

# AGENCY AUTHORITY



*COUNSEL'S CORNER*

Buddy and Jaret Casteel owned and operated “*The Hog Pen*” in Leakey Texas, located on property owned by Amelia Stayton. On July 8, 2011, Jaret Casteel and Melissa Baugh (Stayton’s sister) signed a commercial lease in which Baugh was identified as the “Landlord / Lessor / Agent.” The lease term ended July 14, 2012, and then renewed on a month-to-month basis for several more years.

My investigation reveals that today The Hog Pen sells sausage on a stick, smoked boudain (both links and fried boudain balls with cheese), t-shirts, coffee, brisket, koozies, firewood and tubes: <http://www.thehogpenstore.com/>.

Leakey Texas evidently is known as a place to and from which bikers ride. There is mention of Ranch Roads 335, 336 and 337, but it does not resonate with yours truly.

But I digress.

On August 11, 2014, Baugh sent the Casteels a notice to vacate since the property was in the process of being sold. Consequently, Baugh requested the Casteels to vacate by September 15, 2014.

Jaret and Stayton communicated several times in September 2014. Jaret asked first to buy the property, then to delay the lease termination for 45-60 more days.

On September 16, 2014, Baugh’s counsel send another notice to vacate to the Casteels, giving them 11 more days to relocate.

Circumstances must have changed after the date of that letter, as on September 18, 2014 Baugh and the Casteels signed a handwritten lease for a 10-year term starting September 14, 2014, ending September 14, 2024.

Counsel for Amelia Stayton (recall that Stayton is the actual owner of this property) then weighed in with yet another notice to vacate, this time by September 27,

2014. And when the Casteels did not vacate, Stayton asserted an eviction lawsuit on October 6, 2014.

The case proceeded to trial in Justice Court in Real County, Texas. The Justice of the Peace entered a Judgment that Stayton may recover possession of The Hog Pen from Casteels.

The Casteels appealed to the County Court of Real County for a new trial. The County Court also signed a Judgment awarding Stayton possession. So Casteels again appealed.

In the last appeal the Casteels conceded that Baugh lacked *actual* authority to act as Stayton's agent when Baugh signed the 10-year lease. However, the Casteels claimed that the evidence was insufficient to provide that Baugh lacked *apparent* authority to lease the property as Stayton's agent.

*Actual* authority vs. *apparent* authority. That is all that separated the Casteels from a binding 10-year lease to operate *The Hog Pen* in Leakey, Texas.

The Court of Appeals reviewed the evidence tendered in the trial court to the effect that Baugh had no authority to renew the lease after September 15, 2014. The Court evaluated the various notifications and communications, and questioned if the Casteels attempted to confirm Baugh's authority to lease the property after September 15, 2014.

Finding that “. . . because the evidence that the Casteels had notice of the limitations of Baugh's power was undisputed . . .” the Court held that the evidence tendered in the trial was legally and factually sufficient to support the trial court's judgment. In short, the Court of Appeals was not going to challenge those who reviewed and weighed the authority evidence in the trial court.

Stayton wins again (for the third time). Casteels lose again (for the third time).

See *Casteel v. Stayton*; Cause No. 14-15-00273-CV; Tex. App. Dist. 4; March 23, 2016: <http://www.morelaw.com/verdicts/case.asp?n=04-15-00273-CV&s=TX&d=88657>.

Lessons learned:

1. Based on this case, property sellers, buyers, landlords and tenants have every right to question the authority of the opposing brokers and agents.
2. Anticipating the question, brokers and agents might consider asking their principals to sign a “*to whom it may concern*” letter which brokers and agents might be able to distribute to opposing parties, to end the discussion before it begins.

- Principals dealing with other persons or entities whom they believe to also be principals can easily verify property ownership to be sure. As Dallas County examples, I use both DCAD (<http://www.dallascad.org/>) and Dallas OPR (<https://roamdallaspropertyrecords.com/>). Virtually all counties have something similar, and the fees vary between free and a few shekels for an online search.

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