

## Agency by Estoppel – *Crabtree-Vickars Pty Ltd v Australia Direct Mail Advertising*

- This case emphasises that if you're trying to rely on ostensible authority, then, it's critical that you are relying on a holding out or representation made by the **principle**.
- In the case of a corporation, the representation has to be made by someone who has the authority to make the representation to hold out (that the agent has the authority you're trying to rely on).
- This case emphasises the fact that if you're trying to rely on ostensible authority, then the holding out has to be done by the principal. For a corporation, this is someone who has authority to either:
  - Make the representation of holding out; or
  - To do the act in question.

### *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising & Addressing Co Pty Ltd (1975) 133 CLR*

**Facts** - Concerned the signing of an order by Peter McWilliam. A family company and the executives were a father and two sons. The two sons were Bruce McWilliam and Peter McWilliam. Peter McWilliam had previously been a director of CV but had resigned when he became bankrupt. He still worked full time in the business and he had been given the job of investigating the purchase of a printing machine. Even though he had been given the job of investigating this purchase, he had *no actual authority on behalf of the company to enter into the transaction*. The company was trying to get themselves out of this contract saying it had been made without its authority.

**Issue** - Did Peter McWilliam have ostensible authority?

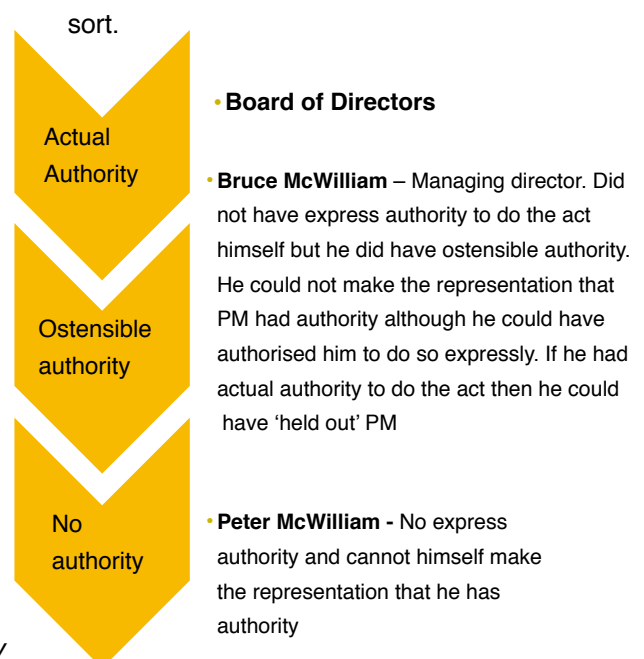
**Held** - Evidence that the two brothers (Bruce who was MD, and Peter who had no position of authority in the company), when they had been visited by the seller of the printing press and Peter McWilliam had said to the managing director of the other company that: "Bruce won't be in the negotiations because he is non-technical, I'm handling the machinery negotiations." Peter was the agent making this authority.

**High Court** - Even though this comment was made by Peter McWilliam in the presence of Bruce McWilliam, Bruce McWilliam **did not have the express authority to do this act himself**. He could not, with express authority, have entered into this contract. The express authority belonged to the board of directors. The Board, acting in concert could make the contract **but one director couldn't under the company's Constitution**. However, Bruce McWilliam as managing director had **ostensible authority** to enter into the contract i.e. someone as an outsider, looking at this contract would be entitled to assume that the managing director was able to commit the company to a contract of this sort. However, Bruce had not performed the action, it was Peter.

**Issue** - Had Bruce, by remaining silent when Peter said: "Bruce won't be in these negotiations, I'm handling the machinery negotiations", effectively held Peter out as being the agent for the company. Could he in fact do so?

**High Court** - He could not. Held that Bruce didn't have the actual authority to place the order and therefore, he could not make the representation that Peter had the authority to do so. If you're relying on a holding out (ostensible authority), the holding out or representation must be made by someone who has authority to perform the act. The HC said:

*"Bruce McWilliam being the managing director upon whom under the articles all powers of management could be conferred had, undoubtedly in our opinion, ostensible authority to make the contract. If with this ostensible authority he actually*



*authorised Peter McWilliam to make the contract, there would have been an exercise by him of ostensible authority. On the other hand, if the managing director had had actual authority to make the contract then in that position he had authority to hold out Peter McWilliam as having authority to make the contract”*

i.e. a person with no actual authority but only ostensible authority to do an act or make a representation (Bruce McWilliam), cannot themselves make a representation which may be relied on as giving a further agent ostensible authority.

**What you must take away from this case** - It must be the **principal** that does the holding out. The principal in this case is the company/Board of Directors acting in concert, or, if for example, one of the Directors has the express authority to perform the action they could do it themselves, or, they could in fact make a representation or hold out another agent (Peter McWilliam) as having authority to perform the action.

*Egyptian International Foreign Trade Co v Soplex Wholesale Supplies Ltd and PS Refson & Co Ltd, The Raffaella [1985] 2 Lloyd's Rep 36.*

- English case. Referred to be **Sealy and Hooley**
- The person making the representation on which ostensible authority is based may have authority to make representations, even though they do not have the authority to enter into the transaction themselves, ie even though they don't have actual authority to do the act, they do have authority to make a representation on which ostensible authority can be based:
  - In some cases, a person (like in Bruce McWilliam's position) who has no actual authority to perform an action may, in fact, have authority to hold out, to make representations on behalf of the company. They may not have actual authority to do the act but they do have authority to make a representation on which ostensible authority could be based.

*“It is obviously correct that an agent who has no actual or apparent authority either (a) to enter into a transaction or (b) to make representations as to the transaction cannot hold himself out as having authority to enter into the transaction so as to affect the principal's position. But, suppose a company confers actual authority on X to make representations and X erroneously represents to a third party that Y has authority to enter into a transaction; why should not such a representation be relied upon as part of the holding out of Y by the company? By parity of reasoning, if a company confers actual or apparent authority on A to make representations on the company's behalf but no actual authority on A to enter into the specific transaction, why should a representation made by A as to his authority not be capable of being relied on as one of the acts of holding out? There is substantial authority that it can be”*

- **Note** - Read through this if we want to, but it is **not settled law**. Enough to have an understanding *Crabtree-Vickars*.

### **Assumptions under the Corporations Act 2001 (Cth)**

- These are often called the **rules of attribution**, or, the **indoor management rules**.
- Under **sections 128** and **129**, the assumptions that can be made by outsiders looking at the actions of company employees are:
  1. **Section 128** - A person is entitled make the assumptions in section 129 in relation to dealings with a company. The company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
  2. **Section 129** - The company's constitution and replaceable rules have been complied with

3. **Section 129** - If, from information provided by the company that is available from ASIC, someone appears to be a director or secretary of a company that they have been duly appointed and that they have authority to exercise the powers and duties customarily exercised or performed by a director or company secretary of a similar company.
  4. **Section 129** - Officers and agents of the company properly perform their duties to the company.
- The sorts of assumptions you can make under these provisions will depend on the nature and size of the company.
    - **Example** - You are the sole director of a small public company registered with ASIC. In that case, you would be *entitled to assume* that that director (who is really the only means through which the company can act at all because companies are not human beings) had all of the powers under the constitution. If however, you were dealing with a single director on the board of BHP Biliton, you wouldn't be entitled to assume that that single director was able to commit a company of that size to a large contract (e.g. \$10 million), you would assume there would be internal cheques and balances that give directors limited power, and that, normally when the company was acting on a transaction of that size, it would need a Board resolution. Not the actions of a single director.

### **Summary of Authority**

- Three kinds of authority:
  - Actual - Implied;
  - Actual - Express; and
  - Ostensible (or, authority by estoppel).