

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF IOWA  
 DAVENPORT DIVISION

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CITY OF KEOKUK, a Municipal Corporation	*	
	*	
Plaintiff,	*	3:08-cv-00095
	*	
v.	*	
	*	
FEDERAL SIGNAL CORPORATION	*	
and VACTOR MANUFACTURING, INC.,	*	ORDER ON MOTION FOR
	*	SUMMARY JUDGMENT
Defendants.	*	
	*	

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Before the Court is Defendants’ Motion for Summary Judgment, filed by Federal Signal Corporation (“Federal Signal”) and Vactor Manufacturing, Inc. (“Vactor”) (collectively “Defendants”) on November 25, 2008. Clerk’s No. 7. Plaintiff, City of Keokuk (“the City”), filed its Resistance to the motion on December 19, 2008. Clerk’s No. 8. Defendants filed a Reply on January 2, 2009. Clerk’s No. 9. The matter is fully submitted.

I. FACTUAL AND PROCEDURAL BACKGROUND

This case involves the City’s claim for specific performance based on agency theory for the delivery of a sewer machine it purchased from EDM Equipment (“EDM”). Sometime before September 19, 2007, the City’s sewer department manager, Carl Lawson (“Lawson”), first contacted Coe Equipment of Rochester, Illinois, to inquire about the purchase of a Vactor PD 2110-824 RCS-18 (“Vactor equipment”). Pl.’s Statement of Undisputed Material Facts (hereinafter “Pl.’s Facts”) ¶ 5. Lawson was informed that Coe Equipment could not sell the machine to the City because EDM is the “exclusive dealer”<sup>1</sup> for the State of Iowa. Pl.’s Facts ¶

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<sup>1</sup> The City characterizes EDM as Vactor’s “exclusive dealer” in the State of Iowa, but this characterization has been disputed by Vactor, who describes EDM as Vactor’s “authorized

5. Lawson then contacted Vactor directly and was told that the City would have to purchase the Vactor equipment from EDM. *Id.* ¶ 6. Vactor assured Lawson that an EDM representative would contact him. Subsequently, an EDM salesman called Lawson and arranged for a demonstration of Vactor equipment in Keokuk, Iowa. *Id.* ¶ 7. The EDM salesman conducted the demonstration with the aid of a Vactor employee who operated the equipment supplied by Vactor. *Id.*

On September 19, 2007, the City entered into a purchase agreement with EDM to purchase one new Vactor equipment for \$273,800. *Id.* ¶ 8. The purchase agreement makes no mention of Vactor as a party to the contract, and Vactor's logo does not appear on the purchase agreement. Clerk's No. 1, Ex. A-1. On September 20, 2007, the City mailed a check for \$273,800 to EDM. Pl.'s Facts ¶ 9. On April 10, 2008, before the Vactor equipment was delivered to EDM or the City, EDM filed for bankruptcy. *Id.* ¶ 13. The City then contacted Vactor, requesting the delivery of the equipment. *Id.* ¶ 11. Vactor refused and informed the City that it would deliver the equipment only if the City made direct payment of \$273,800 to Vactor. *Id.* ¶ 12. The City subsequently initiated this lawsuit against Vactor and its parent company, Federal Signal.<sup>2</sup> *See id.*

The relationship between Vactor and EDM is outlined in the "Standard Terms and Conditions" incorporated into Vactor and EDM's "Distributor Sales and Service Agreement" ("Sales Agreement"). Defs.' App. at 15. The Sales Agreement includes two provisions that

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dealer." Pl.'s Facts ¶ 6; Defs.' Statement of Undisputed Facts ¶ 2.

<sup>2</sup> The City notes that Federal Signal provided a loan in excess of \$163,000 to EDM's President and co-owner, Jeffery Mellen. Pl.'s Facts ¶ 15.

specifically deny any agency relationship between Vactor and EDM. *See id.* First, the Sales Agreement provides that “Distributor is not to be considered the principal for, or agent of, Company,<sup>3</sup> and shall have no authority to bind Company to any obligation.” *Id.* at 14-15.

Further, Article 14.2 of the Sales Agreement states, in relevant part:

Distributor is an independently operated business entity in which neither Company nor any other member of the Group<sup>4</sup> has an ownership interest. The Agreement, and the resulting relationship between Company and Distributor does not constitute an agency relationship between Distributor and Company or the Group. Distributor is not granted any express or implied right or authority to assume or create any obligations on behalf of or in the name of Company or the Group or to bind Company or any member of the Group in any manner or thing.

*Id.* at 52.

On July 15, 2008, the City filed a Petition for Specific Performance (“Petition”) in the Iowa District Court in and for Lee County, Iowa. *See* Clerk’s No. 1, Ex. A-1. On July 25, 2008, Vactor and Federal Signal removed the claim to this Court on the basis of diversity of citizenship. *See* 28 U.S.C. § 1332. The City is a municipal corporation organized under the laws of the State of Iowa. Pl.’s Facts ¶ 1. Vactor is an Illinois corporation with its principal place of business in Illinois, and Federal Signal is a Delaware corporation with its principal place of business in Illinois. *Id.* ¶ 2; Petition ¶ 2. In addition, the amount in controversy in this lawsuit is in excess of \$273,800, well above the jurisdictional requisite of 28 U.S.C. § 1332. *Id.*

In their Motion for Summary Judgment, Vactor and Federal Signal assert that there is no

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<sup>3</sup> In the “Standard Terms and Conditions” incorporated into the Sales Agreement, “Company” is defined as “Vactor Manufacturing.” Defs.’ App. at 24.

<sup>4</sup> The “Standard Terms and Conditions” defines “Group” as “the Federal Signal Corporation Environmental Products Group.” *Id.*

express or implied agency relationship between Vactor and EDM or between Federal Signal and EDM, and that an agency relationship cannot be established based on apparent authority.

Accordingly, Defendants contend that the City is not entitled to specific performance by either Vactor or Federal Signal under the agency theory pled in the City's Petition.

The City counters that EDM is an agent of Vactor and Federal Signal based on both implied agency and apparent authority, and that agency law necessarily binds Vactor to liabilities arising from EDM's breach of contract. Pl.'s Br. at 2. The City asks the Court to order Vactor to deliver the completed Vactor Equipment in accordance with the terms of the City's purchase agreement with EDM. *Id.* at 7.

## II. STANDARD OF REVIEW

Summary judgment has a special place in civil litigation. The device "has proven its usefulness as a means of avoiding full-dress trials in unwinnable cases, thereby freeing courts to utilize scarce judicial resources in more beneficial ways." *Mesnick v. Gen. Elec. Co.*, 950 F.2d 816, 822 (1st Cir. 1991). In operation, the role of summary judgment is to pierce the boilerplate of the pleadings and assay the parties' proof in order to determine whether trial is actually required. *See id.*; *see also Garside v. Osco Drug, Inc.*, 895 F.2d 46, 50 (1st Cir. 1990).

"[S]ummary judgment is an extreme remedy, and one which is not to be granted unless the movant has established his right to a judgment with such clarity as to leave no room for controversy and that the other party is not entitled to recover under any discernible circumstances." *Robert Johnson Grain Co. v. Chemical Interchange Co.*, 541 F.2d 207, 209 (8th Cir. 1976) (citing *Windsor v. Bethesda Gen. Hosp.*, 523 F.2d 891, 893 n.5 (8th Cir. 1975)). The purpose of the rule is not "to cut litigants off from their right of trial by jury if they really have

issues to try,” *Poller v. Columbia Broad. Sys., Inc.*, 368 U.S. 464, 467 (1962) (quoting *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627 (1944)), but to avoid “useless, expensive and time-consuming trials where there is actually no genuine, factual issue remaining to be tried,” *Anderson v. Viking Pump Div., Houdaille Indus., Inc.*, 545 F.2d 1127, 1129 (8th Cir. 1976) (citing *Lyons v. Bd. of Educ.*, 523 F.2d 340, 347 (8th Cir. 1975)).

The plain language of Federal Rule of Civil Procedure 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The precise standard for granting summary judgment is well-established and oft-repeated: “summary judgment is properly granted when the record, viewed in the light most favorable to the nonmoving party and giving that party the benefit of all reasonable inferences, shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *See Fed. R. Civ. P. 56(c); Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994). The Court does not weigh the evidence nor make credibility determinations, rather the Court only determines whether there are any disputed issues and, if so, whether those issues are both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986); *Wilson v. Myers*, 823 F.2d 253, 256 (8th Cir. 1987) (“Summary judgment is not designed to weed out dubious claims, but to eliminate those claims with no basis in material fact.”) (citing *Weightwatchers of Quebec, Ltd. v. Weightwatchers Int’l, Inc.*, 398 F. Supp. 1047, 1055 (E.D.N.Y. 1975)).

The moving party bears the initial burden of demonstrating the absence of a genuine

issue of material fact based on the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any. *See Celotex*, 477 U.S. at 323; *Anderson*, 477 U.S. at 248. Once the moving party has carried its burden, the nonmoving party must go beyond the pleadings and designate specific facts by affidavits or by the depositions, answers to interrogatories, and admissions on file, showing that there is a genuine issue for trial. *See Fed. R. Civ. P. 56(c), (e); Celotex*, 477 U.S. at 322-23; *Anderson*, 477 U.S. at 257. “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat a motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.” *Anderson*, 477 U.S. at 247-48. An issue is “genuine,” if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *See id.* at 248. “As to materiality, the substantive law will identify which facts are material . . . . Factual disputes that are irrelevant or unnecessary will not be counted.” *Id.*

### III. LAW AND ANALYSIS

The key inquiry in this case is whether an agency relationship exists between Defendants and EDM, the company that entered into the purchase agreement with the City for the sale of the Vactor equipment. The City concedes that the Sales Agreement expressly states that no agency relationship exists between EDM and either Vactor or Federal Signal. However, the City alleges that implied agency can be established by the surrounding circumstances and inferred from the communication and contacts between EDM and Defendants. The City claims that Vactor “orchestrated” the sale between the City and EDM by directing EDM to contact the City and, in so doing, Vactor consented to EDM acting as its agent and exercised control over EDM’s contract-making activities with the City. The City also points to the fact that Federal Signal

made either business or personal loans to EDM and its President and co-owner, Jeffrey Mellen, in amounts in excess of \$163,000, thereby establishing an implied agency relationship between Federal Signal and EDM. In contrast, Vactor and Federal Signal assert that there is insufficient evidence to establish an implied agency relationship, especially in light of the specific contract terms in the Sales Agreement excluding both an express agency relationship and an implied authority for EDM to act as Vactor's or Federal Signal's agent.

The City also contends that the doctrine of apparent authority supports finding an agency relationship between Vactor and EDM. The City alleges that EDM expressly stated on its website that it is an exclusive dealer of Vactor equipment in Iowa and Nebraska, while Vactor acted in ways that allowed EDM to "hold itself out as an agent" by making referrals to EDM for the sale. The City argues that, as a result, Vactor and EDM led the City, who had no knowledge of the Sales Agreement between them, to reasonably believe that EDM was Vactor's agent.

An agency relationship is: "a fiduciary relationship resulting from the manifestation of consent by one person, the 'principal,' that another 'agent' shall act on the former's behalf and subject to the former's control and the consent of the latter to so act." *Farmer's Grain Co., Inc. v. Irving*, 401 N.W.2d 596, 601 (Iowa Ct. App. 1986); *see also Mermigis v. Servicemaster Indus., Inc.*, 437 N.W.2d 242, 246 (Iowa 1989). A fundamental principle of agency law is that any action by an agent within the scope of his or her actual authority binds the principal. *Dillon v. City of Davenport*, 366 N.W.2d 918, 924 (Iowa 1985). In addition, all acts and conduct of an agent, which are within the apparent scope of his authority, are binding upon the principal. *FS Credit Corp. v. Troy Elevator, Inc.*, 397 N.W.2d 735, 740 (Iowa 1986) (citing *Mayrath Co. v. Helgeson*, 139 N.W.2d 303, 306 (Iowa 1966)). Proof of an agency relationship can be either found in an

express agreement or implied from the facts and circumstances of the relationship. *Walnut Hills Farms, Inc. v. Farmers Co-op Co. of Creston*, 244 N.W.2d 778, 780-81 (Iowa 1976); *see Asa-Brandt, Inc. v. ADM Investor Servs., Inc.*, 344 F.3d 738, 749 (8th Cir. 2003). The burden of proving the existence of the principal-agent relationship is upon the party who asserts it, here, the City of Keokuk. *Farmers Grain Co.*, 401 N.W.2d at 601; *see also AgriStor Leasing v. Farrow*, 826 F.2d 732, 738 (8th Cir. 1987) (citing *Gatzemeyer v. Vogel*, 544 F.2d 988, 991-92 (Iowa Ct. App. 1976)). When an express agency relationship is absent, the question of whether an implied agency relationship exists or whether apparent authority has created an agency relationship needs to be determined from the facts and circumstances of the instant case. *See Walnut Hills Farms, Inc.*, 244 N.W.2d at 780-81.

#### A. Implied Agency

To prove implied agency, the City must demonstrate: (1) the principal manifested consent for the agent to act on its behalf and the agent had also agreed to so act; and (2) the agent is subject to the principal's control. *Benson v. Webster*, 593 N.W.2d 126, 130 (Iowa 1999). Implied agency, like express agency, is based on communications between the principal and the agent. *See Jackson v. Schrader*, 676 N.W.2d 599 (Iowa 2003); *Wells Fargo Fin. Leasing, Inc. v. LMT Fette, Inc.*, 382 F.3d 852, 856 (8th Cir. 2004).

The City contends that an implied agency relationship can be inferred from the conduct of Vactor, the alleged principal, and its purported agent, EDM. Specifically, the City argues that Vactor's action in facilitating the contact between EDM and the City and its provision of equipment for the demonstration by EDM are evidence of consent and control. The Court finds the City's argument unpersuasive.

A factually-similar case decided by the Iowa Court of Appeals in 2007, *Rogers v. Energy Panel Structures, Inc.*, is especially instructive to the Court's analysis. No. 06-0294, 2007 WL 2257566 (Iowa Ct. App. Aug. 8, 2007). In *Rogers*, the defendant, Frank Manning, entered into an agreement with the Rogers to build a home for them using energy efficient panels produced by Energy Panel Structures ("EPS"). *Id.* at \*1. After the Rogers became dissatisfied with Manning's work and fired him, they sued EPS claiming Manning was EPS's agent because: (1) the EPS website referred to Manning as an "EPS builder;" (2) the EPS website did not indicate that builders were independent of EPS; (3) the president of EPS stated that EPS builders or dealers are an "arm" of EPS and if they do not follow EPS policies, they will receive "the boot" from EPS; and (4) a complaint to an EPS sales manager resulted in Manning coming back to the job site. *Id.* at \*3. The Iowa Court of Appeals held that the Rogers' assertion of an implied agency relationship between EPS and Manning failed because there was insufficient evidence to prove either that EPA manifested its consent or that Manning was subject to EPS's control. *Id.* at \*3-4. The Iowa Court of Appeals found it important that EPS and Manning had entered into a written "Sales & Dealer Agreement," which stated that there was no agency relationship. *Id.* at \*3.

Here, the City has failed to present sufficient evidence to refute Vactor and EDM's intent to preclude forming an agency relationship by disclaiming it in their written agreement. The City heavily relies on Vactor's assistance with sales by EDM, its distributor, as evidence of the implied agency relationship between Vactor and EDM. The court in *Rogers* noted that the interaction between EPS and Manning "is markedly different than EPS directing Manning to contact the Rogers." *Rogers*, 2007 WL 2257566, at \*5. In the instant case, Vactor alerted EDM

to contact the City to discuss the City's purchase inquiry. However, this fact, considered along with other facts and circumstances surrounding Vactor's interaction with EDM, suggests no more than a typical manufacturer-distributor relationship. The single act of passing along the City's inquiry to EDM alone cannot support an agency relationship. Compared to the facts in the *Rogers* case, which suggest at least the possibility of supervision, the facts presented by the City are less convincing and do not indicate a principal-agent relationship. Neither the written agreement nor the actions of Vactor or EDM indicate that Vactor retained control over EDM, or that EDM consented to any such control by Vactor.

The City also claims an implied agency relationship between EDM and Federal Signal existed by pointing out that Federal Signal, Vactor's parent company, loaned a large sum of money to EDM and/or Jeffrey L. Mellen, the President and co-owner of EDM. The Court finds this fact, which is the only evidence the City provided with regard to Federal Signal, adds little, if anything, to its analysis. Taking out a loan does not necessarily empower the borrower to act as an agent for the lender; likewise, providing a loan does not automatically make the lender a principal in an agency relationship. If the Court were to accept the City's argument in this regard, mortgage holders could be deemed agents of the financial institutions from whom they received monetary support; and financial institutions would, by extension, be liable for the multitude of agreements entered into by the mortgage holders. Thus, the City fails to set forth evidence to support its claim against Federal Signal based on an implied agency theory. Accordingly, the City has not presented facts that create a genuine question of material fact as to whether an implied agency relationship existed between Defendants and EDM.

### B. Apparent Authority

The City also seeks to establish Vactor and Federal Signal's liability under an apparent authority theory of liability under agency law. Apparent authority is authority which, although not actually granted, has been knowingly permitted by the principal or which the principal holds the agent out as possessing. *FS Credit Corp.*, 397 N.W.2d at 740 (relying on *Mayrath Co.*, 139 N.W.2d at 306). Apparent authority must be determined by what the principal does, rather than by any acts of the agent. *Waukon Auto Supply v. Farmers & Merchants Sav. Bank*, 440 N.W.2d 844, 847 (Iowa 1989); *Magnusson Agency v. Public Entity*, 560 N.W.2d 20, 25-26 (Iowa 1997). Apparent authority can be established when the conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purported to act for him. *See Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 711 (Iowa 1985); *Tr. of the Graphic Commc'ns Int'l Union Upper Midwest Local 1M Health and Welfare Plan v. Bjorkedal*, 516 F. 3d 719, 728 (8th Cir. 2008) (quoting Restatement (Third) of Agency § 2.03 (2006)). The City alleges that Vactor acted in ways that would lead a third party to reasonably believe that EDM was an agent of Vactor. The Court disagrees.

In *Rogers*, the plaintiffs also premised their claim on an apparent authority theory, alleging that the defendant, Manning, was an agent of EPS because: (1) Manning wore an EPS hat; (2) Manning had an EPS logo on the side of his truck; (3) an EPS brochure contained a picture of Manning sitting in his truck; (4) EPS's signs appeared on the front of buildings constructed with EPS materials; (5) the EPS website, telephone operators, and district sales managers directed the Rogers to Frank Manning Construction; and (6) the EPS website did not

identify Frank Manning Construction or any other EPS dealer as an independent contractor. *Rogers*, 2007 WL 2257566, at \*4. Even with such ostentatious displays of EPS's business insignia on Manning's personal items and business properties and the fact that there was clearly a close business association between EPS and Manning, the Iowa Court of Appeals found the evidence insufficient to support the claim that Manning had apparent authority to act for EPS. *Id.* at \*4-5.

The facts in the instant case are substantially less compelling than those in *Rogers*. Here, Vactor only informed the City that EDM was the distributor for the City's geographic area, passed on the City's inquiry to EDM, and provided a machine and an operator for the equipment demonstration. None of these acts, alone or in combination, can reasonably be interpreted to mean that Vactor consented to be bound by EDM's business transactions. Even if EDM had proclaimed on its website that it is the "exclusive dealer" of Vactor equipment in Iowa, Vactor did not act in any way to lead the City to believe that EDM had the authority to act as its agent and enter into a contract on Vactor's behalf. Further, there is no evidence that Vactor had any contact with the City after the initial phone call. During and following that call, Vactor merely facilitated an interested buyer's purchase of a machine that it produces; passed the City's inquiry to EDM; and informed the City where they could purchase the equipment. This conduct not only adheres to the terms and conditions of its Sales Agreement with EDM, but is also consistent with what can be reasonably expected of manufacturers who want to promote the sale of their products in the market.

Moreover, the City has not proffered any additional evidence beyond the fact that Federal Signal loaned money to EDM to support apparent authority between Federal Signal and EDM. In

no way could such a loan be reasonably interpreted by a third person as consent by Federal Signal to have EDM act as its agent. The City's attempt to establish an agency relationship between Federal Signal and EDM based on apparent authority, therefore, also fails.

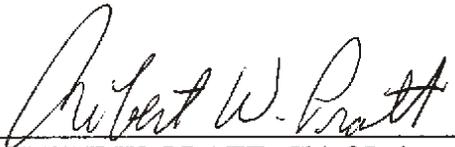
Taken together, the conduct of Vactor and Federal Signal could not have caused the City to reasonably believe that EDM was an agent of either of them. Accordingly, the Court finds that the City has not proffered sufficient evidence to raise a genuine issue of material fact in the question of whether EDM had apparent authority to act on Vactor's and Federal Signal's behalf.

#### IV. CONCLUSION

For the reasons stated above, Defendants' Motion for Summary Judgment (Clerk's No. 7) is GRANTED.

IT IS SO ORDERED.

Dated this \_\_\_19th\_\_\_ day of February, 2009.

  
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ROBERT W. PRATT, Chief Judge  
U.S. DISTRICT COURT