DOES YOUR AGENT HAVE YOUR AUTHORITY TO MESS UP?

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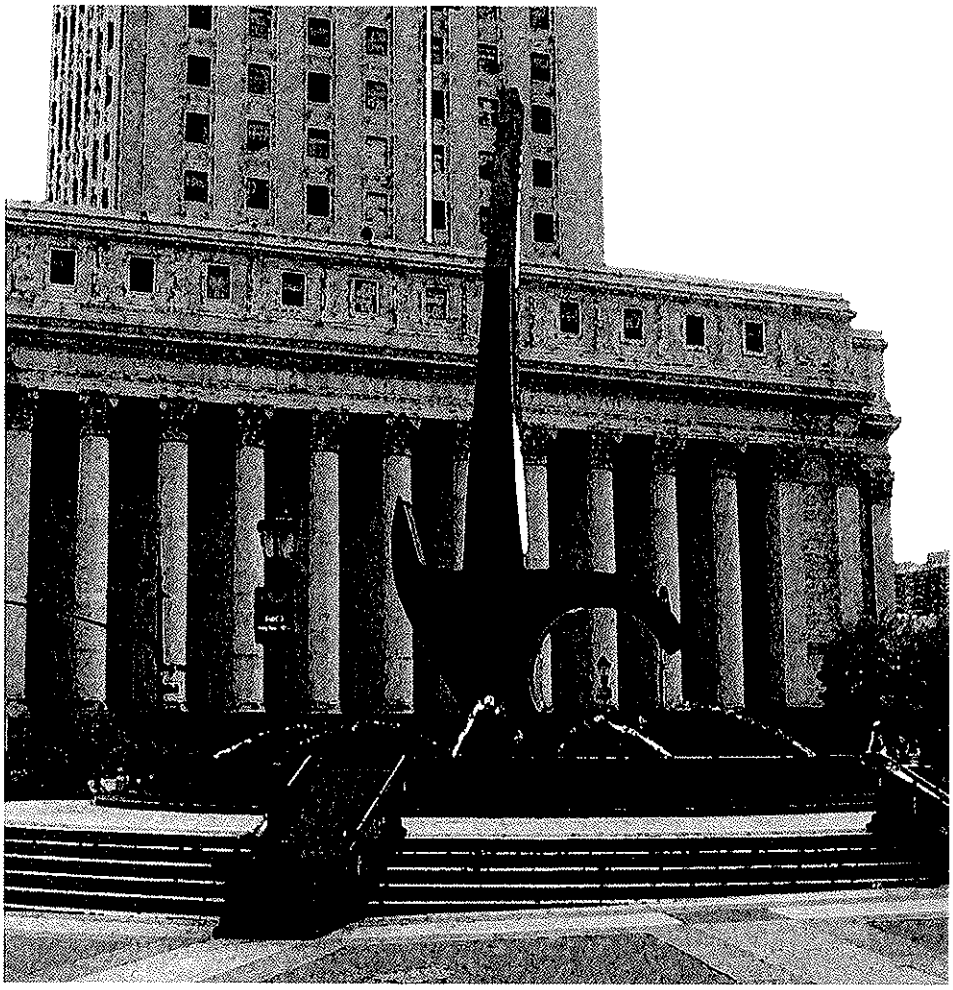

It could be assumed that if one hires an attorney to do "X" and that attorney does "X" and "Y", the attorney's actions as far as "Y" were not authorized; however, the question of authority between principals and agents is not so simple. In our society today, it is considered the appropriate course of action to hire experienced professionals, such as attorneys, to handle sophisticated matters in order to avoid careless or novice mistakes. From big businesses to individuals, people rely on these professionals as their agents, and with that reliance authority often is bestowed on the agent to effectuate requests made by the principal. But what happens when the agent's actions cause a loss to the principal that was never intended – especially where the agent's actions were not specifically authorized?

"Actual authority…is created by a principal's manifestation to an agent that, as reasonably understood by the agent, expresses the principal's assent that the agent take action on the principal'sbehalf." Restatement (Third) of Agency § 3.01 (2006); accord Demarco v. Edens, 390F.2d 836, 844 (2d Cir. 1968).

On January 21, 2015, the U.S .Court of Appeals for the Second Circuit issued a ruling that should re-enforce a diligent person's mantra – assume nothing and double-check everything. The appeal was derived from the Bankruptcy Court's decision in the case of petitioning Debtor where the parties were trying to determine if an errant filing, which caused the release of a security interest, was enforceable against the secured creditor. Official Comm. of Unsecured Creditors of Motors Liquidation Co. v. JP Morgan Chase Bank, N.A. (In re Motors Liquidation Co.), 777 F.3d 100, 2015 U.S. App. LEXIS 859, 60 Bankr. Ct. Dec. 136, 2015 WL 252318 (2d Cir. 2015).

The secured creditor had instructed outside counsel to file releases of two security interests, but outside counsel inadvertently included a third security interest in the release documents. The Bankruptcy Court ruled that because the secured creditor had not authorized outside counsel to terminate the third security interest, the erroneously-filed release was not effective. The Bankruptcy Court reasoned that under UCC § 9-509(d)(1), a UCC-3 termination statement is only effective if the secured party of record authorizes the filing.

The Unsecured Creditors Committee appealed that decision, arguing that the UCC-3 termination statement had been properly filed and the secured creditor had authorized the filing even though the actual filing incorrectly included the release of the third security interest. The U.S. Court of Appeals for the Second Circuit first determined that under UCC § 9-509(d)(1), the secured creditor's authorization to file a UCC-3 release is sufficient authorization for the entire filing, even if that filing caused an unintended effect.

The outcome of the appeal hinged on whether the secured creditor had authorized outside counsel to file the document that unintentionally terminated the third security interest. The Court found that outside counsel had communicated directly with secured creditor's in-house counsel and had provided copies of the intended filings to in-house counsel, who had promptly approved the filing. Based on that correspondence, the Court determined that when in-house counsel gave his approval of the documents, that act provided the necessary authority for outside counsel to file the termination of all three security interests, even if that was not the authorizing party's intent.

Authority is necessary for the attorney-client relationship to function; however, the principal must be prepared to accept the consequences of the agent's actions. The principal and agent should be mindful of their communications with one another because they may end up unintentionally expanding the scope of the agent's authority.

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