

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of The Home Insurance Company

No. 03-EQ-106, 2009-HICIL-44

ORDER

The claimant, Adebowale O. Osijo, filed a motion to recommit and requests this court review the decision of the referee, ruling that collateral estoppel bars his claims against Home Insurance Company ("Home"). Mr. Osijo alleges that a settlement he entered in 1991 with Housing Resources Management ("HRM"), an insured of Home, was not executed with Mr. Osijo's consent or knowledge. Accordingly, Mr. Osijo claims he cannot be precluded from challenging the settlement in Home's liquidation. Mr. Osijo asserts that the referee erred by upholding the settlement and giving it preclusive effect. The liquidator objects and cites several California cases, which have ruled on the merits of Mr. Osijo's claims. The liquidator believes that these cases bind this court. This court heard argument on November 17, 2011. Because Mr. Osijo's attorney had full apparent authority to settle his claim in 1991, the motion to recommit is DENIED.

In 1988, Mr. Osijo was injured while working for HRM. The facts relating to this injury and its subsequent investigation are accurately set forth in the record and in the referee's order and will not be repeated here. Following this incident, Mr. Osijo brought an action against HRM in 1989. On July 25, 1991, Mr. Osijo and his attorney negotiated a settlement. Mr. Osijo signed the settlement. The terms of the settlement required HRM to pay Mr. Osijo \$250,000 in exchange for a release. (CR. at 66). Following the execution of the settlement agreement, the parties went to dinner together to celebrate.

The very next day, Mr. Osijo called his attorney to contest the settlement. Mr. Osijo claims that he only briefly agreed to the settlement and thereafter protested its terms. Thus, Mr. Osijo refused to sign the final discharge form agreeing to release HRM. Nonetheless, Mr. Osijo's attorney signed the form on his behalf and cashed HRM's check. Mr. Osijo's attorney deposited this check in Mr. Osijo's trust account and paid Mr. Osijo \$122,500 and \$12,500 at various times pursuant to an agreement between Mr. Osijo and his attorney. (CR. at 4, 152). Despite Mr. Osijo's sworn affidavit acknowledging receipt of these funds, Mr. Osijo repeatedly asked, "where is the money?" during the November 17, 2011 hearing. Mr. Osijo claims that he never authorized the settlement agreement and, thus, it cannot have any preclusive effect and cannot be enforced by Home.

A threshold issue involves choice of law. Both parties agree California law governs this case because that is where the underlying personal injury arose. Thus, this court will apply California substantive law.

The record supports a finding that Mr. Osijo authorized the settlement agreement; indeed, he executed it personally. Consequently, even if the court accepts Mr. Osijo's representation of almost instantaneous second thoughts, his attorney had apparent authority to settle and to execute a signed release on his behalf.

As a general proposition the attorney-client relationship, insofar as it concerns the authority of the attorney to bind [her] client by agreement or stipulation, is governed by the principles of agency. Hence, the client as principal is bound by the acts of the attorney-agent within the scope of [her] actual authority (express or implied) or [her] apparent or ostensible authority; or by unauthorized acts ratified by the client.... The authority thus conferred upon an attorney is in part apparent authority—*i.e.*, the authority to do that which attorneys are normally authorized to do in the course of litigation manifested by the client's act of hiring an attorney—and in part actual authority implied in law.

Blanton v. Womancare, Inc., 38 Cal. 3d 396, 403–04 (Cal. 1985). Under California law, an attorney must be specifically authorized to settle and compromise a claim; an attorney-client relation-

ship alone is not sufficient to confer implied or ostensible authority to bind a client to a compromise settlement of pending litigation. *See e.g., In re Samkirtana S.*, 222 Cal. App. 3d 1475, 1482–83 (Cal. App. 4th 1990). “[A]pparent authority is created, and its scope defined, by the acts of the principal in placing the agent in such a position that [s]he appears to have the authority which [s]he claims or exercises.” *Blanton*, 38 Cal. 3d at 406. The duty to ascertain whether the agent has authority to act is on the third party who would negotiate with the agent, and that party “assumes the risk if in fact the agent has no such authority.” *Id.*

Here, when Mr. Osijo signed the settlement agreement in the presence of both his own and HRM’s counsel, he conferred both actual and apparent authority on his attorney to settle the case. Although such authority would not have been assumed absent this act, by overtly agreeing and then celebrating the decision, Mr. Osijo gave his attorney authority to fulfill the terms of the settlement agreement. As far as HRM knew, this authority continued beyond July 25, 1991. Thus, when Mr. Osijo’s attorney completed the steps delineated in the settlement, she did so cloaked with apparent authority to act on behalf of her client—an authority clearly conveyed on July 25, 1991.


When an agent acts beyond her principal-authorization, a claim may arise between the principal and the agent but not between the principal and a third party, unless the third party knew that the agent lacked authority. *See* RESTATEMENT (FIRST) OF AGENCY § 399 (2011). As indicated above, the record supports a finding that Mr. Osijo’s attorney did not act outside the scope of her authority when she executed the release. Indeed, the California courts have held that the settlement agreement signed by Mr. Osijo on July 25, 1991 constitutes a valid exchange that can be enforced. (CR. at 67, 69–71). Nevertheless, even if the court assumes *arguendo* that this is the case, there is no evidence to suggest that HRM or Home knew about it. Mr. Osijo cannot

now blame HRM for any inappropriate acts committed by Mr. Osijo's own attorney following Mr. Osijo's execution of the settlement.

Based on the foregoing, the court concludes that Home, as HRM's insurer, is not complicit in any of the alleged misconduct of Mr. Osijo's attorney regarding his settlement proceeds. This is dispositive. Thus, the court need not address the referee's collateral estoppel analysis and Mr. Osijo's concomitant allegation that HRM and Home are not in privity. Because the settlement is enforceable against Mr. Osijo, his motion to recommit is DENIED.

So ORDERED.

Date: December 16, 2011


LARRY M. SMUKLER
PRESIDING JUSTICE