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## THE CASE OF THE APPARENT AGENT

LAWRENCE SAVELL

As any fan of the "James Bond" movies can attest, the words "agent" and "automobile" are often closely connected, usually at high speeds. But such a connection also occurs in real life, as "agents" are often involved in negotiations regarding collector cars. However, while in the movies a "secret agent" takes great pains (literally) to conceal his status, in real life someone who appears to be an agent may really not be an agent at all.

Such was the case in *Abroms v. Mosley*, which, while never making it to the silver screen, did have a limited engagement in the Ohio court system.

Hillard Abroms, "a classic automobile enthusiast," heard that (Mr.) Beverly Mosley had a 1971 Jaguar XKE 2+2 (you were expecting an Aston-Martin?) which he might be interested in selling. Abroms contacted Mosley and examined the car in Mosley's garage three times.

During one visit, Mosley informed Abroms that title to the Jaguar was actually in the name of his daughter, Laurie Hinshaw. Mosley told Abroms that he would like to sell the car for \$7000.

After his third inspection, Abroms informed Mosley that he wanted to buy the Jaguar. Mosley replied that final negotiations had to be conducted with Hinshaw. Abroms then called Hinshaw and arranged for her to meet him at his office, purportedly to consummate the sale. However, on the day of the

scheduled meeting, Hinshaw canceled the appointment and refused to sell the car to Abroms.

Abroms sued Mosley and Hinshaw, asking the court to order that the car be sold to him. Abroms argued that Hinshaw's silence while she was aware that Mosley was in the process of making the sale indicated to Abroms that Mosley was Hinshaw's agent.

The trial court, following the recommendation of a referee, ruled for Abroms. The referee concluded that Mosley was Hinshaw's agent and that Abroms and Mosley entered into a binding contract. The referee found that Hinshaw, silent in the face of an obligation to "speak out," cloaked Mosley with "apparent authority" to negotiate the sale.

Mosley and Hinshaw appealed.

On December 18, 1990, the Court of Appeals of Ohio, Tenth Appellate District, Franklin County, reversed the trial court's decision.

The appellate court noted that Abroms was attempting to establish a case of "apparent authority" or "authority by estoppel." Under such theories, the principal (the person whom the plaintiff seeks to bind by the agent's actions) may confer authority to act as an agent if he affirmatively or intentionally, or by a lack of ordinary care, causes or allows the plaintiff to rely on an apparent agency relationship. Thus, the plaintiff must prove two facts. First, the plaintiff must

show that the principal held the purported agent out to the public as possessing sufficient authority to perform the act in question, or knowingly permitted him to act as if he possessed such authority. Second, the plaintiff must also show that he had reason to believe and did believe that the agent possessed the necessary authority.

Examining the evidence, the appellate court found that Abroms had not proven these facts. The court ruled that Hinshaw had no duty to speak or otherwise thrust herself into her father's negotiations with Abroms. The court noted that mere silence in the face of questionable knowledge of the dealings between Abroms and Mosley did not constitute the affirmative action needed to establish an apparent agent-principal relationship between Mosley and Hinshaw. The court also noted that Hinshaw's allowing Mosley to have possession of the Jaguar was not determinative. Indeed, if merely allowing a person to have possession of property were sufficient to create apparent authority to sell, every person to whom property was entrusted (such as a mechanic, a dry cleaner, or a warehouseman) would have a right to sell the entrusted property.

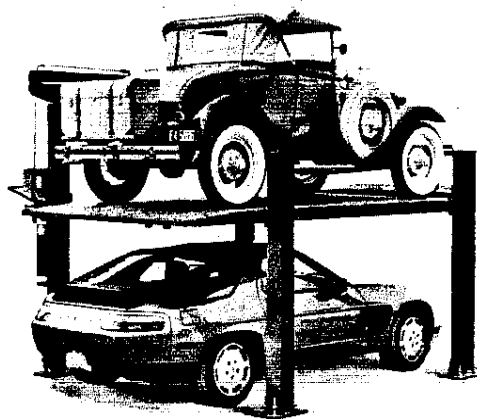
Moreover, the court found no basis for a reasonable belief by Abroms that Hinshaw had authorized her father to act on her behalf to sell the car. The court noted that Mosley had told Abroms that final negotiations had to involve Hinshaw, indicating to Abroms that Mosley lacked authority to sell the automobile. The court also noted that the parties' failure to execute a written contract, which Abroms, a lawyer, presumably knew was required for such a transaction, suggested he had not really relied on Mosley's statements.

Johnny Rivers' classic hit song, *Secret Agent Man*, warned that a secret agent "lives a life of danger." The *Abroms* case warns the rest of us of the "danger" in assuming that the person with whom we are dealing is truly an authorized "agent."

*Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.*

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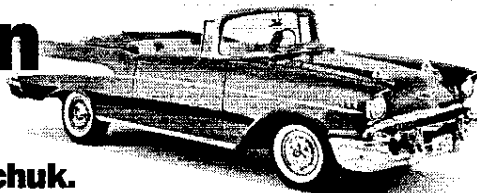
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