Rocks and Jeans v. Lakeview Auto Sales

Welcome to the MLMLegal.com Legal Cases Project. Here you will find hundreds of legal cases in the fields of MLM, Direct Selling, Network Marketing, Multilevel Marketing and Party Plan. The cases span federal and state courts as well as administrative cases from the FTC, FDA, IRS, SEC, worker's compensation, unemployment compensation, etc.

The intent of the MLMLegal.com Cases Project is strictly educational, and, to provide insight into the legal issues and cases for an industry that spans the globe in upwards of 150 countries with sales volume exceeding $100 billion and distributor involvement in the tens of millions. ***MLMLegal.Com*** *does not promote or endorse any company.* ***MLMLegal.Com*** *offers no value judgments, either pro or con, regarding the companies profiled in legal cases.*

Jeffrey A. Babener, principal attorney in the Portland, Oregon, law firm Babener & Associates, and editor of www.mlmlegal.com, represents many of the leading direct selling companies in the United States and abroad.

Rocks and Jeans v. Lakeview Auto Sales

Case: Rocks and Jeans v. Lakeview Auto Sales (1992)

Subject Category: Pyramid

Agency Involved: Private Civil Suit

Court: New York Supreme Court, Appellate Division

Case Synopsis: The New York Supreme Court, Appellate Division, was asked if the fraudulent payment of money to a salesman could be recovered directly from the salesman's employer.

Legal Issue: Can fraudulent payment of money to a salesman be recovered directly from the salesman's employer?

Court Ruling: The New York Supreme Court, Appellate Division, held that the fraudulent payment of money could be recovered from the employer, and not the person who fraudulently induced the payment directly. The salesman operated a pyramid scheme without the knowledge of the employer and used the deposits of customers to fund the scheme. The Court held that even though the salesman had defrauded both the plaintiffs and the employer, the party that allowed the perpetration of the fraud should bear the loss. Thus, the employer was liable for the customer's loss.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: People who aid fraudulent activity may be just as liable as the primary transgressor.

Rocks and Jeans v. Lakeview Auto Sales , 184 A.D.2d 502 (1992) : The New York Supreme Court, Appellate Division, held that the fraudulent payment of money could be recovered from the employer, and not the person who fraudulently induced the payment directly. The salesman operated a pyramid scheme without the knowledge of the employer and used the deposits of customers to fund the scheme. The Court held that even though the salesman had defrauded both the plaintiffs and the employer, the party that allowed the perpetration of the fraud should bear the loss. Thus, the employer was liable for the customer's loss.

584 N.Y.S.2d 169

ROCKS & JEANS, INC., Respondent,

v.

LAKEVIEW AUTO SALES & SERVICE, INC., Appellant.

Supreme Court, Appellate Division, Second Department.

June 1, 1992.

Before THOMPSON, J.P., and BRACKEN, SULLIVAN and SANTUCCI, JJ.

*502 MEMORANDUM BY THE COURT.

In an action, inter alia, to recover damages for breach of contract, the defendant appeals from so much of an order of the Supreme Court, Nassau County (Goldstein, J.), entered June 15, 1990, as granted the plaintiff's motion for partial summary **170 judgment on the cause of action for money had and received.

ORDERED that the order is affirmed insofar as appealed from, with costs.

This appeal concerns the plaintiff's cause of action for the return of a $25,000 deposit the plaintiff paid to a salesman of the defendant for the purchase of an automobile. The salesman later was discovered to be involved in a "pyramid scheme" which resulted in the defrauding of several customers. The defendant, which admits to receiving and cashing the plaintiff's deposit check and not delivering the

promised car, argues that factual issues are raised as to the existence of a contract between the parties and as to whether the doctrine of "unclean hands" bars summary judgment. We disagree.

[1][2][3][4] The cause of action at issue is for money had and received, which sounds in quasi contract. The cause of action arises when, in the absence of an agreement, one party possesses money that in equity and good conscience it ought not retain (see, Board of Educ. of Cold Spring Harbor v. Rettaliata, 78 N.Y.2d 128, 572 N.Y.S.2d 885, 576 N.E.2d 716). Therefore, the plaintiff need not prove the existence of a contract. The defendant has received a $25,000 benefit which it ought not, in good conscience, retain. It argues that its salesman was acting outside the scope of his actual authority and, therefore, the plaintiff must look to the salesman alone for the return of his deposit. Here, however, although the salesman might have been operating outside the scope of his actual authority, he was still able to bind the defendant within the scope of his apparent authority (see, Wen Kroy Realty Co. v. Public Nat. Bank & Trust Co., 260 N.Y. 84, 183 N.E. 73; Skyline Agency, Inc. v. Coppotelli Inc., 117 A.D.2d 135, 502 N.Y.S.2d 479; 2 NYJur 2d 84, 531-32). The plaintiff's previous relationship with both the defendant and its dishonest salesman made reliance on the salesman's apparent authority in tendering the deposit check reasonable (see, Hallock v. State of New York, 64 N.Y.2d 224, 485 N.Y.S.2d 510, 474 N.E.2d 1178; Skyline Agency, Inc. v. Coppotelli Inc., 117 A.D.2d 135, 148, supra, 502 N.Y.S.2d 479; Wen Kroy Realty Co. v. Public Nat. Bank & Trust Co., 260 N.Y. 84, 183 N.E. 73, supra). Therefore, the defendant is fully bound by *503 the actions of its agent. Even though the salesman defrauded both the plaintiff and the defendant, this court has held that between two innocent parties, the party that allowed the perpetration of the fraud, here, the defendant, should bear the loss (see, Hatton v. Quad Realty Corp., 100 A.D.2d 609, 610, 473 N.Y.S.2d 827). Further, we are not convinced by the defendant's arguments concerning the doctrine of "unclean hands". A cause of action for money had and received is an action at law and, therefore, the equitable doctrine of "clean hands" does not strictly apply (see, Board of Educ. of Cold Springs Harbor v. Rettaliata, 78 N.Y.2d 128, 572 N.Y.S.2d 885, 576 N.E.2d 716). Moreover, we do not find any facts or circumstances which give rise to an inference of "unclean hands" on the part of the plaintiff.

We have examined the defendant's remaining contentions and find them to be without merit.