YALE UNIVERSITY *v.* OUT OF THE BOX, LLC
(AC 29710)

Flynn, C. J., and DiPentima and Borden, Js.

Argued September 3, 2009—officially released January 12, 2010

(Appeal from Superior Court, judicial district of New Haven, Housing Session, Doherty, J. [judgment of possession]; Crawford, J. [motion to open and set aside].)

Jonathan M. Freiman, with whom were *Robert J. Klee*, and, on the brief, *Katherine H. Hagmann*, for the appellant (plaintiff).

William F. Gallagher, with whom, on the brief, were *Hugh D. Hughes*, *David M. Krassner* and *Hugh F. Keefe*, for the appellant (defendant).

Opinion

DiPENTIMA, J. The plaintiff, Yale University, appeals from the denial of its motion to open and set aside a stipulated judgment. Specifically, it claims that the trial court improperly concluded that the plaintiff's attorney possessed apparent authority to enter into a settlement agreement and to bind the plaintiff to the terms of that agreement. As a result, the plaintiff contends that the court should have granted its motion to open and set aside the judgment. We are not persuaded and, accordingly, affirm the judgment of the trial court.

The origin of the plaintiff's appeal lies in a factually complex summary process action filed by the plaintiff with respect to a parcel abutting 266 College Street in New Haven, described as a shed and walkway.[1] In November, 2001, the defendant, Out of the Box, LLC, had entered into a ten year lease with the owner of 266 College Street, Asimina Antonellis. On January 26, 2005, the plaintiff obtained from Antonellis a quitclaim deed to 1016-1020 Chapel Street, which included the shed. In June, 2005, the plaintiff and Antonellis entered into a license agreement allowing Antonellis and her tenant, the defendant, use of the shed for a term of seven years. In October, 2005, the plaintiff offered a license agreement to the members of the defendant, Arturo Camacho and Suzette Franco-Camacho, for use of a walkway at the rear of 266 College Street. Additionally, after Camacho and Franco-Camacho had purchased 266 College Street, the plaintiff offered the defendant a license for use of the shed. The members, on behalf of the defendant, refused to sign the license agreement offered by the plaintiff.[2] As a result, the plaintiff filed a summary process action, claiming that neither Antonellis nor the defendant had any right or privilege to its parcel. The defendant filed, inter alia, a motion to stay the summary process action.

The court scheduled a hearing on the defendant's motion for July 10, 2006. Thomas Sansone, the plaintiff's attorney, David Newton, the plaintiff's director of university properties, Franco-Camacho and David Krassner, the defendant's attorney, met with a housing specialist in an effort to reach a settlement. The hearing then was postponed until August 10, 2006. On that date, Sansone, Newton, Franco-Camacho and Krassner continued their negotiations and reported to the court that they had reached a settlement to the satisfaction of both parties. Newton agreed to each of the terms reached during the negotiations between the parties. Sansone, on behalf of the plaintiff, and Franco-Camacho and Krassner, on behalf of the defendant, signed the settlement. After canvassing Franco-Camacho and commending the parties, the court accepted the settlement.[3]

The terms of the settlement stated that judgment of possession in favor of the plaintiff would enter, with a

stay of execution through August 9, 2008, subject to the following terms: (1) judgment of possession may enter in favor of the plaintiff and against the defendant; (2) the parties agree that there was no admission as to whether the plaintiff had legal title or the right to possession, and the defendant expressly retained all rights to pursue an adverse possession, prescriptive easement or related claim; (3) the plaintiff was prevented from bringing an action to quiet title; however, the defendant retained the option to do so; and (4) the plaintiff agreed to grant a minimum two year license agreement to use the parcel in question. The license agreement incorporated the following conditions: (1) a two year minimum term renewable annually unless terminated by either party; (2) if the defendant remained in possession in excess of seven years, then it would bear the cost of removing the shed; (3) any reconstruction was subject to the plaintiff's approval; and (4) the defendant expressly retained its potential adverse possession claim as to the rear door of 266 College Street and the pathway leading thereto.

On August 15, 2006, the plaintiff filed a motion to open and set aside the judgment pursuant to Practice Book § 17-4. The motion alleged that Sansone had exceeded the scope of his authority to settle the matter on the terms stipulated as a result of "a misinterpretation of the instructions that had been provided to him by the plaintiff." Attached to this motion were affidavits from Sansone, Newton, Bruce Alexander, the plaintiff's vice president for New Haven and state affairs and campus development, and Dorothy Robinson, the plaintiff's vice president and general counsel. The defendant filed an objection. Following an extended evidentiary hearing conducted over the course of several months, the court denied the plaintiff's motion to open and set aside the judgment. The court concluded that the plaintiff, acting through Alexander and Robinson, led the defendant to believe that good faith negotiations had occurred and that the plaintiff would be bound by the action of its agent, Sansone. Specifically, the court determined that "the plaintiff failed to show that . . . Sansone lacked authority. Instead, the evidence leads to the conclusion that . . . Sansone had apparent authority to enter into the stipulation." This appeal followed.

Our Supreme Court expressly has stated: "The procedural posture of this case determines the scope of our review." *Ruddock* v. *Burrowes*, 243 Conn. 569, 573, 706 A.2d 967 (1998); see also *Hall* v. *Gilbert & Bennett Mfg. Co.*, 241 Conn. 282, 306, 695 A.2d 1051 (1997) ("[o]ur consideration of these claims is hindered, however, by the procedural posture in which the present case arrived at our doorstep"). Our case law is replete with examples of the significance of procedural posture to appellate review. See, e.g., *Tellar* v. *Abbott Laboratories, Inc.*, 114 Conn. App. 244, 245, 969 A.2d 210 (2009)

(when reviewing pretrial motion to dismiss, allegations taken in most favorable light to nonmoving party); *Misata* v. *Con-Way Transportation Services, Inc.*, 106 Conn. App. 736, 740, 943 A.2d 537 (2008) (posture of case determined whether this court considered merits of underlying judgment or limited to whether trial court abused discretion in denying motion to open); *Samaoya* v. *Gallagher*, 102 Conn. App. 670, 675, 926 A.2d 1052 (2007) (due to failure to file motion to correct findings in workers' compensation case, party unable to challenge findings on appeal).

The procedural posture of the case before us is the denial of a motion to open and set aside a judgment. "The principles that govern motions to open or set aside a civil judgment are well established. Within four months of the date of the original judgment, Practice Book [§ 17-4] vests discretion in the trial court to determine whether there is a good and compelling reason for its modification or vacation. . . . The exercise of equitable authority is vested in the discretion of the trial court and is subject only to limited review on appeal. . . . *We do not undertake a plenary review of the merits of a decision of the trial court to grant or to deny a motion to open a judgment. The only issue on appeal is whether the trial court has acted unreasonably and in clear abuse of its discretion.* . . . In determining whether the trial court abused its discretion, this court must make every reasonable presumption in favor of its action." (Emphasis added; internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 94–95, 952 A.2d 1 (2008); see also *Gillis* v. *Gillis*, 214 Conn. 336, 337, 572 A.2d 323 (1990); *Eremita* v. *Morello*, 111 Conn. App. 103, 105–106, 958 A.2d 779 (2008); *Cox* v. *Burdick*, 98 Conn. App. 167, 176, 907 A.2d 1282, cert. denied, 280 Conn. 951, 912 A.2d 482 (2006); *Magowan* v. *Magowan*, 73 Conn. App. 733, 737, 812 A.2d 30 (2002), cert. denied, 262 Conn. 934, 815 A.2d 134 (2003). The posture of the present case is whether the court properly denied the motion to open the stipulated judgment between the parties. It follows that we review such a claim pursuant to the abuse of discretion standard.[4]

On appeal, the plaintiff claims that the court improperly concluded that Sansone possessed apparent authority to enter into a settlement agreement and bind the plaintiff to the terms of the agreement. We note that in both its appellate brief and at oral argument before this court, the plaintiff expressly disavowed any challenge to the relevant factual findings made by the trial court. Instead, the plaintiff maintains that the court's legal conclusion that Sansone had apparent authority was improper.[5] We are not persuaded that the court acted unreasonably or abused its discretion in denying the plaintiff's motion to open and set aside the judgment.

A brief discussion of the law of agency will facilitate our discussion. "Agency is defined as the fiduciary relationship that arises when one person (a principal) manifests assent to another person (an agent) that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act. 1 Restatement (Third), Agency, § 1.01, p. 17 (2006)." (Internal quotation marks omitted.) *LeBlanc* v. *New England Raceway, LLC*, 116 Conn. App. 267, 274, 976 A.2d 750 (2009). As a general matter, a principal is liable for the acts of its agent. *Hallas* v. *Boehmke & Dobosz, Inc.*, 239 Conn. 658, 673, 686 A.2d 491 (1997). An agent's authority may be actual or apparent. *State* v. *Marsala*, 116 Conn. App. 580, 585–86, 976 A.2d 46, cert. denied, 293 Conn. 934, 981 A.2d 1077 (2009).

"Apparent authority is that semblance of authority which a *principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses*. . . . Consequently, *apparent authority is to be determined, not by the agent's own acts, but by the acts of the agent's principal*. . . . The issue of apparent authority is one of fact to be determined based on two criteria. . . . First, it must appear from the principal's conduct that the principal held the agent out as possessing sufficient authority to embrace the act in question, or knowingly permitted [the agent] to act as having such authority. . . . Second, the party dealing with the agent must have, acting in good faith, reasonably believed, under all the circumstances, that the agent had the necessary authority to bind the principal to the agent's action." (Citations omitted; emphasis added; internal quotation marks omitted.) *Tomlinson* v. *Board of Education*, 226 Conn. 704, 734–35, 629 A.2d 333 (1993); see also *Gordon* v. *Tobias*, 262 Conn. 844, 850–51, 817 A.2d 683 (2003); 1 Restatement (Third), supra, § 2.03, p. 113. This type of authority may be derived from a course of dealing. *Hall-Brooke Foundation, Inc.* v. *Norwalk*, 58 Conn. App. 340, 346, 752 A.2d 523 (2000); see also *Edart Truck Rental Corp.* v. *B. Swirsky & Co.*, 23 Conn. App. 137, 140, 579 A.2d 133 (1990).

The general rules regarding agents and apparent authority become more complicated when, as in the present case, the agent is a lawyer who has settled a case for his or her client. See generally J. Parness & A. Bartlett, "Unsettling Questions Regarding Lawyer Civil Claim Settlement Authority," 78 Or. L. Rev. 1061 (1999). One court aptly has observed that the intersection of ethical guidelines,[6] contract law, agency law, the attorney-client relationship and policy considerations[7] is the reason for the difficulty in determining the extent of an attorney's authority to effectuate a settlement without the express authorization of the client. *Makins* v. *District of Columbia*, 861 A.2d 590, 593 (D.C. 2004). Our

Supreme Court expressly has noted that "[a]n attorney who is authorized to represent a client in litigation does not automatically have either implied or apparent authority to settle or otherwise to compromise the client's cause of action." *Acheson* v. *White*, 195 Conn. 211, 213 n.4, 487 A.2d 197 (1985); *Cole* v. *Myers*, 128 Conn. 223, 227, 21 A.2d 396 (1941).[8]

The court found that Sansone had been retained by the plaintiff in 1986 and had been involved in the dispute over the shed and walkway from 2001. Sansone had engaged in extensive negotiations with the defendant regarding the various property issues. During this time, Sansone worked closely with Newton, who also had substantial contact with the defendant and its attorney. Additionally, Sansone and Newton had participated in discussions regarding the lease of 1044 Chapel Street, a nearby restaurant location owned by the plaintiff and leased to Camacho and Franco-Camacho. Sansone had considerable correspondence with Krassner, the defendant's lawyer for over four years. Finally, Franco-Camacho contacted Alexander directly, via e-mail, in an effort to resolve the dispute. This e-mail began: "I write to you at the risk of asking for your involvement on an issue that is most certainly otherwise below your concern." Franco-Camacho indicated a willingness to sign a license agreement and requested "ten minutes of [Alexander's] time . . . ." Alexander, Newton's supervisor, responded to Franco-Camacho's e-mail but did not correct or address her statement that this matter was below his concern.[9] On the day of the settlement, both Sansone and Newton were present, and Newton approved each term contained in the written agreement between the parties.

Simply put, this is not a case in which the court found apparent authority simply as a result of retaining a lawyer and having him negotiate on behalf of a client. See, e.g., *Acheson* v. *White*, supra, 195 Conn. 213 n.4. Instead, on the basis of the totality of the circumstances of this case, the court reasonably determined that Sansone had apparent authority. See 1 G. Hazard & W. Hodes, The Law of Lawyering (3d Ed. Sup. 2003) § 5.7, pp. 5-22 through 5-22.2; see, e.g., *Hudson United Bank* v. *Cinnamon Ridge Corp.*, 81 Conn. App. 557, 573–74, 845 A.2d 417 (2004) (although general rule is that corporate vice president lacks inherent authority to bind corporation, in certain cases that individual may have apparent authority to do so). There is no finding that either the members of the defendant or Krassner were told or made aware that Alexander's approval was required to settle the dispute. The plaintiff acknowledged that Alexander and Robinson had delegated the authority to negotiate to Newton and Sansone.[10] When Franco-Camacho presented the matter directly to Alexander, he failed to indicate that his approval was necessary; instead, his e-mailed response acted as confirmation that the matter was, as described by

Franco-Camacho, "below [his] concern." In other words, the issue of authority was raised with Alexander, and he did not address that issue. By this omission or inadvertence, Alexander caused or allowed the members of the defendant to believe that Sansone, part of the team that had been, in effect, the "face" of the plaintiff, possessed the authority to settle the dispute. Finally, Newton, a direct subordinate to Alexander and an employee of some consequence, was present at the time the parties reached the settlement and voiced no opposition to any of the terms.[11] The court properly determined that the actions and inactions of the plaintiff, the principal, caused or allowed the defendant reasonably to believe that Sansone, the agent, had the authority to enter into and to bind the plaintiff to the settlement with the defendant.[12]

Last, as discussed previously, the question is limited to whether the court abused its discretion or acted unreasonably in denying the motion to open and set aside. We are required to make every reasonable presumption in favor of its action. Accordingly, we conclude that the court did not abuse its discretion in denying the plaintiff's motion to open.

The judgment is affirmed.

In this opinion FLYNN, C. J., concurred.

[1] The court explained: "The shed (at times referred to as the rear room or hut) is a cinder block structure which has been attached to the rear of 266 College Street for approximately fifty years." The walkway is located at the rear of 266 College Street.

[2] Despite the quitclaim deed provided to the plaintiff, both the members, on behalf of the defendant, and Antonellis believed that valid claims of adverse possession existed with respect to the shed and a prescriptive easement as to the walkway.

[3] "Agreements that end lawsuits are contracts, sometimes enforceable in a subsequent suit, but in many situations enforceable by entry of a judgment in the original suit. A court's authority to enforce a settlement by entry of judgment in the underlying action is especially clear where the settlement is reported to the court during the course of a trial or other significant courtroom proceedings." (Internal quotation marks omitted.) *Audubon Parking Associates Ltd. Partnership* v. *Barclay & Stubbs, Inc.*, 225 Conn. 804, 811, 626 A.2d 729 (1993).

[4] We are not persuaded by the dissent's citation to *Water Pollution Control Authority* v. *OTP Realty, LLC*, 76 Conn. App. 711, 713–14, 822 A.2d 257, cert. denied, 264 Conn. 920, 828 A.2d 619 (2003). In that case, because the defendant claimed that the plaintiff lacked standing and thus implicated the court's subject matter jurisdiction, we employed the plenary standard of review. Id. The lack of the court's subject matter jurisdiction is readily distinguishable from a claim that a motion to open was denied improperly.

We are also aware of our Supreme Court's decision in *Wallerstein* v. *Stew Leonard's Dairy*, 258 Conn. 299, 780 A.2d 916 (2001). In that case, following a stipulated judgment, the plaintiff sought an award of attorney's fees pursuant to General Statutes § 52-240a. Although the dissent in *Wallerstein* characterized the appeal as whether the trial court had abused its discretion in denying the plaintiff's motion to open; id., 308–309 (*Zarella, J.*, dissenting); the majority determined that the issue was one of statutory construction and therefore utilized the plenary standard of review. Id., 302–307.

The issues of standing, subject matter jurisdiction or statutory interpretation are not before us. Undeniably, our jurisprudence requires the plenary standard of review for such claims. The present case concerns only the issue of whether the court abused its discretion or acted unreasonably in denying the plaintiff's motion to open the stipulated judgment.

[5] In its appellate brief, the plaintiff acknowledges the abuse of discretion standard with respect to our review of the denial of a motion to open and

set aside. It then notes that ordinarily, the question of proof of agency is a question of fact. See *Maharishi School of Vedic Sciences, Inc.* (*Connecticut*) v. *Connecticut Constitution Associates Ltd. Partnership*, 260 Conn. 598, 606, 799 A.2d 1027 (2002); see also *Host America Corp.* v. *Ramsey*, 107 Conn. App. 849, 858, 947 A.2d 957, cert. denied, 289 Conn. 904, 957 A.2d 870 (2008). The plaintiff correctly argues that when the facts are undisputed; *Russo* v. *McAviney*, 96 Conn. 21, 24, 112 A. 657 (1921); or when no reasonable fact finder could find that an agency relationship existed; *Hallas* v. *Boehmke & Dobosz, Inc.*, 239 Conn. 658, 673–74, 686 A.2d 491 (1997); then the issue of agency becomes a legal question. Nevertheless, the ultimate question before us is whether the trial court abused its discretion or acted unreasonably in denying the plaintiff's motion.

[6] See rule 1.2 (a) of the Rules of Professional Conduct ("[a] lawyer shall abide by a client's decision whether to settle a matter").

[7] "To be sure, settlement of disputes . . . is to be encouraged as sound public policy. . . . [Nevertheless, as] between the client and the third party, the third party should bear the risk of an unauthorized settlement because the third party should know that settlements are normally subject to approval by the client . . . ." (Citations omitted; internal quotation marks omitted.) *Makins* v. *District of Columbia*, 861 A.2d 590, 597 (D.C. 2004). Under the facts of the present case as well as the limited standard of review that we must employ here, the latter policy does not prevail.

[8] In its brief, the plaintiff refers to certain language from *Cole* v. *Myers*, supra, 128 Conn. 223, in support of its argument that the court improperly determined that Sansone had apparent authority to settle the summary process action. "The rule is almost universal that an attorney *who is clothed with no other authority* than that arising from his employment in that capacity had no implied powers by virtue of his general retainer to compromise and settle his client's claim or cause of action, except in certain conditions of emergency. Either precedent special authority from the client or subsequent ratification by him is essential in order that a compromise or settlement by an attorney shall be binding on his client." (Emphasis added.) Id., 227. We note that in the present case, the court found that Sansone had been clothed with apparent authority. Because the court in *Cole* was not describing apparent authority, the three conditions detailed in that case, emergency, precedent condition and subsequent ratification, would not appear to apply here to bind the plaintiff to the actions of Sansone.

[9] Alexander's e-mail indicated that he had reviewed the actions taken by "University Properties" and concluded that appropriate actions had been taken. He consistently referred to "University Properties" as "they" and gave no indication of any authority over that group. He did not direct, order or instruct University Properties; instead he "asked" and "requested" that they resolve the issue of an unsigned lease with Franco-Camacho. Most importantly, nothing in the e-mail would dispel Franco-Camacho's belief that the matter was beneath Alexander's concern or would suggest that he had to approve any settlement.

[10] "It is well settled . . . that a corporation is a distinct legal entity that can act only through its agents." *Larsen Chelsey Realty Co.* v. *Larsen*, 232 Conn. 480, 505, 656 A.2d 1009 (1995).

[11] Although the court did not expressly find that Newton had received authority to settle the matter on his own, the fact that he had received the authority to engage in settlement discussions with the defendant is significant on its own. Sansone was accompanied by an employee of the plaintiff of some importance and when the terms of the settlement were finalized, Newton agreed to each term. This fact buttresses the claim that Sansone had the apparent authority to complete the settlement.

[12] The plaintiff also argues that the court failed to find that the defendant's belief that Sansone had the necessary authority to bind it was not reasonable. We simply note that the court concluded that Robinson and Alexander, "by their actions or lack thereof, left the parties to believe that they were negotiating in good faith and [that the plaintiff] would be bound by the actions of its agent." It further observed that the plaintiff failed to meet its burden to show that Sansone lacked authority. It is implicit in the court's decision that it found that the belief of Franco-Camacho that Sansone had the authority to settle the matter was reasonable. Because the plaintiff does not challenge any of the court's factual findings, we need not address this argument further.