-120(3) and pursuant to the underlying contract which provides for fees to the prevailing party. *R.*, Confidential Exhibit, p. 8, ¶ 11.

IV. ARGUMENT

A. *Standard of Review.*

“In an appeal from an order of summary judgment, this Court’s standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment.” *Lockheed Martin Corp. v. Idaho State Tax Comm.*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006). Rule 56(c) of the Idaho Rules of Civil Procedure provides, in pertinent part, that summary judgment “shall be rendered forthwith if the pleadings, depositions, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law[.]” However, the party responding to summary judgment is not required to present evidence on every element of his or her case at that time of summary judgment, but rather must establish a genuine issue of material fact regarding the element or elements challenged by the moving party’s motion. *See Thomson v. Idaho Ins. Agency*, 126 Idaho 527, 530, 887 P.2d 1034, 1037 (1994).

“All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party.” *Robert Comstock, LLC v. Keybank Nat’l Assoc.*, 142 Idaho 568, 571, 130 P.3d 1106, 1109 (2006). “This Court freely reviews issues of law.” *Soignier v. Fletcher*, 151 Idaho 322, 324, 256 P.3d 730, 732 (2011) citing *Lattin v. Adams Cnty.*, 149 Idaho 497, 500, 236 P.3d 1257, 1260 (2010).

B. *The District Court Erred in finding that Ward’s attorney was not acting within the scope of his authority at the time he disclosed the terms of the confidential Settlement Agreement.*

This Court has previously held that the attorney-client relationship is a relationship of agency, stating:

“The relationship between an attorney and client is one of agency” in which the client is the principal and the attorney is the agent.” *Muncey v. Children’s Home Finding and Aid Soc. Of Lewiston*, 84 Idaho 147, 151, 369 P.2d 586, 588 (1962). An agent may bind a principal if the agent has actual authority. Actual authority is that authority a principal expressly grants to an agent or impliedly confers on an agent because it is usual, necessary, and proper to achieve the object of the express authority granted to the agent. *Bailey v. Ness*, 109 Idaho 495, 497, 708 P.2d 900, 902 (1985) (citing *Clark v. Gneiting*, 95 Idaho 10, 12, 501 P.2d 278, 280 (1972)).

Caballero v. Wilkse, 140 Idaho 329, 332, 92 P.3d 1076, 1079 (2004).

The expression of “necessary, usual, and proper” is used by this Court to assist the trier of fact in the determining whether or not an action falls within the scope of authority of an agent. That is to say, whether the action is *properly* within the scope of the representation. The very purpose of agency law is to hold principals accountable for the wrongful, negligent, or *improper* acts of their agent. To hold that an improper action takes the action outside of the scope of authority would be to negate the entire purpose of the law of agency.

Idaho Civil Jury Instructions 6.40.1 defines Agency as: “The term ‘agent’ refers to a person authorized by another, called the ‘principal,’ to act for or in the place of the principal. The principal is responsible for any act of the agent within the agent’s scope of authority.”

The Idaho Civil Jury Instructions also provide a definition for the scope of authority. “Conduct is within the scope of the agent’s authority if it occurs while the agent is engaged in the

duties that the agent was asked or expected to perform and relates to those duties.” Idaho Civil Jury Instructions 6.43.1. In this present matter Mr. Roark was communicating with the deputy prosecutor as part of his express duty to represent Ward in the criminal action, and those communications related exclusively to that duty.

“It is not necessary that a particular act or failure to act be expressly authorized by the principal to bring it within the scope of the agent’s authority. Conduct for the benefit of the principal that is incidental to, customarily connected with, or reasonably necessary for the performance of such duties is within the scope of the agent’s authority.” *Id.* (citing *Landvik v. Herbert*, 130 Idaho 54, 936 P.2d 697, 702, (Idaho App. 1997), emphasis added). This language is directly in line with the present matter. Ward did not directly oversee every statement made by Mr. Roark, but gave him express authority to participate in and conduct the communications with the prosecuting attorney. Mr. Roark derived no personal benefit from the communications and his conduct was for the benefit of Ward, and Ward alone.

Mr. Roark’s duties as attorney for the accused in a criminal matter naturally include communicating with the prosecuting attorney regarding Defendant’s criminal matter. Because Ward was represented by counsel in the criminal matter, the prosecutor was legally bound to communicate only with Ward’s counsel and not with Ward directly. It was therefore, usual, necessary and proper for Mr. Roark to communicate with the Prosecuting Attorney on behalf of Ward. There is no dispute that Mr. Roark was acting within the scope of his agency during the course of his communications with the Cassia County prosecutor.

Actions that are proper and usual under the course of the agency are done within the

umbrella of the agency. If a real estate agent were to represent his client in court that would be outside of the proper scope of the agency of the real estate agent. If the real estate agent were to list a piece of property and provide incorrect data to the buyer, it would be improper (or wrongful), but still within the scope of the agency. *King v. H.J. McNeel, Inc.* 94 Idaho 444, 446, 489 P.2d 1324, 1326 (1971) (“Representations as to boundary or quantity of land have generally been held to be binding upon the principal even though no express authority existed giving the agent authority to make such representation.”).

If a driver were to list his employer’s home for sale, it would be outside of the proper scope of the driver’s agency. If a driver negligently operates his employer’s vehicle, causing an accident, that is a wrongful and improper action, but it is still within the scope of the driver’s agency. “The statements of an agent respecting the subject matter of an action and within the scope of his authority are binding on the principal.” *Thornton v. Budge*, 74 Idaho 103, 257 P.2d 238 (1953). In *Thornton*, the Idaho Supreme Court held that a passenger in an automobile was the principal of the driver where the driver was taking the passenger on a business errand for the passenger. The driver in *Thornton* negligently caused an automobile accident and the passenger was held liable for the damages caused by the automobile accident. *Id.* The *Thornton* Court further found that the principal was bound by the statements made by the driver at the scene of the accident as the passenger’s agent. *Thornton*, 74 Idaho at 108, 257 P.2d at 241.

The whole purpose of the law of agency is to hold the principal accountable for wrongful conduct of the agent. Idaho Civil Jury Instructions 6.40.1. There would be no purpose for the body of law regarding agency if every wrongful action of every agent exempted the act from the

scope of the agency itself.

Communicating with a prosecuting attorney is clearly within the proper scope of representing a criminal defendant. However poorly performed the communication might be does not remove the communication from being within the scope of the agency. Mr. Roark while communicating with the prosecuting attorney was acting exactly as expected to perform his representation of Mr. Ward. Mr. Ward as the principal is responsible for the wrongful actions of Mr. Roark taken during the course and scope of those communications.

Just as operating a vehicle in a negligent manner is improper, it does not excuse the principal from responsibility for that improper action as it remains within the scope of the authority. Similarly, one does not stand over the shoulder of their attorney dictating what the attorney writes, but simply authorizes the attorney to communicate on their behalf. If the attorney subsequently makes a negligent or improper statement in the course of fulfilling his duty to communicate on behalf of the client, the client is still responsible for the conduct of his attorney as his agent.

“Litigants freely choose their attorneys and cannot avoid the consequences of the attorney’s actions.” *Devault v. Steven L. Herndon, A Professional Ass’n.*, 107 Idaho 1, 3, 684 P.2d 978, 980 (1984) (citations omitted). In *Devault* the attorney repeatedly failed to comply with orders from the court, resulting in a delay of trial and ultimately the dismissal of the action altogether. Those actions on the part of Devault’s attorney were clearly improper. However, this Court upheld the dismissal, stating that Devault could not avoid the consequences of his

attorney's action. Similarly, in the present matter, the impropriety of Mr. Roark's actions do not take his actions outside of the scope of his authority.

The District Court in the present matter held that it was the impropriety of Mr. Roark's conduct that removed the conduct from being within the scope of Mr. Roark's authority, stating,

“Implied actual authority comes from a general statement of what the agent is supposed to do; an agent is said to have implied authority to do acts consistent with that direction.” *Id.* It is that authority “which is necessary, usual, and proper to accomplish or perform” the express authority delegated to the agent by the principal. *Clark v Gneiting*, 95 Idaho 10, 12, 501 P.2d 278, 280 (1972).

Under this theory Ward could only be liable for the actions of Roark that were “necessary, usual, and proper” to accomplish the task expressly authorized by Ward, which was to represent him in the criminal matter. “Proper authority” implied to carry out an express authority cannot be read as authority to do something improper in carrying out the express authority—such as disclosing the confidential terms of an agreement—and therefore forecloses liability imputed to Ward on the basis of an implied authority theory.”

R. pp. 0124-0125

The District Court's reasoning clearly conflates the idea of being “properly within the scope” of authority with the propriety of the action itself. While the action of disclosing confidential terms of the Settlement Agreement was an improper action, it was done within the course and scope of Mr. Roark's legal representation of Ward in the criminal matter. Therefore, the principal, Mr. Ward is accountable for the actions of his attorney.

V. CONCLUSION

For the reasons set forth above, Plaintiff/Appellant Primera Beef, LLC, respectfully requests that the Court reverse the District Court's decision granting Ward's Motion for Summary Judgment and remand this matter to the District Court for further proceedings including but not limited to trial.

RESPECTFULLY SUBMITTED this 9th day of April, 2019.



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CERTIFICATE OF SERVICE

I hereby certify that on April 9th, 2019, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the manner indicated below:

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