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THE CASE OF THE AGENT WITH HIRE AUTHORITY

By Richard Craven and Tamsin Travers

We all know about agents. Actors, the FBI, insurance companies and building societies have them. The Construction Plant-hire Association Model Conditions make the driver or operator supplied with hired plant the “agent” of the hirer and then on 1 October new and important regulations about “agency” workers come into force. But do we all know what, legally, “agency” is and what its consequences might be?

For Lanstar Limited, an environmental waste management and recycling company, finding out about agency came too late and at considerable expense. Lanstar hired Mr Vaughan as a contractor, not an employee, as “Landfill Materials and Recycling Facilities Manager” to run one of their sites. Work on site involved repairing and refurbishing machinery to an operating state and then selling it. In the meantime other machinery could be hired in “on a short term basis”.

As Lanstar’s agent, Mr Vaughan was given authority to enter into short term hire contracts for machinery but he also entered into three long term hire contracts which provided that, if the machine in question was “off-hired” before the end of the hire term, then the hire charge for the remaining period would be 60% of the agreed hire rates.

Mr Vaughan fell out with Lanstar and, later that year, Lanstar closed the site and terminated the long term hire agreements. CRJ, the hire company, brought adjudication proceedings (on just one of the long term agreements) claiming its 60% cancellation charge. Lanstar resisted the claim, saying that it had no contract

with CRJ, because Mr Vaughan had no actual, implied or ostensible authority to enter into the agreement. Consequently, it said, the adjudicator had no jurisdiction.

The adjudicator disagreed and awarded CRJ its 60%. When CRJ tried to enforce the award, Mr Justice Akenhead had to decide, in those proceedings, if Mr Vaughan really did have authority to enter into the long term contract.

The judge noted there were three relevant types of agent’s authority - express, implied and ostensible. An agent has express authority where expressly given authority (orally, in writing, or even by conduct) to do something, including entering into a contract on behalf of their principal. An agent has implied authority to do whatever is incidental to the ordinary conduct of the trade or business they are authorised to conduct and to do whatever is necessary for the proper and objective performance of their duties. Ostensible, or apparent, authority, however, involves a representation by a principal, by words or conduct, that someone else (who is not their agent or who does not have the appropriate authority) has the necessary authority to act on their behalf. If the third party relies on that representation, the principal will be bound as if they had given express authority, unless, of course, the third party knew of the lack of authority.

Lanstar failed in its argument as to lack of authority. The judge found that Mr Vaughan had been appointed as the Landfill (etc) Manager of the site, he had authority to hire plant, there was no evidence that Lanstar had



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told CRJ that his authority was limited to short term contracts and the regular payment, by Lanstar, of CRJ's substantial hire charges pointed strongly to him being given implied authority (so far as the outside world was concerned) or ostensible or apparent authority from his job and job description.

All of which must have been an unwelcome surprise to Lanstar, but a serious reminder for others that carefully recording (in writing), and telling relevant third parties, the scope of an agent's authority might avoid unanticipated consequences. 007 is not the only "agent" who can cause problems.

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