

Authority is the eye of the beholder

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Hitex v Uniserve decision

1. The High Court considered the circumstances in which an agent could bind its principal in making representations and variations in commercial contract agreements. *Advanced Multi Technology for Medical Industry and others v Uniserve Ltd and others* [2024] EWHC 1725 (Ch) 8 July 2024.

Analysis

2. **The Facts.** The Claimant, (“*Hitex*”), was a manufacturer of face masks used during the Covid pandemic. The Defendant, (“*Uniserve*”), had agreed to purchase 80 million masks between April and July 2020. Hitex claimed that Uniserve, in breach of contract, failed to receive and pay for the majority of the masks resulting in damages of \$23.1m. Uniserve counterclaimed for delays in performance of the supply contract and misrepresentations allegedly made on Hitex’s behalf.
3. A fundamental issue in this case was whether the individuals acting during the contract negotiation particularly agents including Mr. Andrew Waller and Mr. Popeck—had authority to bind Hitex in making representations. Uniserve claimed reliance on an email by Mr. Waller, stating Hitex could produce 5 million masks weekly. Hitex denied that Mr. Waller or Mr Popeck, had any authority, arguing they acted independently. A similar assessment had to be made of Uniserve’s intermediary, Maxitrac Limited (“*Maxitrac*”) and its Director, Dr Stead.
4. The Court examined the scope of agency law, focusing on whether agents had actual or apparent authority to bind the Parties. This issue was critical in determining the primary claims of breach of contract and misrepresentation.
5. **The Arguments.** Uniserve argued that Mr. Waller’s email, which projected Hitex’s ability to produce and deliver masks, constituted a binding representation. It argued that Mr. Waller was either directly authorised by Hitex or that Hitex conferred apparent authority upon him by allowing agents like Popeck and Waller to act on its behalf during contract negotiations. Uniserve also suggested that Hitex’s failure to correct the statements made by Waller and Popeck amounted to tacit acceptance of their authority and representations.
6. It was further argued by Uniserve that Maxitrac and Dr Stead did not have the authority make representations or assurances on Uniserve’s behalf.
7. Hitex rejected these arguments and contended that Waller’s and Popeck’s statements were unauthorised and speculative. Furthermore, they argued that Maxitrac and Dr Stead did have the authority to negotiate and bind Uniserve. Dr Stead had given permission for an adjusted delivery schedule which, if binding, estopped Uniserve from alleging a breach in the supply contract.
8. **The Court’s Decision.** The Court upheld Hitex’s Claim against Uniserve and dismissed their Counterclaim.
9. Both claims primarily turned on the limitations of apparent authority.

10. The Court did first consider the respective tests for express and implied actual authority relying upon Lord Denning’s test set out in *Hely-Hutchinson v Brayhead Ltd* [1968] 1 Q.B. 549:

‘[Actual] authority may be express or implied.

It is express when it is given by express words, such as when a Board of directors pass a resolution which authorises two of their number to sign cheques. It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as when the Board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office. Actual authority, express or implied, is binding as between the company and the agent, and also as between the company and others, whether they are within the company or outside it.’

11. In the present case it was determined that neither party could establish actual authority whether expressed or implied. Instead, both parties relied on apparent authority.

12. Apparent authority was also defined in *Hely-Hutchinson*:

‘Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. Thus, when the board appoint one of their number to be managing director, they invest him not only with implied authority, but also with ostensible authority to do all such things as fall within the usual scope of that office. Other people who see him acting as managing director are entitled to assume that he has the usual authority of a managing director. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his

actual authority is subject to the £500 limitation, but his ostensible authority includes all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation.’

13. In the present case the Court determined that Mr Waller and Popeck did not have apparent authority to bind Hitex but Dr Stead and Maxitrac did have apparent authority to bind Uniserve.

14. The Court found the following factors to be relevant:

a) **Formality of Agent’s Role.** Dr Stead and Maxitrac were actively involved in formal negotiations. Waller and Popeck were not formally linked to Hitex;

b) **Direct Interaction with Principal.** Dr Stead communicated directly with Uniserve. Waller and Popeck’s communication was passed indirectly and without Hitex’s oversight;

c) **Principal’s conduct or representations.** Uniserve directed Maxitrac and Dr Stead to manage negotiations and oversee contract logistics, implying authority. Hitex neither directed nor endorsed Waller or Popeck to represent its interests or capacity;

d) **Principal’s knowledge of representations.** Uniserve knew and accepted that Stead/Maxitrac were speaking on its behalf, creating reliance on their statements. Hitex had no knowledge of Waller’s or Popeck’s specific representations or their scope; and

e) **Scope of Authority.** Dr Stead was Uniserve’s designated agent, with implied authority to negotiate and vary terms. No evidence suggested Waller or Popeck had express, implied, or apparent authority from Hitex.

Impact of the Decision

- 15. The Court’s decision has provided helpful guidance for the application of agency law in commercial transactions:
- 16. **Clarity in Agency Relationships.** The ruling sets out the need for clear documentation of agency relationships. Principals should formalise agreements with agents to define the scope of their authority and mitigate the risk of unauthorised representations.
- 17. **Apparent Authority and Conduct.** The judgment highlights that apparent authority requires the principal’s explicit or implied conduct. Third parties cannot rely solely on an agent’s actions or statements without confirmation from the principal. Practitioners should advise clients to seek direct assurances from contracting parties to avoid reliance on agents.
- 18. **Mitigating Misrepresentation Risks.** Businesses should proactively manage communication channels during negotiations to prevent unauthorised statements by third parties. Regular monitoring and clear disclaimers about the limits of agents’ authority are essential.
- 19. **Due Diligence and Reliance.** The court’s finding that Uniserve conducted its own due diligence before signing the Supply Contract underscores

the importance of independent verification. Companies should document diligence efforts to avoid claims of reliance on third-party statements.

- 20. **Practical Advice for Intermediaries.** Brokers and facilitators should seek explicit authority from principals before making representations. This protects their role and ensures enforceability of the contract.

20 November 2024

This article intends to state the law at the date indicated above. Although every effort is made to ensure accuracy, this article is not a substitute for legal advice.

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