

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TONI M. FOGAL, :
Plaintiff :
 :
vs. : NO. 03-00,490
 :
RONALD READ, : CIVIL ACTION
Defendant :
 :
vs. :
 :
RICHARD and CINDY BARBERIO, :
Additional Defendants :

ORDER

AND NOW, this ____day of May 2004, the Court denies Additional Defendant Richard Barberio's preliminary objections to Defendant Ronald Read's "Additional Defendant Complaint." Generally, neither husband nor wife by virtue of the marital relationship has power to act as agent for the other. The relation is of such a nature, however that circumstances that in the case of strangers would not indicate the creation of authority might indicate it in the case of husband or wife, even without evidence of an explicit, specific authorization. Bradney v. Sakelson, 473 A.2d 189, 191(Pa.Super. 1984); Lapio v. Robbins, 729 A.2d 1229 (1999). Moreover, despite the general rule, there are certain limited circumstances such as dealings related to entireties property and perhaps the purchase of necessities, when authority to act is presumed as long as the benefit inures to both. See Bradney v. Sakelson,

473 A.2d 189 (Pa.Super. 1984); Heitz v. Bridge, 155 Pa.Super. 655, 39 A.2d 287 (1944); Boggs v. Buhl, 109 Pa.Super. 487, 167 A. 373 (1933). Even if a spouse does not have authority, his or her actions may be affirmed or ratified by the other spouse. An affirmance of an unauthorized transaction can be inferred from a failure to repudiate it. Restatement (Second) of Agency, §94; Gregory v. Fassett, 178 Pa.Super. 599, 606, 116 A.2d 304, 308 (1955).

Here, Mrs. Barberio entered into a one-year lease for premises that were used by both her and Mr. Barberio as their residence for several months in the year 2002.

It is too early in the proceedings for the Court to determine as a matter of law that Mrs. Barberio was not acting for both herself and her husband when she entered the residential lease in question.

By The Court,

Kenneth D. Brown, P.J.

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