

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-793

PERRY'S AUTO PARTS, INC.

vs.

LINDA RONEN & another.<sup>1</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant, Linda Ronen (Ronen), appeals from a judgment of the Superior Court after a bench trial that awarded judgment against her for breach of contract, based upon her purported personal guaranty. The plaintiff, Perry's Auto Parts, Inc. (Perry's), claims that Ronen provided the guaranty to Perry's so that Ronen's company, Brakes Plus, Inc. (Brakes Plus), could purchase auto parts from Perry's on credit. Ronen, on the other hand, claims that the personal guaranty was provided to Perry's not by her, but by the bookkeeper for Brakes Plus, that the bookkeeper had neither actual nor apparent authority to incur personal obligations for Ronen, and that Ronen had no knowledge of the guaranty prior to this lawsuit. We agree that Perry's

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<sup>1</sup> Brakes Plus, Inc., a Massachusetts Corporation.

failed to show that Ronen had provided a personal guaranty, or that the bookkeeper had implied or apparent authority to do so on Ronen's behalf, and accordingly reverse the judgment as to Ronen.<sup>2</sup>

Background. As this is an appeal from a judgment after trial, we recite the facts from the record in the light most favorable to Perry's, the prevailing party. See Charles v. Leo, 96 Mass. App. Ct. 326, 328 (2019). There were three witnesses at trial. The sole witness for plaintiff Perry's was its owner, Wayne Pare. Ronen and a former Brakes Plus employee testified for the defendants. Dorothy Boulette, the bookkeeper who is at the center of this controversy, did not testify. Much of the evidence was not contested, and it showed the following.

Ronen established Brakes Plus in March of 2014, and was the sole owner of the business. Around that same time Ronen made a rubber stamp of her signature and gave it to the bookkeeper. Ronen testified that the stamp was for the bookkeeper to use "in relationship to the signing of checks for the daily running of Brakes Plus, Inc." Thereafter, Ronen was not personally involved in Brakes Plus's day-to-day operations, and instead visited the business approximately once per month.

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<sup>2</sup> The judgment was against Ronen and Brakes Plus.

Initially, Brakes Plus paid Perry's cash on delivery for its parts, but in June of 2014, Brakes Plus requested that Perry's provide the parts on credit. Perry's provided Brakes Plus with a form "credit application," which Brakes Plus filled out and returned. At the bottom of the credit application was the following, in small print:

"The undersigned agrees to assume the full responsibility of charge purchases made on the account by any of the applicant's employees. In consideration of the credit [extended] hereunder, the undersigned . . . hereby . . . personally guarantee(s) full payment of the [debt]."<sup>3</sup>

The bookkeeper applied the Ronen signature stamp on the personal guaranty portion of the credit application, which was then returned to Perry's.<sup>4</sup>

It is undisputed that the owner of Perry's never spoke to Ronen at any time, and accordingly, never spoke to Ronen about the guaranty. And there was no evidence that anyone else -- either from Perry's or Brakes Plus -- spoke to Ronen about the guaranty. Ronen testified that she knew nothing about the guaranty prior to the lawsuit.

After receiving the application, Perry's extended credit to Brakes Plus. Brakes Plus became a high-volume customer of

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<sup>3</sup> The language of the personal guaranty in the record is indecipherable in places. Accordingly, the language herein is reproduced as faithfully as possible.

<sup>4</sup> The case was tried by all parties on the implicit assumption that it was the bookkeeper who affixed Ronen's stamped signature on the personal guaranty.

Perry's, and by 2015 had accrued an unpaid balance of more than \$22,000. In fall of 2015, Perry's briefly stopped extending credit, but began again after the bookkeeper supplied a letter in November of 2015, bearing Ronen's stamped signature, that provided a schedule for making payments on the debt. Brakes Plus got further behind in 2016, however, and by the time Brakes Plus went out of business in December of 2016, it owed Perry's \$47,905.

Perry's brought a collection action in Superior Court against Brakes Plus and Ronen, asserting claims for breach of contract and unjust enrichment. The case went to trial, jury waived, in November of 2018. During trial, the owner of Perry's testified that he had spoken with the bookkeeper for Brakes Plus on a weekly basis, but had never spoken with or met Ronen. Ronen testified that while she gave the bookkeeper the signature stamp to use "in relationship to the signing of checks for the daily running of Brakes Plus, Inc.," Ronen did not authorize the bookkeeper to sign a personal guaranty on her behalf, and Ronen was unaware the personal guaranty had been provided. Ronen further testified that she was not aware that Perry's had extended credit to Brakes Plus, or that there was an unpaid balance.

After trial, the parties posed the following special questions to the judge:

"[1] Has the plaintiff proven that Brakes' bookkeeper had the actual authority to affix the stamped signature of Linda Ronen . . . to the personal guarant[y]?"

"[2] Has the plaintiff proven that the bookkeeper had the implied authority to affix Ronen's stamped signature to the personal guarant[y]?"

"[3] Has the plaintiff proven that the bookkeeper had the apparent authority to affix Ronen's stamped signature to the personal guarant[y]?"

The judge answered question one "No," and questions two and three "Yes" -- that is, the bookkeeper did not have actual authority to affix the signature, but did have implied and apparent authority to do so. After answering the special questions, the judge directed judgment to enter for Perry's on the breach of contract claims, holding Brakes Plus and Ronen jointly and severally liable in the amount of \$40,220.<sup>5</sup> This appeal followed.

Discussion. Ronen argues that there was insufficient evidence to support the judge's conclusions as to both the bookkeeper's implied authority, and her apparent authority. We review a judge's responses to special questions following a jury-waived trial to determine "whether anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference

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<sup>5</sup> The court clerk later amended the judgment to reflect damages and prejudgment interest, for a judgment in the amount of \$49,666.41. The quantum meruit claims were dismissed.

could be drawn in favor of the [nonmoving party]" (quotation and citation omitted). Motsis v. Ming's Supermkt., Inc., 96 Mass. App. Ct. 371, 379-380 (2019). We conclude the evidence was insufficient to support the findings of either implied or apparent authority.

Implied authority and apparent authority are different legal bases on which a principal (Ronen) could be held liable based upon the actions of its agent (allegedly, the bookkeeper). Implied authority is a type of actual authority. Theos & Sons, Inc. v. Mack Trucks, Inc., 431 Mass. 736, 743-744 & n.13 (2000). It must be demonstrated by the conduct of the agent and the principal, "as manifested to the agent by the principal." Id. at 744. In particular, the principal must manifest his or her consent that the agent "shall act on his [or her] behalf and subject to his [or her] control" (quotation and citation omitted). Kirkpatrick v. Boston Mut. Life Ins. Co., 393 Mass. 640, 645 (1985). Accordingly, the critical evidence of implied authority involves the principal's conduct towards the agent.

In contrast, "[a]pparent authority exists only if [a third party] reasonably relied on the principal's words or conduct at the time he entered the transaction that the agent is authorized to act on the principal's behalf." Theos & Sons, Inc., 431 Mass. at 745. "Only the words and conduct of the principal, . . . and not those of the agent, are considered in determining

the existence of apparent authority." Licata v. GGNSC Malden Dexter LLC, 466 Mass. 793, 801 (2014). Therefore, unlike with implied authority, here apparent authority could only be shown through the interactions between the principal and the third party (Perry's).

1. Implied authority. Starting with the implied authority issue, we must examine the evidence of the relationship between Ronen and her alleged agent, the bookkeeper. Theos & Sons, Inc., 431 Mass. at 743-744 & n.13. Perry's did not introduce any testimony in its affirmative case regarding the relationship between the bookkeeper and Ronen. Pare had never met Ronen, and had never seen her and the bookkeeper interact. The only testimony on the subject came from Ronen. Ronen testified that she gave the bookkeeper authority to use the signature stamp to conduct the affairs of Brakes Plus. Ronen denied, however, that she gave the bookkeeper authority to sign a personal guaranty on her behalf.

On this record, it is unquestionable that Ronen gave the bookkeeper authority to act as an agent of the corporation, Brakes Plus, but there is no evidence to support the judge's conclusion that Ronen -- either through words or conduct -- authorized the bookkeeper to act as Ronen's agent in a personal capacity. "It has long been settled in the Commonwealth that a corporation is separate and distinct from its owners." Andrade

v. Aetna Life & Cas. Co., 35 Mass. App. Ct. 175, 178 (1993).

The bookkeeper's authority to act on behalf of Brakes Plus, in and of itself, has no bearing on the bookkeeper's authority to act on Ronen's behalf personally.<sup>6</sup>

There is no other evidence to support the judge's conclusion regarding implied authority. In its brief, Perry's points to the facts that the bookkeeper had charge of Ronen's signature stamp, and used it repeatedly. Perry's posits that "the court could infer . . . that [the bookkeeper] had [Ronen's] implied authority to take any action necessary which would ensure that the business continued receiving parts from [Perry's]." Once again we disagree, however, because the only evidence Perry's can point to shows the bookkeeper's authority with respect to the corporation, rather than Ronan personally. Indeed, there is no other evidence that the bookkeeper exercised or attempted to exercise authority on Ronen's behalf personally, other than stamping the personal guaranty.

2. Apparent authority. For similar reasons, there is no evidence to support the existence of apparent authority on this record. As discussed, "[o]nly the words and conduct of the

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<sup>6</sup> We note that Perry's has not argued that piercing the corporate veil is appropriate here. Moreover, veil piercing is appropriate only "in rare particular situations in order to prevent gross inequity," and the circumstances here do not warrant such an extreme remedy. My Bread Baking Co. v. Cumberland Farms, Inc., 353 Mass. 614, 620 (1968).



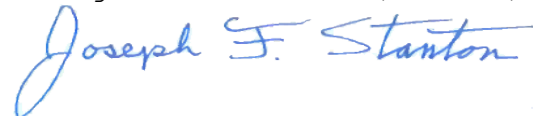
principal, . . . and not those of the agent, are considered in determining the existence of apparent authority." Licata, 466 Mass. at 801. As Pare and Ronen never met or spoke, Pare had no opportunity to observe "the words and conduct" of Ronen, and thus no basis to reasonably believe that Ronen had given the bookkeeper authority to act as Ronen's personal agent.

Perry's argues that Ronen bestowed apparent authority on the bookkeeper due to Ronen's lack of involvement with Brakes Plus. As discussed above, however, the bookkeeper's authority to act for Brakes Plus does not translate into authority to act for Ronen.

We reverse the amended judgment insofar as it pertains to Ronen. Judgment shall enter in Ronen's favor on Perry's complaint. The amended judgment is otherwise affirmed.

So ordered.

By the Court (Meade,  
Englander & Grant, JJ.<sup>7</sup>),



Clerk

Entered: May 12, 2022.

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<sup>7</sup> The panelists are listed in order of seniority.