

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable William L. Howard, Sr.
Special Referee

CASE NO. 2007-CP-08-2718

RITTER AND ASSOCIATES, INC.,

Respondent/Appellant

v.

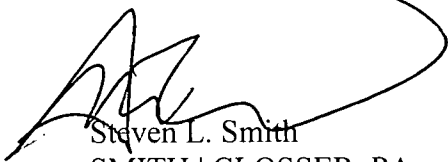
BUCHANAN VOLKSWAGEN, INC. and
DAVID BUCHANAN,

Appellants/Respondents

**MOTION FOR REHEARING
OF APPELLANTS/RESPONDENTS
BUCHANAN VOLKSWAGEN, INC. and
DAVID BUCHANAN**

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JUN 04 2013

SC Court of Appeals



Steven L. Smith
SMITH | CLOSSER, PA
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
(843) 760-0220
Attorneys for Appellants/Respondents
Buchanan Volkswagen, Inc. and David
Buchanan

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769 (1991) 3

Respondents/Appellants Buchanan Volkswagen, Inc. and David Buchanan (collectively “Buchanan”) would respectfully request that the Court grant a rehearing and reconsider its Opinion of May 22, 2013 affirming the Honorable Special Referee in this matter. In reaching its decision, the Court of Appeals misapprehended the significance of several of the points highlighted by Buchanan in its initial argument to the Court.

I. BECAUSE TAYLOR WAS THE AGENT FOR MULTIPLE DEALERSHIPS, RITTER COULD NOT UNILATERALLY DECIDE THAT ALL OF TAYLOR’S ACTIONS WERE BEING CONDUCTED ON BEHALF OF BUCHANAN.

There is no question but that the individual primarily responsible for the losses forming the basis of this action was Todd Taylor. There is similarly no question – and both the Special Referee and the Court of Appeals found – that Taylor was an agent of Buchanan’s. Finally, there is no question but that Taylor also acted as an agent for a number of other automobile dealerships when making purchases from Ritter and Associates. The Court found, however, that it was immaterial whether or not Taylor was acting exclusively on behalf of Buchanan during the relevant time period.

This conclusion is significant, and that significance was not fully addressed by this Court’s Opinion. There is no doubt but that Buchanan permitted Todd Taylor to act on its behalf, and to execute documents including bills of sale. However, Ritter testified, and both the Special Referee and this Court found, that Taylor acted in the same capacity for other dealerships at the same time. There was no question, as a matter of fact, and based upon the testimony of both Taylor and Ritter, that the bills of sale for the transactions which form the basis of the award herein were completed by Ritter, not by Taylor. Furthermore, Ritter himself testified that he filled out these forms, and that Taylor signed them, while eating lunch and most likely without examining them. Trial Trans., pp. 620 – 22, R-414 – 415.

Furthermore, Ritter, and his witnesses, testified that Taylor was one of the top purchasers at the Florida Auto Auction, and that he made purchases on behalf of numerous entities, none of whom was personally known to Ritter. *Id.* The primary difficulty with this case, and an issue not addressed by this Court, is the determination of agency in a situation in which the purported agent is known to act on behalf of numerous principals, and the decision as to which of those principals' names is to be attached to any particular transaction is made by the plaintiff who eventually seeks recovery from that principal. The evidence is clear that is precisely what occurred herein. Todd Taylor was known to represent multiple principals. Ritter decided to put the name "Buchanan" on the particular bills of sale for which he now seeks payment, not because of any actual or even reasonable belief that the transactions were being consummated in Buchanan's name but merely because that seems to have been the most convenient entity to which the sale could be assigned.

The Court set out the general principles regarding the law of agency, and the standard for a finding of apparent agency. *See, e.g., Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982). However, the finding of apparent agency in a particular case may be more complicated than the cases generally assume: in this instance, the purported agent accurately held himself out as acting on behalf of considerably more than one principal, and those dealing with him could base any conclusion as to which principal at any given time on nothing other than the agent's own statements, or their own unsupported conclusions. It is axiomatic that an agency cannot be formed exclusively by the words of the agent. *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142, 399 S.E.2d 430, 433 (Ct. App. 1990), *overruled on other grounds by Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000).

The application of that well-known axiom to this case has not been fully addressed by this Court. Buchanan does not deny that Todd Taylor acted, at times, at its agent. What has not been addressed is whether Ritter's decision to suddenly change his relationship with Taylor from one in which Taylor was acting on behalf of a number of dealerships to one in which Ritter – and Ritter alone – determined that Taylor was acting exclusively on behalf of Buchanan was reasonable. The evidence at trial was clear that Ritter began to deal with Taylor long before Buchanan entered the picture, and the manner in which he dealt with him remained unchanged until the termination of their relationship. At some point, however, Ritter, without any input from Buchanan or any other third party upon whom it could rely, decided that all transactions in which Taylor was involved were now being conducted exclusively on behalf of Buchanan.

This is the point at which the exclusivity, or non-exclusivity, of the agency becomes relevant. It was objectively unreasonable for Ritter to conclude that merely because Taylor had certain authority with respect to one principal, and merely because Ritter wanted to complete all of the bills of sale he was turning over in one name rather than in several, Taylor had suddenly become exclusively the agent for Buchanan. Buchanan would respectfully request that the Court reconsider its conclusion that the exclusivity of the agency relationship is not relevant.

II. THE COURT DID NOT ADDRESS THE IMPORTANCE OF RELIANCE ON THE EXISTENCE OF THE AGENCY RELATIONSHIP IN A FINDING THAT AN AGENCY EXISTS.

In its brief to this Court, Buchanan argued that it was important to the finding of the existence of an agency relationship that the party dealing with the agent show that there was reliance on the relationship itself. *Graves v. Serbin Farms, Inc.*, 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991); *Charleston v. Young Clement Rivers & Tisdale, LLP*, 359 S.C. 635, 643, 598

S.E.2d 717, 721 (Ct. App. 2004). Ritter made no showing of such reliance, and its actions flatly contradict its existence.

The evidence showed that Ritter made sales to Taylor, individually, before Buchanan's entry into the picture and during the entire period of time Taylor had added Buchanan to his list of principals. At the time of his deposition testimony in 2007, Ritter testified that it still had a personal check from Todd Taylor, taken as payment for some of the vehicles for which it was seeking to recover from Buchanan. Furthermore, Ritter made it clear that he never verified the source of any of the payments for any of the vehicles handed over to Taylor, a fact that was substantiated by the admission into evidence of numerous checks from other entities for the same cars shown on Ritter's hand-written records as having been sold to "BVW."

Ritter's belief in the exclusive agency, and its conclusion that all of the cars it gave to Taylor were being sold solely to Buchanan, was unreasonable and was based on nothing more than Ritter's own desires. It was familiar with Taylor, and was familiar with the fact that Taylor acted on behalf of a number of parties. At some point, Buchanan joined in that list of principals. There is no question but that Buchanan gave Taylor the authority to make purchases on its behalf; at least ten or fifteen other dealers had done the same thing. Ritter, without ever verifying the scope or nature of the agency with the principal, arbitrarily and unilaterally decided that all sales to Taylor were being made to Buchanan. At the same time, none of its practices with respect to Taylor changed, and there is no indication that it relied on the existence of this agency in any manner whatsoever.

The record clearly demonstrates that Ritter began to sell to Taylor long before it became aware of the existence of Buchanan. The record further, and equally clearly, demonstrates that Ritter altered none of its practices with respect to Taylor in reliance on any supposed agency

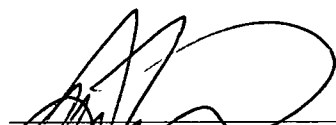
with Buchanan, and that it continued to deal with Taylor in precisely the same manner as previously. Finally, the record demonstrates that Ritter made no attempt of any kind to verify that the agency in which it claimed – after the fact – to believe existed in the form or scope it now alleges. In fact, many of the vehicles sold to Taylor, sales that are not alleged to have been made in reliance on Buchanan's payment for Taylor's actions, were actually paid for by third parties.

Buchanan would respectfully ask that this Court address the issue of reasonable reliance on the existence of an agency, and whether Ritter actually relied on Buchanan in continuing to make sales to Todd Taylor, precisely as it had done for some time.

CONCLUSION

Based upon the foregoing, Buchanan would respectfully request that this Court rehear certain aspects of its arguments, and reconsider its Opinion in this matter.

Respectfully submitted,



Steven H. Smith
SMITH | CLOSSER, PA
7455 Cross County Road, Suite 1
P.O. Box 40578
Charleston, SC 29423-0578
(843) 760-0220
Attorneys for Appellants/Respondents
Buchanan Volkswagen, Inc. and David
Buchanan

5-31, 2013
Charleston, SC

THE STATE OF SOUTH CAROLINA
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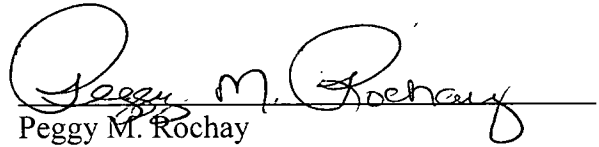
v.

BUCHANAN VOLKSWAGEN, INC. AND
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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Motion for Rehearing of
Appellants/Respondents Buchanan Volkswagen, Inc. and David Buchanan was served by
mailing or hand delivery on the following:

Robert B. Varnado, Esquire
Brown and Varnado, LLC
P.O. Box 1127
Mt. Pleasant, SC 29465


Peggy M. Rochay

Charleston, South Carolina

May 31, 2013
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Smith | Closser, P.A.

Attorneys at Law
7455 Cross County Road, Suite One
Post Office Box 40578
Charleston, South Carolina 29423-0578

Steven L. Smith
ssmith@scnlaw.com

Office - 843-760-0220
Fax - 843-552-2678
www.smithclosser.com

May 31, 2013

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ritter and Associates, Inc. v. Buchanan Volkswagen, et al.
Case No. 2007-CP-08-2718
SJC File No. 04-026

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Motion for Rehearing of Appellants/Respondents Buchanan Volkswagen, Inc. and David Buchanan along with our Certificate of Service in the above referenced matter. I would appreciate it if you would file this and return a filed copy to us.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Steven L. Smith

SLS/pmr

Enclosures

cc: Robert B. Varnado, Esquire

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