

Vicarious liability for fraud and reliance-based torts

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The *Winter v Hockley Mint* decision

1. In torts such as deceit, where liability depends on the claimant acting *in reliance on a statement* made to him, the test for establishing vicarious liability is not the same as for other wrongs committed in the course of a servant's employment.
2. A principal will be vicariously liable only where his agent was acting within his actual or ostensible authority in making the relevant statement to the claimant: *Winter v. Hockley Mint Ltd* [2018] EWCA Civ 2480 (15 November 2018).

3PB's Analysis

3. **The Facts.** The Appellant was a sole trader who supplied postal equipment. The Respondent (“**Hockley**”) operated a business that incurred significant postage costs. In the course of negotiations with the Appellant's agent, Mr Ramsden, the latter made false representations to the effect that if Hockley entered into contracts to lease postal equipment, they could generate savings by receiving ‘postal credits’ from the Royal Mail.
4. Hockley relied on those representations to enter into three lease agreements with a finance company, which purchased the equipment from the Appellant. It then transpired that there were no postal credits with the Royal Mail or otherwise. On discovering that, Hockley brought claims to recover lease payments due under the agreements, including a claim in deceit against the Appellant. The defence denied that any representation by Mr Ramsden had been authorised by the Appellant.
5. **Vicarious liability.** The trial judge directed himself that the correct test for determining a principal's liability for his agent's intentional torts was whether there was a sufficiently close

connection between the agent's wrongdoing and the class of acts he was employed to conduct.¹

6. On that test, notwithstanding the Judge's finding that the Appellant was not a party to Mr Ramsden's fraud but was merely an innocent supplier, he was nonetheless liable for the deceit because he had put Mr Ramsden in the position of entering into the leasing transactions and finalising arrangements for cash discounts. It was also just and fair for the Appellant to be held vicariously liable for the acts of its agent (a test that the judge drew from earlier authority).
7. **The Court of Appeal.** The point of interest is the Appellant's challenge that the judge had applied the wrong legal test for vicarious liability in fraud. The Court of Appeal ruled that he had.
8. First, the correct test was to be found in *Armagas Ltd v. Mundogas SA (The Ocean Frost)* [1986] A.C. 717: vicarious liability for deceit must depend on the agent acting within his actual or ostensible authority (at [48]). As to actual authority, the judge had not made a finding that Mr Ramsden had been expressly authorised to negotiate and conclude the lease agreements *including* the postal rebates, or “*to enter into any agreement with [Hockley that] he chose*” (at [38],[43]).
9. As to Mr Ramsden's ostensible authority: ‘*The analysis of the Judge did not identify or address the essential ingredients of vicarious liability of a principal for the deceit of his agent as required by Armagas: a holding out or representation by the principal to the claimant, intended to be and in fact acted upon by the claimant, that the agent had authority to do what he or she did, including acts falling within the usual scope of the agent's ostensible authority*’ (at [63]).

¹ A test of “*close connection with his employment*” has become familiar with establishing vicarious liability for servants acting in the course of their employment, or partners: *Bowstead and Reynolds on Agency* (21st ed.), at para. 8-177.



10. Secondly, the judge had extracted a much wider principle based on justice and fairness of holding the principal liable in the circumstances of the case and/or the “close connection” test (at [61]). But the first of those was too wide and not supported by authority, and the second had no application to reliance-based torts. In such torts where the claimant relies on a statement made by the agent, as a matter of policy that reliance cannot be attributable to anything done by the principal unless the principal had authorised it.²
11. Thirdly, the Court of Appeal rejected Hockley’s contention that a principal would be liable so long as his agent had acted with the intention of benefiting his principal. It was inappropriate to add such a gloss to the test set out in Armagas, and that expansion of the basis for liability was not consistent with earlier authority.
12. Instead the question that should be asked is whether the agent had gone beyond the scope of his authorised actions. Though there was evidence of such a finding in this case, because the wrong test had been applied, the Court remitted the determination for a re-hearing.

² “...if that misrepresentation is not within the ostensible authority of the servant, the [claimant] is placing reliance on a statement by the servant which, as I have already indicated, either does not fall within the class of acts which a person in his position is usually authorised to perform, or is a statement made in circumstances where the [claimant] has notice that his authority is limited. In either case, in my judgment, the [claimant] is placing his reliance exclusively upon the servant” (per Robert Goff LJ in Armagas Ltd v Mundogas SA, cited in Winter at [50]).

Impact of the Decision

13. The Court’s ruling does offer some protection and clarity for principals implicated by the fraudulent conduct of their agents. However, it is by no means a shield to any allegation of vicarious fraud. It will still be necessary to scrutinise whether the principal, either directly or indirectly, endorsed or allowed for deceitful conduct to be exercised on its behalf.
14. Practitioners will note the Court’s rejection of the ‘sufficiently close connection’ test in claims involving a reliance-based tort. Equally, a wider basis of liability, based merely on the agent acting with the intention of benefiting his principal, has been rejected as inappropriate and unsupported by existing authority.

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