

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

MYERS	:	MARCH TERM, 1994
	:	
v.	:	NO. 3184
	:	
GAF CORPORATION, ET AL.	:	ASBESTOS CASE
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	:	
HOLSINGER	:	NOVEMBER TERM, 1994
	:	
v.	:	NO. 2000
	:	
GAF CORPORATION, ET AL.	:	ASBESTOS CASE
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	:	
BOWEN	:	DECEMBER TERM, 1994
	:	
v.	:	NO. 3262
	:	
GAF CORPORATION, ET AL.	:	ASBESTOS CASE
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GRUBB	:	MAY TERM, 1995
	:	
v.	:	NO. 705
	:	
GAF CORPORATION, ET AL.	:	ASBESTOS CASE
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	:	
ESTATE OF WALTER ZADROGA	:	DECEMBER TERM, 1997
	:	
v.	:	NO. 3178
	:	
GAF CORPORATION, ET AL.	:	ASBESTOS CASE

O P I N I O N

## **I. Overview**

The five (5) present appeals were filed in response to orders entered by this Court, whereby, this Court granted five motions to enforce settlement agreements against asbestos defendant, GAF Corporation. The motions filed by these plaintiffs were to enforce settlements reached through the Center for Claims Resolution, acting as agent with authority and on behalf of the principal, GAF Corporation.

## **II. Factual and Procedural Background**

The Center for Claims Resolution (“CCR”) is an organization comprised of a group of approximately sixteen (16) common asbestos defendants, formed to resolve asbestos disputes on behalf of the member corporations. The CCR’s authority to form binding settlement agreements on behalf of its members is governed by a “producer agreement.” GAF Corporation (“GAF”) is an asbestos defendant and was a member of the CCR from 1988 until January 17, 2000.

The procedure followed by the CCR in reaching settlements on behalf of the member corporations is quite simple. The CCR first enters into a lump sum settlement agreement on behalf of various asbestos defendants being sued by a particular plaintiff. The CCR apportions each member’s share of liability from the original lump sum settled amount. Anywhere between 60 and 90 days before the settlement payment is due, the CCR bills each member corporation for the share that it owes. The plaintiffs are paid with funds that are submitted to the CCR by the individual member corporations, such as GAF. The CCR is not itself a party to the actions. Rather, the CCR is merely a place where one plaintiff can resolve multiple claims against the many asbestos defendants which comprise the CCR’s membership. In entering into these settlement agreements, the CCR is only an “agent” for its members. This information is clearly disclosed to the settling

plaintiffs. The plaintiffs are aware at the time of settlement that the settlements are being made through the CCR on behalf of the settling defendants (CCR “principals”).

As of January 17, 2000, after twelve (12) years as a member of the CCR, GAF’s membership to the CCR was terminated. Although GAF is no longer a member of the CCR, prior to their separation date, the CCR had entered into numerous settlement agreements on GAF’s behalf. It is without dispute that CCR entered into these agreements while GAF was still a member. However, GAF failed to submit its share of the settlement to the CCR upon request. Since the CCR itself is not and cannot be named as a party to any of the asbestos lawsuits, GAF’s share of given settlement funds were omitted when the CCR went to distribute these funds to various settling plaintiffs. These plaintiffs then filed petitions to enforce the settlement agreements against the CCR and GAF. This Court decided the motions collectively on October 8, 2000, and entered October 10, 2000. This Court found that the CCR was only an “agent” acting with authority to settle claims between its “principal,” GAF, and various plaintiffs. Thus, the motions to enforce settlement were granted against GAF only. This timely appeal followed

### **III. Argument**

This Court’s decision to enforce the settlement agreements against GAF was based upon Pennsylvania agency and contract law. Pennsylvania courts have consistently embraced the concepts espoused in the American Law Institute’s Restatement of the Law. The Superior Court has stated that, “[i]t is a basic tenet of agency law that an individual acting as an agent for a disclosed principle [sic] is not personally liable on a contract between the principle [sic] and a third party unless the agent specifically agrees to assume liability.” In re Estate of Duran, 692 A.2d 176, 179 (Pa. Super. Ct. 1997) (quoting Cox and Co., Inc. v. Giles, 267 Pa. Super. 411, 415, 406 A.2d

1107, 1110 (1979) (citing RESTATEMENT (SECOND) OF AGENCY § 320 (1958))). In any other situation, the agent has been found to be a party to the contract. Cox and Co., Inc. v. Giles, 267 Pa. Super. 411, 416, 406 A.2d 1107, 1110 (1979) (citing RESTATEMENT (SECOND) OF AGENCY §§ 321, 322 (1958)). The RESTATEMENT (SECOND) defines a “disclosed principal” in terms of the following scenario: “at the time of a transaction conducted by an agent, the other party thereto has notice that the agent is acting for a principal and the principal’s identity, the principal is a disclosed principal.” RESTATEMENT (SECOND) OF AGENCY § 4 (1958). Likewise, when a third party has notice that an agent may be acting on behalf of a principal but has no notice of the principal’s identity, then that type of principal is known as a partially disclosed principal. Id. It follows logically that where there is no notice that the agent is acting on another’s behalf, the principal is said to be undisclosed. Id. This examination leads to the conclusion that the answer to whether an agent can be held as a party to a contract is contingent upon determining the type of principal that the agent was representing. See, e.g., Cox and Co., 267 Pa. Super. At 416, 406 A.2d at 1110 (“Instantly, the pivotal question is whether Le Chateau was a disclosed principle [sic] in the dealings between appellant and Mr. Cox.”).

As to principal liability, the RESTATEMENT is similarly clear: “[a] disclosed or partially disclosed principal is subject to liability upon contracts made by an agent acting within his authority if made in proper form and with the understanding that the principal is a party.” RESTATEMENT (SECOND) OF AGENCY § 144 (1958). This approach to principal liability has also been adopted by Pennsylvania courts. See, e.g., Silverman v. Polis, 230 Pa. Super. 366, 372, 326 A.2d 452, 455 (1974); Perlman v. Pittsburgh Cabinets and Builders Supplies, 191 Pa. Super 234, 236, 156 A.2d 373, 375 (1959) Dodson Coal Co. v. Delano, 266 Pa. 560, 565, 109 A. 676, 677 (1920) (“the disclosed principal alone is liable for the acts of his agent within the scope of the latter’s

authority.”). Pennsylvania agency law, as stated by the Superior Court, is quite clear in this matter:

It is well established that a person acting as an agent for a disclosed principal is not a party to the contract. Where one deals with an agent who acts within the scope of his authority and reveals his principal, the principal alone is liable for a breach of the contract.

Marano v. Granata, 147 Pa. Super. 558, 561, 24 A.2d 148, 150 (1942).

Thus, this Court found the following to be correct: (1) GAF is a named defendant with whom these settling plaintiffs entered into a settlement agreement (2) GAF is a “disclosed principal.”; (3) the CCR was acting under the authority of GAF through the Producer’s Agreement; (4) the CCR is the “agent.” Applying the RESTATEMENT (SECOND) OF AGENCY and Pennsylvania case law leads to the logical conclusion that GAF, the disclosed principal is solely liable for the settlements it entered into through its agent, the CCR. The CCR, acting as an agent for GAF, is not liable for settlements it entered into on behalf of the disclosed principal. Therefore, GAF, the disclosed principal, is bound by the settlement agreements entered into by its agent. Accordingly, this Court found GAF to be solely liable on the settlements CCR entered into on its behalf.<sup>1</sup>

#### **IV. Conclusion**

For the reasons stated, this Court respectfully submits that these orders enforcing the settlements against GAF Corporation, were proper.

**BY THE COURT,**

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**J.**

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The view of this Court has recently been echoed by the Superior Court of Connecticut in Purgatore v. AC&S, Inc., 2000 WL 1474792, at \*1 (finding “that CCR had actual authority from GAF Corporation by virtue of a written agreement between CCR and GAF Corporation to engage in settlement negotiations with the plaintiffs, and, therefore, GAF Corporation is bound to make payments under the settlement agreements”). Likewise, the MDL 875 Court operating out of the United States District Court for the Eastern District of Pennsylvania has reached a similar conclusion. 15 NO. 14 Mealey’s Litig. Rep.: Asbestos 10 (August 18, 2000).