



Here's a common scene for you: Mr. X shows up at a Friendly Faces Hardware Store, where he purchases \$5,000.00 worth of building materials on credit. He does not complete a formal credit application; instead he tells the store manager that he is building a garage for a friend of his, and promises payment for the materials when he is paid by his friend. Days and weeks elapse, but Mr. X never seems to have the funds (or the friend) to pay the account. When Friendly Faces finally consults an attorney, who sues to collect the account, Mr. X asserts that the debt is not his. Instead he maintains that he is an employee of Buildem Cheap Construction Co., Inc. and that the debt owed is the corporate liability of Buildem Cheap. Unfortunately Buildem Cheap filed a Chapter 7 bankruptcy petition a few days after Friendly Faces extended credit and has no assets available to satisfy its creditors' claims. Is Friendly Faces out of luck?

Under these facts, probably not. One who acts as an agent for another in making a contract is personally liable for the debt created thereby if, at the time of the making of the contract, the

agent did not disclose the agency and the identity of his principal and the creditor had no reason to know of the agency. So in the above scenario, Mr. X will be personally liable on the debt if he gave Friendly Faces no indication that he was acting on behalf of Buildem Cheap, and Friendly Faces had no reason to believe otherwise.

Like most rules of law, this one is not without exception. Suppose Mr. X had done business with Friendly Faces for several years. During that time, if Mr. X had supplied Friendly Faces with checks written on Buildem Cheap's bank account, had always driven a Buildem Cheap truck to the hardware store and had previously signed credit applications as agent for Buildem Cheap, then the principle of "apparent" or "ostensible" agency would apply. Friendly Faces could not credibly claim ignorance of the agency relationship, since it was evident from the parties' course of doing business. See Potter v. Chaney, 290 S.W. 2d 44 (Ky. 1956). □

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