

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

AMERICAN CANDY COMPANY,

Case No. 01-13291-MAM-11

Debtor.

AMERICAN CANDY COMPANY,

Plaintiff,

v.

Adv. No. 02-01259

JOYA INDUSTRIES, INC.,

Defendant.

**ORDER DISMISSING AMERICAN CANDY COMPANY'S
COMPLAINT AGAINST JOYA INDUSTRIES, INC.**

Meredith Lees, Birmingham, Alabama, Attorney for American Candy Company
Christopher Kern, Mobile, Alabama, Attorney for Joya Industries, Inc.

This matter is before the Court on American Candy Company's complaint to recover payment from Joya Industries, Inc. for candy products Joya ordered. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court finds that American Candy Company's complaint against Joya Industries, Inc. is due to be dismissed.

FACTS

American Candy Company ("ACC") filed a chapter 11 bankruptcy case in this Court on June 29, 2001. Prior to filing bankruptcy, ACC was a candy manufacturer located in Selma, Alabama. It made candy products which were sold to retail distributors through a network of

independent candy broker companies. ACC's sales process was not complex. Its candy brokers took orders from retail distributors and forwarded the orders to ACC. After receiving the orders, ACC would ship the products directly to the distributors and send them an invoice. In many cases, the invoice represented the entirety of the sales contract between ACC and the retailers.

Joya Industries, Inc. ("Joya") is a retail candy distributor located in Miami, Florida. It regularly placed orders for ACC candy products in the manner described above with one of ACC's candy brokers, Burdette Beckman, Inc. ("Beckman"). On June 5, 2002 Joya placed a \$30,775.68 ACC order with Beckman for one of Joya's customers. ACC received Joya's order from Beckman, generated a matching invoice, and shipped the products and invoice to Joya. ACC's invoice was the only documentation or communication regarding the terms of the order. It did not contain any provision regarding returns.

After Joya received the products from ACC, it did not remit any payment to ACC. Instead, Joya contacted Beckman to return the products because its client had cancelled the order. Beckman picked up the products from Joya and issued a "merchandise transfer" statement to Joya. The merchandise transfer listed the price of the products transferred as \$30,775.68 and stated that "credit & invoice will be issued at respective customer's pricing." (Defendant Exhibit No. 1).

ACC subsequently contacted Joya regarding payment of the \$30,775.68 invoice. Joya informed ACC that it had returned the products through Beckman and did not owe anything on the invoice. ACC replied that Joya was still liable for the amount of the invoice because Joya's transfer to Beckman was not authorized under ACC's internal policies. The parties failed to reach an agreement and ACC filed this adversary proceeding on December 14, 2002.

The Court conducted a trial on this matter on November 19, 2003. It heard testimony from witnesses for ACC, Joya, and Beckman. John Wechsler, the owner of ACC, testified that ACC had an internal policy regarding returned merchandise. Mr. Wechsler stated that Beckman, as ACC's broker, was not authorized to negotiate prices or accept returns on ACC's behalf. Instead, Beckman was merely a "go-between" for ACC and the distributors who purchased its products. Mr. Wechsler testified that under ACC's policy, any return for a dollar amount of \$5,000 or greater, such as the one in this case, had to be approved by ACC's president, Gaylon Warrington. Mr. Wechsler stated that Beckman may have previously accepted small returns from distributors on ACC's behalf but Joya's large return had to be approved by Mr. Warrington. Joya never asked for or received Mr. Warrington's approval.

Jorge Medina, the president and majority stock owner of Joya, testified that he made returns of candy products through Beckman to various candy manufacturers. Mr. Medina stated that it was a common practice in the candy distributor industry to make returns through brokers. However, the return at issue in this case was the only return of ACC products that Mr. Medina ever made through Beckman. Mr. Medina testified that he contacted Beckman regarding the return and Beckman picked up the merchandise and issued a merchandise transfer for the order. He did not contact anyone at ACC and was not aware of what happened to the merchandise after Beckman picked it up.

Robert Taylor, the president of Beckman, testified that Beckman took possession of the returned ACC products from Joya. Mr. Taylor stated that Beckman faxed a copy of the merchandise transfer to ACC after Beckman had taken possession of the returned products. Beckman subsequently sold the returned products to one of its other customers and applied the

proceeds toward a debt for commissions that Mr. Taylor believed ACC owed Beckman. Mr. Taylor testified that Beckman had previously issued merchandise transfers for returned ACC products in this manner because it was his understanding that Beckman was authorized to do so as ACC's agent.

LAW

The plaintiff in this case, American Candy Company, filed a complaint against Joya Industries, Inc. for failure to pay for products Joya ordered and subsequently returned to ACC's broker, Burdette Beckman, Inc. The Court must determine whether the agreement between ACC and Joya provided for the return of ACC's products through Beckman. This issue is controlled by Alabama state law. *See Butner v. United States*, 440 U.S. 48 (1979).¹

The Court will not discuss whether ACC gave Beckman actual authority to accept returns on ACC's behalf because it is not essential to the disposition of this case. For purposes of brevity, the Court will only discuss its finding that Joya returned ACC's products to Beckman in good faith based on Beckman's apparent authority to accept them.

APPARENT AUTHORITY

The Supreme Court of Alabama has held that "[t]he test for determining whether an agency existed by . . . 'apparent agency' is based upon the potential principal's holding the potential agent out to third parties as having the authority to act." *Malmberg v. American Honda Motor Co., Inc.*, 644 So.2d 888, 891 (Ala. 1994). Put more concisely, it is the actions of the principal, not the agent, that determine whether apparent authority exists in a given case. *Id.*

¹ Neither part disputed that Alabama state law should apply.

The subjective understanding of the third party and any representations made solely by the agent regarding its authority are not relevant. *Id.*

The purpose behind the apparent agency doctrine is to “hold[] a principal accountable for the results of third-party beliefs about an actor’s authority to act as an agent when the belief is reasonable and traceable to a manifestation of the principal.” *Restatement (Third) of Agency* §2.03 (T.D. No. 2, 2001). Consistent with its protection of third parties, “apparent agency when present trumps restrictions that the principal has privately imposed on the agent.” *Id.* Alabama state law makes this clear. It holds that “[w]hen one has reasonably and in good faith been led to believe, from the appearance of authority which a principal permitted his agent to exercise, that a certain agency exists, and in good faith acts on such belief to his prejudice, the principal is estopped from denying such agency.” *Malmberg* at 891.

ANALYSIS

In this case, the agent (Beckman) operated as a “go-between” for the principal (ACC) and the third party distributor (Joya) who purchased its products. Beckman took orders from Joya and forwarded the orders to ACC. After receiving the orders, ACC shipped the products directly to Joya and sent it an invoice. ACC’s invoice was the only documentation or communication regarding the terms of the order and it did not contain any provision regarding returns.

After Joya’s client cancelled its order, Joya contacted Beckman to return the products. Beckman accepted the return and issued a merchandise transfer to Joya stating that Joya would be issued a refund. Mr. Medina, the president of Joya, testified that this return process was

typical in the candy distributor industry. He frequently made products returns through brokers and ACC did not notify Joya that it could not return products through Beckman.

Mr. Wechsler, the owner of ACC, testified that ACC had an internal procedure regarding returns. He stated that any return for a dollar amount of \$5,000 or greater, such as the one in this case, had to be approved by ACC's president, Gaylon Warrington. Mr. Wechsler testified that Beckman knew it was not authorized to accept returns. However, he did not offer any evidence to show that Joya was given notice of ACC's internal returns policy. Beckman was the only party aware of this policy according to Mr. Wechsler.

Beckman's president, Robert Taylor, testified that ACC authorized Beckman to accept returns on ACC's behalf as its agent. Mr. Taylor told Joya the same. When Joya inquired if it could make this particular return through Beckman, Beckman informed Joya that Beckman was ACC's agent and it was authorized to accept returns on ACC's behalf. Subsequent to taking possession of the returned products, Beckman sold the returned products to one of its other customers and applied the proceeds toward a debt for commissions that Mr. Taylor believed ACC owed Beckman.


Beckman's representation to Joya of its authority to accept returns on ACC's behalf is not relevant. *Malmberg* at 891. Nor is any subjective understanding of Joya regarding returns. *Id.* Only the representations made by ACC to Joya are relevant to the Court's determination of whether Beckman had apparent authority to accept the return at issue in this case. *Id.* However, as the facts demonstrate, ACC did not make any direct representations to Joya regarding returns. The only direct communication between the parties was the invoice ACC sent to Joya. It did not contain any return provision.

Because ACC did not make any direct communication with Joya regarding the authority of its agent, Beckman, to accept returns, ACC argues that Beckman did not have any apparent authority. It is incorrect. The doctrine of apparent authority is not that simple because “[t]he principal’s conduct does not occur in a vacuum.” *Restatement (Third) of Agency* §2.03 (T.D. No. 2, 2001). Instead, “[a] third party’s reasonable understanding of the principal’s conduct will reflect general business custom, as well as usage that is particular to the principal’s industry.” *Id.*

Mr. Medina, Joya’s president, testified that Joya regularly made returns through Beckman to other candy manufacturers. He stated that this was a common practice in the industry and ACC did not indicate to Joya that its return policy was any different. ACC did not offer any evidence to refute Mr. Medina’s testimony. The Court finds that ACC’s use of Beckman as a “go-between” for sales of its products to third parties, combined with the common practice of the industry and ACC’s failure to include a return provision in its invoice, was enough to provide Joya with a reasonable and good faith belief that it could make purchases and returns of ACC’s products through the same party, Beckman. It was reasonable for Joya to believe that Beckman had the authority to accept returns on ACC’s behalf; therefore, Joya is not liable to ACC for payment of the \$30,775.68 order.

It is ORDERED that American Candy Company’s complaint against Joya Industries, Inc. is dismissed with prejudice.

Dated: December 5, 2003


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE