

THE DOCTRINE OF THE UNDISCLOSED PRINCIPAL**JOHN UZOMA EKE**

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ABSTRACT

A contractual relationship can be established either personally or by authorizing another person to do so. When a person authorized another person to act on his behalf, there is said to be a contract of Agency. Agency is a special type of contract in which one called the Agent is expressly or impliedly employed by another called the principal to bring the principal into contractual relationship with third parties. More so, in a Contractual relationship the principle of privity of contract precludes third parties from bearing burdens or obtaining benefits under a contract which they are not party to. However, under agency, an undisclosed principal shares in the rights and liabilities arising from a contract entered into by an agent and a third party even though the identity and existence of the principal may not be known to the third party at the time of making the contract. A third party, after discovering the fact of the agency has to elect to sue either the principal or the agent. An agent could, therefore, be liable on a contract which he has not benefitted if the third party elects to sue him. This would occasion injustice to the agent. To this extent, Agency Contract creates an exception to the basic rule of contract that a person cannot be beneficiary or adversely affected by a contract to which he is not a party. Using the doctrinal method which involves the analysis of cases and scholarly works on the subject, this project has examined the doctrines of the undisclosed principal and privity of contract and found that the former is an erosion of the latter. The undisclosed principal has been accepted for commercial convenience even though it is more of a third party protection device particularly, against the agent who does not usually benefit from the contract but acts on another's behalf. Although the agent has a right to indemnity by the principal, such might be defeated if the agent has to wait and claim from the principal after the conclusion of the third party's case against him. As such, this project recommends that the principal's duty of indemnity should be enforced by the agent claiming against the principal through third party proceedings under relevant rules of court whenever the agent is sued by the third party. Alternatively, the court should insist on compulsory disclosure of the fact of the agency by the agent to third party at the time of making the contract to avoid the problems that would arise when the principal is subsequently discovered.

Keywords: Contract, Agency, Principal, Liabilities.

JEL Classifications: K13, L14, L24

Introduction

When one party delegates some authority to another party whereby the latter performs his actions in a more or less independent fashion, on behalf of the first party, the relationship between them is called an agency. Agency can be expressed or implied it is important to know that the law relates to Agency because nearly all

business transactions worldwide are lamed out through area of Business law¹. Relationships relating to principal and Agent involve three main parties, they are the principal and agent involve three main parties, they are the Principal, the Agent and a third party. A principal is said to be a person legal or natural relationship who authorizes an agent to act to create one or more legal relationship with a third party, this relies on the common law proposition *qui facit per alium facit per se* which means “he who act through another, acts personally. It is a parallel concept to vicarious liability and strict liability in which one person is held liable for the acts or omissions of another in criminal law or torts. A principal can be classified as disclosed, patricianly-disclosed and undisclosed principal. A disclosed principal’s identity is known to third parties dealing with the agent, the partially disclosed principal’s is known by the third parties to exist without making it known the principal’s name which the undisclosed principle is unknown to a third party, the third party believes that she is interacting with the Agent.²

An agent on this other hand can be said to be in law, a person who represents and acts on behalf of the other called Principal in such a way as to be able to affect the principal’s legal position in respect to third parties to the relationship by the making of contracts on the deposition of property the agent can be classified as special Mercantile General (this will be discuss in details). More so, factors that give rise to the need of principal-agent relationship in modern business transaction has become so for several reasons which are, trade liberalization the question of physical necessity, expertise knowledge, hidden principal identity and distance and transport problems (Discuss in details).

The Black’s Law Dictionary³ defines Agency as a fiduciary relationship created by express or implied contract or by law, which one party (The Agent) may act on behalf of the another party (The principal) and bind the other party by words or action. An agent’s authority can basically be deduced from the nature of mode of creation of the Agency, this authority can be said to either be actual or apparent authority. An actual authority can be said to be the authority conferred on an agent expressly (i.e written or oral) by implication or by conduct; it therefore consists of express, implied and usual authority. Whist apparent authority is an authority arising from estopped, by this the agent derives its authority as a result of the conduct of the principal which conduct is said to preclude the principal from denying the agents authority to act for the principal⁴. Generally, the principal is liable to third parties for all contractual and tortious acts of his agent done in the discharge or execution of the terms of the agency and which are within the scope of his authority, actual or apartment. This is because the agent is merely intermediary between his principal and the third party. Whether rights and liabilities exist under such a contract will depend on the nature of the principal, should the principal be named partially disclosed, disclosed and undisclosed. Thus, an undisclosed principal which is the fundamental of this project, is a person who uses an agent for

¹. *Contract Act of India 1872*, ss 183,184.

². MC Okany, *Nigerian Commercial Law (Onitsha; Africana First Publishers 2009)* 449.

³. BA Garner (ed), *Blacks Law Dictionary*, (7th edn, West Group, 1999) 62.

⁴U Ironkwe and Others, *Modern Business Law and Practice in Nigeria (Port Harcourt; Ceiwill Publishers 2012)* 205.

negation with a third party, who has no knowledge of the identity of the agents principal; in the case of an undisclosed principal, the identity of the principal and the fact of the agency are not made known to the third party at the time of making the contract, that is the case of an undisclosed principal, the identity of the principal and the fact of the agency are not made known to the third party at the time of making the contract, that is both the name of the principal and his very existence are not disclosed. Often in such situation the agent pretends to be acting for him or herself. As a result, the third party does not know to look at the real principal where dispute arises. However, the rule is that the contract may be enforced by or against the principal provided the agent's act who authorized the rule was expressed in *Crompton Richmond & Co. Inc v Salam Alhaji Atanda*⁵ where it was held that when a party contracts with an Agent whom he does not know to be an agent, the undisclosed principal is generally bound by the contract and entitled to enforce it.

Undisclosed principal is said to be where an agent fails to inform the third party that he is acting on behalf of a principal. In his case only the agent can sue and be sued on then contract, however incipal can be established, the law permits the third party to sue the principal. It has been observed that in the case of an undisclosed principal the third party could always recover from the principal by showing merely that the contract was either within the agent's actual authority, that is proof of fraud which would obviously not be required because the very possibility of fraud in that regard would be precluded by the facts.

The extent of the level of disprove has become a thing of great concern to the society because the extent, to which the theories of the common law antedating the law of agency and upon the principals of the law of agency itself as hitherto accepted mm the cases of *Watteu v Fenwick*,⁶ and *Brooks v Shaw*,⁷ should be rejected in so far as they hold that a principal can be liable other than for authority actually given to his agent or in order to prevent fraud upon third parties. Hence it is on this premise that this present research work is necessary to investigate the levels and frequencies of the application of the doctrine of undisclosed principal.

Conceptual Framework

This project is investigating the reason behind a third party electing to proceed an action against an agent who is just an intermediary in a contract between the principal and the third party. In this paper, the review of existing literature shall be done in the following subheading:

Agent

An agent can simply be said to be a person who acts on behalf of another an agent can also be said to be in law a person, who represents and acts on behalf of the other called principal in such a way as to be able to effect the principals legal position in respect to third parties to the relationship by the making of contracts on the deposition of property. *The Black's Law Dictionary*⁸, defines agent as a person

⁵. (1967) NMLR 383.

⁶. LR (1893) Q B D 346

⁷. 117 F.2d 682 (1941)

⁸. BA Garner (ed), *Black's Law Dictionary*, (6th edn. West Group, 1991)63.

authorized by another to act for or in place of him, one entrusted with another's business. In the case of *Humphries v Going*⁹ "One who represents and for another under the contract or relation of Agency. A business representative, whose function is to bring about, modify, affect, accept performance of or terminate contractual obligations between principal and third party. Also in *Farm Bureau mut. Ins.co. v Coffin*. "One authorized to transact all business of principal or all of principals business of some particular kind or all business at some particular place. Scholars have employed various around upon to classify agents into varying types. According to Ironkwe and others¹⁰," agency is a special type of contract in which one party called the agent is expressly or impliedly employed by another called the principal to bring the principal into contractual relationship with third parties, in other words the agent may contract for the principal as if the principal contracted himself and as such the agent will therefore not incur any liability on the contract. Okany,¹¹ classifies agents first according to the extent of the principal's rights of control and the nature of the acts to be performed by the agents, secondly accordingly to the liability imposed on the Agent and finally in terms of the particular functions performed by Agents. Be that as it may, Agents are generally classified into three major types, these are; General Agent, Special Agent, Mercantile Agent.

According to "Black's law Dictionary, a general agent is one who is authorized to transact the entire principal's business of a particular kind or in a particular place. In other words, when an agent is employed to conduct a series of duties which are within the scope of the assignment, the agent employed and authorized to carry out a particular business is not required to receive additional authorization for each transaction he conducts on behalf of the principal over such a business. To this end, even third parties are prone to assuming that such an agent to do within such transactions. Thus, any private restrictions on the agent's authority by the third party. Examples of General agents are Solicitors, Sales agents and the like. Another type of Agent is special agent, Thus, Black's Law Dictionary defines a special agent as one employed to conduct a particular transaction or to perform a specified act. An agent may be employed and authorized to perform a specific task such as selling real property (Estate Agent) where an agent is to perform a specific assignment he is called a special agent in this regard, he is authorized to perform a single transaction and once the transaction is carried out the agency ends. Against this background, third parties are not prone to assume that he has unlimited authority to which end, ultra vires act done by the agent cannot bind the principal. Also, another type of agent is the Mercantile Agent;

The Black's Law Dictionary defines a mercantile as one who is employed to sell goods or merchandise on behalf of the principal. Section 1 of the Factories Act¹² also defines a mercantile agent as a person who, having in the customary course of his business as such agent, authorized either to sell goods or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods. By

⁹. D C N C 59 F R D 583, 589.

¹⁰. Ibid

¹¹. MC Okany (n 14), 329.

¹². Factories Act, 1987, s. 1

this definition the following includes; Brokers, factor, Del Cadre Agent, Auctioneers, Partners and Bankers.

Agent and Servant

An agent may be confused with positions having similar characteristics, but there exists distinct features in an agent which may not exist in such similar position. It is in fact such distinctive features that serve to distinguish, set apart and make different the positions of a servant and a trustee. It is for the reason that a distinction is being made between the position of an agent and such other positions. A servant may be confused with one who is agent though a servant is not akin to an agent according to Black Law Dictionary,¹³ however, a servant is a person who is employed by another to do work under the control and directions of the employer.¹⁴ From the definitions above, it is clear that essentially the difference between servant and an agent has in:

- **Number of Masters/Principals:** While it is usual for a servant to serve only one master (and indeed it is said you cannot serve two masters, either you love one and hate the other, or else he will hold to the one and despise the other) but an agent can be an agent to several principals at the same time.
- **Assignment of Duty:** A servant in unique circumstances may assume the role of an agent and act in that capacity for instance a manager of a company is essentially a servant of the company but in dealing with certain matters on behalf of the company with third parties, he may act as an agent as his acts binds the company as regards such third persons. but an independent agent who is not employed as a servant does not assume the role of a servant as each of his acts on behalf of his principal binds the principal in relation to third parties.
- **Mode of Remuneration:** the way a servant is remunerated for his work is different from the way an agent is also remunerated for a work done. While the remuneration of a servant is paid in terms of salary or wages, an agent is more often than not remunerated by way of commission accruable on the volume of business transacted.
- **Liability:** the nature liability suffered by a principal and a master are equally different for instance, a principal is only liable to third parties on contracts made on his behalf by his agent within the scope of his authority as the principal's agent, on the other hand, a master is liable for any wrongful act of his servant in so far as it is done in the course of the servant's employment.

Agent and Trustee

A trustee may equally be confused with an agent yet both relationships are not the same. A trustee has been defined as an individual or corporation named by an individual, who sets aside property to be used for the benefit of another person, to manage the property as provided by the terms of the documents that created the arrangements in sum. Below are the basic differences between an agent and a trustee:

- A trustee is made to manage a property while an agent may not have any authority over the principal's property as the subject matter of the agency may not relate to it.

¹³. B A Garner, Black's Law Dictionary (9th Edition West Group 2014) 219.

¹⁴. A Lang, The Conceptual Basis of the Undisclosed Principal Doctrine (2012) (18), Auckland University Law Review, 144-136.

- The trustee is usually vested with the legal title to which the trust relates while the agent is never vested with the title to which the agency relates.
- The acts of the trustee over the trust property are done in his name whereas though the Agent's acts in the name of the principal.
- It is not always the case that a trust is a contractual relationship on the other an agency is more often than not, a contractual relationship.

Principal

A principal is said to be a person legal or natural who authorized an agent to act to create one or more legal relationship with a third party. This relies on the common law proprietors "*Qui facit per alium facit perse*" which means he who acts through another acts personally. It is a parallel concept to vicarious and strict liability in which one person is held liable for the acts or omission of another in criminal law or torts. Also a principal can be a person, Corporation, Partnership, Not-For-Profit organization, or even a government agency, in any case once a principal engages an agent, the principal owes the agent obligation and as such of his authority.

Disclosed Principal

A disclosed principal in its natures can be sub-classified as; Named Principal and Unnamed Principal. Where the agent informs the third party that he is only acting as an agent and made known the name of his principal to the third party, this is known as Named principal. Thus, as long as the agent disclosed that he is acting on behalf of a named principal, the third party is protected in this case the principal and the third party that acquire rights and liabilities under the contract.

The principal shares both rights and liabilities alone and is the right person to sue and be sued. in *Ologbosere v Ezenwa*,¹⁵ it was held that where the agent acting within the scope of his authority makes a contract with a third party on behalf of a disclosed principal, the agent drops out completely and only the principal can sue and be sued by the third party this means that, the Agent is a mere conduit pipe in the contract and drops off the transaction as he is not a party to it in *Akin Bojor Bros v Crek West Africa Line*,¹⁶ it was held that where the name of the principal is disclosed by the agent he is not personally liable on the contract to the third party.

While on the other hand an Unnamed Principal in this instance, the agent informs the third party that he is acting on behalf of a principal without making it known, the principal's name the general rule is that, the non-disclosure of the principal's name does not in any way show that the agent is acting on his own behalf. Therefore, the rights and liabilities in this relationship still subsist, in the principal and the third party. In other words, when an agent enters into a contract but does not name his principal at the time of the contract, the agent is not liable on it so long as it is clear that he did not pledge in personal credit. The agent only makes it known to the third party at the time of making the contract that he is acting on behalf of a principal. The agent is not liable in the circumstances, where in a contract a person makes it as an agent for or on account of or on behalf of, or simply for a principal or where words of that kind are added after the agent's signature, he is not personally

¹⁵. (1962) LLR 1465.

¹⁶. (1970) NCLR, 136

liable but the principal in the case of *University of Calabar v Ekpo Ephraim and ors*¹⁷ were the court held that the agent is not liable where it was known that he was acting for a principal. This means that at the disclosure of the fact that there is a principal on whose behalf the agent's act, his name or identity need to be revealed, it suffices if the third party is aware or ought to know that the person he is dealing with is acting for another person. It is therefore, clear that a disclosed principal may be named or unnamed.

Undisclosed Principal

This is where an agent fails to inform the third party that he is acting on behalf of a principal. In this case, only the agent can sue and be sued on the contract. However, where an undisclosed principal receives benefits arising from the contract, the law renders the undisclosed principal liable for the contract at the option of the principal, unless the terms of the contract do not leave themselves to such implication. Under this situation, where a contract is made with a person who is actually an agent but the identity of the principal and the fact of the agency are not made known to the third party at the time of making the contracts, the undisclosed principal as well as the agents are as a rule bound by the contract and entitled to it. An undisclosed principal is one of whose existence the third party is not always, so that the third party does not know that the person he deals with is an agent to someone else. The rule is that the contract may be enforced by or against the undisclosed principal provided the agent's act was authorized. The rule was expressed in *Crompton Richmond & Co. Inc. v Salami Alhaji Atanda*¹⁸.

LEGAL AND INSTITUTIONAL FRAMEWORKS

These are statutes promulgated to regulate contract of an undisclosed principal as it has to do with rights and liabilities of an agency transaction and determine their outcome.

Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN)

The Constitution is the organic law also referred to as the grundnorm that birthed the legislature and empowered it to make other laws, subject to the provisions of the constitution¹⁹. Following, because it represents the interests of the people, it realized the need for the people not to compulsorily acquire property, thereupon, Section 44(2)²⁰, nothing in Subsection (1) of this Section shall be continued as affecting any general law and by 44 subsection 2(c),²¹ relating to leases, tenancies, mortgages, charges, bill of sale or any other rights or obligation arising out of contracts.

This sections above provides that before an interest in property can be transferred, there must be notice given, this also applies to a contractual relationship especially one which has to do with the principal and his agent as concerning authorized and unauthorized acts done by the agent with respect to contract with a third party and as such acquires rights and obligation arising out of the contracts; the contract may

¹⁷. (1992) 1 NWLR (Pt. 271) 551.

¹⁸. (1967) NMLR 383.

¹⁹. Constitution of the Federal Republic of Nigeria, 1999(as amended), s.1

²⁰. Ibid, S. 44 (2)

²¹. Ibid, S 44 (2) (c)

be enforced by or against the principal provided the agent's act was authorized. However, where the agent expressly described himself as the principal, the rule is that the undisclosed principal cannot enforce a contract where the agent makes it without disclosing that he is an agent does not apply. On this premise were notice has not been given as regards to an undisclosed principal and the third party discovers that there is an undisclosed principal, the agent will be held liable and the undisclosed principal cannot enforce the contract against the third party. It may be stressed again that for the principal to be bound on the contract to the third party, the acts of the agent must be authorized. *Labode v Otubu Cusano (Nig) Ltd.*²² It is submitted here that the agent should always give notice of his principal to the third party, the fact of agency as a matter of compulsion otherwise he should be held responsible.

Sale of Goods Law of Rivers State, 1999

The Sale of Goods Law of Rivers State 1999²³, it provides many rights and remedies to parties in a contractual relationship. The law deems that many rights are part of a sale of goods contract, regardless of what the parties have or have not agreed on. The law of Sale of Goods is a collection of guidelines and liabilities that are put in place to provide a safety net for customer.

The law imposes terms and conditions on transactions between a person or company that enters into an agreement to sell goods. By section 20 subsection 1,²⁴ which provides that where goods are sold by a person who is not their owner who does not sell them under the authority or with the consent of the owner, or where a joint owner of goods sells them without the consent of the other joint owner, the buyer acquires no better title to the goods than the seller had, unless the owner or other joint owner of the goods, as the case maybe, is by his conduct precluded from denying the seller's authority to sell. Also section 24(1)²⁵, where a mercantile agent act with the consent of the owner, in possession of goods or other disposition of the goods made by him when acting in ordinary course of business, shall subject to the provisions of this law be as valid as if he were expressly authorized by the owner of the goods to make the same by Section 32²⁶ which provides for the rights of true owner, nothing in this law shall authorize an agent to exceed or depart from his authority as between himself and his principal or exempt him from liability, civil or criminal for so doing.

The competent agent is legally capable for acting for this principal vis-à-vis the third party. Hence the process of concluding a contract through an agent involves a two-fold relationship. On the one hand, the agency is concerned with the external business relations of an economic unit and with the powers of the various representatives to affect the legal position of between principal and agent as well, thereby imposing certain duties on the representative. The two relationships need not be in full conformity, thus, an agent's effective powers in dealing with outsiders

²². (2001) 7 NWLR (Pt. 712) 256.

²³. *Sale of Goods Law of Rivers State, 1999.*

²⁴. *Sale of Goods Law, Rivers State, 1999, S 20 91)*

²⁵. *Ibid, s 24*

²⁶. *Ibid, s 32*

may extend to transactions that he is under a duty to his principal not to undertake, leading to a situation characterized as apparent authority.

Companies and Allied Act 2020

The Current Companies and Allied Matters Act, 2020 which repealed the Companies and Allied Matters Act, 1990. The CAMA 2020 was enacted to provide for incorporation of companies such as, Limited liability partnerships, Limited partnerships, registration of business names together with incorporated trustees of certain communities, bodies, association and for related matters. By virtue of section 8(1) CAMA, the CAC is established and saddled with the functions of incorporation of companies, registration of business names together with incorporated trustees of certain communities, bodies, association and for related matters.^{90(1) CAMA 2020,}²⁷ provides that the acts of any officer or agent of a company shall not be deemed to be acts of the company unless such act is authorized by general meeting, by the board of director or managing directors whether expressly or impliedly. In other words the company which happens to be a principal on one side must authorize its members (agent) expressly or impliedly to act on its behalf, however where such act has not been authorized, the agent becomes liable.

Furthermore, the company cannot derogate from the vicarious liability of the officers in so far as they act within the scope of their employment as agents, where they act beyond the scope of their employment, they will be held liable. Section 90(2) CAMA provides that where the agent's act is not authorized, the company can only bear liability if the act was conferred to act by the company or by any subsequent ratification.²⁸ By virtue of section 87(1) of CAMA 2020,²⁹ a company shall act through its members in general meeting or its board of directors or through officers or agents appointed by or under authority derived from, the members in general or board of directors. This provision entails that where the member of a company or board of directors is duly appointed by the company to act on behalf of it, such individual becomes an agent of the company and any act done by him will be the liability of the company. However section 89(a) provides where an individual has been appointed by the company, his respective powers fall within the scope of the company's Article, in other words where he acts outside the scope of the company's Article, he becomes liable for his actions³⁰.

Insurance Act, 2003

This Nigerian Insurance Act, 2003 was created to make provisions for the application of different types of insurances in Nigeria, the penalties for not having insurance, and the regulations governing the process of obtaining insurance protection. The main purpose for the Enactment of this law is Legality and Enforceability of Insurance Contract in Nigeria. Since there are many uncertainties in life, insurance provides financial support and reduce the burden of uncertainties in business and human life. It provides safety and security against the insured event.

²⁷. CAMA 2020, 90 (1).

²⁸. *Ibid*, s. 90 (2)

²⁹. *Ibid*, s 87 (1)

³⁰. *Ibid* s. 89 (a)

By virtue of 34(1) No person shall transact business as an insurance agent unless he; (a) possesses a certificate of proficiency issued in the name of the individual applicant by the Chartered insurance Institute of Nigeria (referred to in this Act as the “Institute”); (b) is duly appointed by an insurer and licensed in that behalf under this Act.³¹ (2) An application for a license as an insurance agent shall be made to the Commission in the prescribed form and be accompanied by the prescribed fee and such other documents as may be prescribed, from time to time. From the aforesaid, the first part provides that an individual who wants to carry on business in Nigeria as an insurance agent must meet to certain requirements by acquiring a certificate of proficiency. The second part which provides for another criterion for an individual to act as an insurance agent. Thus, he be appointed by an insurer (principal) to act on his behalf as his insurance agent.

EXAMINATION OF THE DOCTRINE OF THE UNDISCLOSED PRINCIPAL IN COMMERCIAL TRANSACTIONS IN NIGERIA

An undisclosed principal is one of whose existence, the third party is not aware, so that the third party does not know that the person he deals with is an agent to someone else. The rule is that the contract may be enforced by or against the undisclosed principal provided the agent’s act was authorized. The principle of privity of contract states that only a party to a contract can benefit and share in the liability under the contract. There are however instances where the principle of privity of contract can be evaded to avoid hardship being caused by its strict application. One of such instances is agency relationships. Under agency, a person who is an agent can enter into contract with another person for the benefit of yet another person which is referred to as the principal. So the contract becomes that of the principal and only him can sue and be sued under the contract. This means that under Agency, a person who is not a party to a contract acquires rights and liabilities under it. Therefore, once it is certain or undisclosed that the agent is acting on behalf of another (principal), the principal becomes liable for the contract. This is an aberration from the spirit behind privity of contract.

One of the foundational principles of contract law is that each party must objectively manifest an intention to enter into contractual relations with the other. Such a meeting of minds can exist only between the third party and the agent, and still only objectively, for the agent must at all times intend to act on behalf of the principal. The agent who fails to disclose his true position should be personally liable as a party under the contract is consistent with privity of contract. Only a party to contract can sue or be sued under this doctrine. The value of the privity of contract doctrine has weakened due to the development of exceptions to the rule. According to Akanki;³²

From the view point of commercial men, the doctrine of privity of contract is quite an inconvenient one. In modern commercial transactions, there are many occasions in which a contract is made for the benefit of a third party with the exception that the

³¹. Insurance Act 2003, s. 34 (1) (a) (b)

³². EO Akanki, Commercial law in Nigeria (university of Lagos Press 2005)200.

beneficiary should have full rights to enforce the contract. In most cases the doctrine complicates judicial process by necessitating double litigation. As a result many exceptions have evolved.

A controversial exception to the rule is undisclosed agency. Unlike disclosed agency, the third party contracts with the agent and not the undisclosed principal because the third party is unaware of the undisclosed principal's existence. The general idea of undisclosed agency corrodes the notion of privity of contract. However, the circumstances placed on the undisclosed principal's ability to intervene reflect cohesion to privity of contract where it may be arbitrary to the third party to have him barge in or intervene in that contract. Mechem states that the principle of undisclosed agency doubles an anomaly, but even so, as well settled as any other rule in the law of agency. It is evident that the law on undisclosed agency does undermine the notion of privity of contract as the undisclosed principal can in certain circumstances, intervene in a contract between the agent and the third party. However, the courts will only undermine the rule and allow intervention upon terms which exclude injustice, in this includes where the contract terms suggest there is no undisclosed principal or where the personal nature of the agreement means that the privity between the agent and the third party becomes fundamental to the contract itself. According to Krebs: "... where the contract expressly provides that the agent is solely bound." That is where the agent expressly states in the contract that he is the principal and is to be bound by the contract as in *Pabod Suppliers Ltd v. Beredugu*, the principal will not be sued. Although the rule is anomalous within the constraints set by the privity of contract doctrine, it is an exception that will continue to have great importance within commercial transactions. The acknowledgement of third part intervention via an undisclosed principal will be bemoaned by doctrinal purists, but will generally be welcomed by commercial pragmatists.

Obligations of a Principal and an Agent

An agency is the establishment of a contract entered into by joint consent that involves two parties. The first is the principal, which is a party who gives legal authority to another to action his or her behalf in business transactions. An agent is the other party which is the party who is legally authorized to act on behalf of the principal in the principal's business transaction. The law of agency thus, governs the legal relationship in which an agent deals with a third party for his or her principal. Hitherto, the relationship between a principal and an agent is fiduciary and agent's actions bind the principal. Fiduciary relationship is the kind of relationship where one places complete confidence in another hence, the agent is obligated to act in the best interests of the principal.

However, not only agent but the principal owes certain obligations to the agent too. To begin with the agent, this essay is discussing some of the duties that an agent and the principal are obligated to each other and remedies if there is a breach of duty in an agency.

An agent is obligated to act in the best interests of the principal. It is the duty of an agent when appointed to facilitate or negotiate a transaction on behalf of the

principal, to use his diligence and skills to negotiate terms of a transaction on behalf of his principal with a third party to the furthestmost benefit of his principal in the state of affairs, this was in the case of He not required to show more skill than he has held himself out to possess.

Remedies for Breach of Duty

It might happen that the principal or the agent breaches his or her duties. In that state, dismissal, cause for money had and received, right of lien and Action for indemnity, are some of the remedies. On dismissal as it was in the case of *Deep-Sea Fishing and Ice Co v Fernham*,³³ held that, where an agent commits a serious breach of duty, the agent can be dismissed by the principal. Cause of money had and received is another remedy. This remedy gives power to the principal to bring an action against the agent to recover the money if an agent earns money from the transactions without informing the principal.

In the case of *Andrew v Ramsay and Co*³⁴ The agent made secret profit on the goods that he sold for his principal. The principal then sought to recover the commission he paid the agent and the secret profit. The court held he was entitled to do so. Right of lien is the remedy for an agent to exercise his right of lien on the goods of the principal which are lawfully in his possession. Alien can either be general lien or particular lien. Before a lien can be applied, some conditions have to be followed, some of the conditions include the agency contract should not contain provisions inconsistent with the exercise of a right of lien. The second condition is if the agent lawfully came into the agent's possession.

The agent is entitled to be indemnified for losses incurred by him in the exercise of his duties as an agent. In the case of *Christoforides v Terry*,³⁵ the court held that he was entitled to be indemnified by the principal for the loss he sustained. In summary, agency is a two way street whereby parties, the agent and the principal have duties to each other. The principal is obliged to compensate the agent, to indemnify the agent and lots of duties in order to keep their relationship alive. On the other hand, the agent is indebted to act in client's best interest, to be confidential and lots of duties as per to agency law. However, if a breach of duty arises, the principal can dismiss the agent and in the case where the agent was making secret profits, the principal, can cause of money of the agent for liability and expenses incurred in the execution of the agency and the only way to do this is by way of third party proceedings.

Conclusion

The right of a principal to sue under the principle of undisclosed principal depends on whether the third party knows that the agent dealing with him is doing so on behalf of another person who is the principal. If the agency is not disclosed, the principal may sue the third party under the contract even though the third party is ignorant of his existence. The third party also has the right to elect as between the agent and the principal who to sue. This arrangement even though is contrary to the

³³. (1957) 1 WLR 1051

³⁴. (1903) 2 KB 635.

³⁵. (1974) ac 556.

principle of privity of contract; is considered to be useful for commercial convenience and to avoid injustice in commercial transactions. However, the principle of undisclosed principal is more of the third party protection and an agent may suffer loss in a contract which he did not benefit from if the third party elects to sue the agent for the contract.

Recommendations

This project made the following Recommendations;

- a) That the court should always insist on compulsory disclosure by the agent to the third party the fact of contract of agency. Where an agent does not disclose, he should be personally held liable. This will prevent injustice being meted on an agent who has not benefitted from a contract but only makes a representation.
- b) The third party should proceed straight against the principal alone and not either of them. This will remove the huddles in electing who should be sued or should sue and make businessmen transact freely and without suspicions
- c) A solution to these conflicts of interests where there's an apparent authority must be in final analysis rest upon an evaluation of the extent to which the relationship between the undisclosed principal and the agent should influence the contract made by the agent with a third party.
- d) The principal's duty of indemnity should be enforced by the agent claiming against the principal through third party proceedings under relevant rules of court whenever the agent is sued by the third party.