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Corporations

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CORPORATIONS

LIABILITY OF CORPORATION FOR CONTRACT EXECUTED BY AGENT ACTING WITHOUT AUTHORITY

Louisiana, Texas. In *Jones v. Shreveport Lodge No. 122, BPOE,*[1] the Supreme Court of Louisiana adhered strictly to the general rule that an act of an agent in excess of his authority will not bind a corporation; persons dealing with him act at their peril if they do not first ascertain his authority.[2] In this case plaintiffs' suit for specific performance of a contract to sell property was denied, although the defendant corporation's board of trustees, board of directors, and members of the Lodge assembled in a regular business meeting approved recommendations of the building committee and adopted resolutions to accept plaintiffs' offer and authorized its president to sign all deeds necessary to carry out the proposed contract. Plaintiffs and defendant, acting through its designated officers, then entered into a contract whereby plaintiffs were to acquire the property. There was no question as to the integrity or motives of the designated officials, and it is interesting to note that the persons who acted on behalf of the corporation were all members of the Bar who certified that they were duly authorized to act for the corporation.

In refusing to consummate the sale, the defendant claimed that the officials had acted pursuant to an invalid and illegal resolution, since proper notice had not been given to the members of the Lodge of the purpose of the business meeting and therefore the officers did not have authority to enter into a contract for the sale of the property in question. Louisiana statutory requirements provide:

> ... [A] corporation may ... sell ... its immovable property, only if a resolution so authorizing has been approved by the governing body

[1] 221 La. 968, 60 So. 2d 889 (1952).
[2] BALLANTINE, CORPORATIONS (Rev. ed. 1946) 137.

> of the corporation at a regular or special meeting, convened *after notice of its purpose.*[3] (Italics added.)

The notice which had been sent to all members read as follows:

> Special Notice — Important. Leon Hendrick, chairman of the building committee, announces that at this week's meeting the plan and report of the building committee relative to a proposed New Elks Home will be presented. This will be your only notice, and since this is a very important matter, you are requested to be present.

Plaintiffs argued that this notice was sufficient compliance with the statutory requirement, as the members of the Lodge had known for some time that the building committee was studying plans for acquiring a new lodge and that these plans would necessitate the sale of property held by the Lodge. Six of the eleven members presently opposing the sale had participated in the business meeting of the Lodge, and the vote of the other five could not have changed the result. All officers of the corporation who testified at the trial agreed that the contract was valid and that the plaintiffs were entitled to specific performance.

The Supreme Court of Louisiana rejected this argument and held that, since the corporation owed its existence to the state, it could function only in accordance with the law creating it. Statutory requirements were held to be "sacramental," and failure to comply strictly with these requirements had rendered the resolution void and the ensuing contract nugatory. The court stated that a person who deals with a corporation is charged with notice of statutory limitations and is generally bound to know whether or not the person who assumes to represent the corporation is authorized to do so. The court did not cite any cases directly in point but relied on *Corpus Juris Secundum*,[4] *American Juris-*

[3] 12 LA. STAT. ANN., REV. STAT. (West, 1951) § 113.

[4] "If... the governing statute requires powers conferred to be exercised in a particular manner... and the provision is not merely directory, it cannot legally exercise them otherwise." 19 C. J. S., *Corporations*, § 960. A person dealing with a corporation is chargeable with notice of limitations and restrictions imposed by statute. *Id.*, § 997. However, this same Section states in a later paragraph that "in the absence of notice to the contrary, persons dealing with the corporation may rely on a statement in their deeds or contracts or in a certificate purporting to set forth the minutes of the board of directors."

prudence,[5] and four Louisiana cases[6] which actually were distinguishable.

In the case of *F. H. Woodruff & Sons, Inc. v. Schuster*[7] a Texas court was more liberal and upheld the validity of a contract made by an unauthorized agent on the basis that the agent had apparent authority.[8] Schuster, a farmer in Hidalgo County, Texas, purchased a quantity of "California Wonder" pepper seed from F. H. Woodruff and Sons, Inc., a Connecticut corporation. By mistake the seller delivered another variety of seed, but the error was not discovered until the plants began to grow. Schuster notified Wesley Gould, a branch manager for the seller in its office at Mercedes, Texas, and Gould agreed that a mistake had been made.

A month later (November, 1949) Gould went to Schuster's farm and took with him E. E. Parker of Atlanta, Georgia. Parker was introduced as a director of the corporation, who had been sent by the president to make a settlement with Schuster on behalf of the corporation. In December, 1949, F. H. Woodruff, the president of the corporation, went to Schuster's farm and expressed satisfaction with the settlement that had been made.

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[5] "Where a statute ... prescribes the manner in which notice of a meeting of the corporation shall be given, compliance with its requirements is essential to a valid notice...." 13 AM. JUR., *Corporations*, § 477. Also see 13 AM. JUR., *Corporations*, §§ 20, 739, 746.

[6] In Pierce v. New Orleans Building Company, 9 La. 397 (1836), assent of stockholders was obtained individually and not in a regular stockholders' meeting. The proceeding was held to be null and void. In Jeanerette Rice and Milling Company v. Durocher, 123 La. 160, 48 So. 780 (1909), the president received verbal assent given separately by a majority of the individual directors. It was held that such assent cannot be recognized as having the force and effect of a resolution adopted by the board. In T. P. Ranch Company v. Gueydon and Riley, 148 La. 455, 87 So. 234 (1921), a lease of corporate property by two of three directors without knowledge of the third director, the lessee knowing of the irregularity, was held void in absence of estoppel. In Rome v. New River Lodge No. 402, F. & A. M., 197 So. 174 (La. App. 1940), plaintiff had notice of lack of authority of a corporate agent. It was held to be the duty of every person entering into a contract with a corporation to see that the person representing the corporation has proper authority.

[7] 248 S. W. 2d 196 (Tex. Civ. App. 1952).

[8] "When a principal has placed an agent in such a situation that a person of ordinary prudence, conversant with business usages ... is led to believe that the agent has authority ... one dealing with the agent is justified in presuming such authority to have been given." 2 TEX. JUR., *Agency*, § 39 *et seq.*

The corporation later refused to perform in accordance with the alleged settlement, and plaintiff brought suit to enforce the agreement. Judgment was rendered for plaintiff based on the jury finding of the above stated facts and on the jury finding that E. E. Parker was acting "within the apparent scope of his authority." The record showed that the board of directors had not given authority to Woodruff or Parker to enter into any settlement agreement, and both denied having done so. Appellant corporation contended that it should have been granted an instructed verdict or judgment non obstante veredicto, but judgment of the trial court was affirmed.

This case is of interest as it appears to be a mild departure from the general rule and the Texas rule that an act of an agent in excess of his authority will not bind a corporation and persons dealing with him are bound to ascertain his authority.[9] If they act without such inquiry, they act at their peril, and the representation of an agent that he has authority does not result in apparent authority.[10]

The court of civil appeals did not feel that Schuster was acting at his peril after he had done all that he could do to deal with authorized agents of the company. As a practical matter he could not go to Connecticut to examine the minutes of the board of directors to see if a resolution had been passed authorizing Parker and Woodruff to negotiate his claim against the company, and he was justified in dealing with the branch manager and such agents as came to Texas to discuss the matter with him. The court was not too clear as to the specific grounds that support a finding of apparent authority and seems to have taken several factors into consideration, though no one would have been sufficient in itself. It stressed the fact that Gould as general manager

[9] BALLANTINE, CORPORATIONS (Rev. ed. 1946) 137. Adkins-Polk Co. v. Pate, 11 S. W. 2d 654 (Tex. Civ. App. 1928).

[10] Henderson Mercantile Company v. First National Bank of McKinney, 100 Tex. 344, 99 S. W. 850 (1907).

of a branch office was presumed to be a general agent of the corporation[11] and that under all the circumstances of this case Schuster had a right to rely on his representation that Parker and Woodruff had authority to settle the claim.

The argument that Gould as general agent could clothe Parker and Woodruff with apparent authority[12] is weakened by the fact that there was no representation that Gould had authority to settle the claim, and Schuster seemed to understand that he did not have such authority. It would appear that any presumption that Gould was a general agent of the company was negated by Schuster's knowledge that he was not such an agent. Schuster relied on his agreement with Parker, and Parker certainly had no authority, as directors are supposed to act as a board and not in an individual capacity.[13]

Since the court gave considerable thought to the ratification of Woodruff, it must have felt that the corporation was not bound at the time Parker and Schuster reached their agreement. If Woodruff did not have proper authority, it is difficult to see how his ratification could validate the previous agreement unless Gould, as general agent, had in some way conveyed apparent authority to Woodruff. If Schuster had a right to rely on the representations of Gould, the ratification of Woodruff would have been unnecessary as the contract would have been valid when entered into by Parker.

The net result of this case seems to be that the court will make every effort to uphold a finding of apparent authority of an agent of a corporation when the other party has used all practical means to ascertain the agent's authority. Thus, the other party is not acting at his peril if he has good reason to rely on the representa-

[11] McAfee v. Travis Gas Corp., 137 Tex. 314, 153 S. W. 2d 442 (1941); Western Cottage Piano and Organ Co. v. Anderson, 97 Tex. 432, 79 S. W. 516 (1904).

[12] "A general agent . . . stands in the shoes of the principal and may do anything . . . that the principal could have done." McKaughan v. Baldwin, 153 S. W. 660, 661 (Tex. Civ. App. 1913) *er. ref. w. m.*

[13] The fact that a person assuming to act for a corporation is a director does not even raise a presumption that he is its authorized agent. BALLANTINE, CORPORATIONS (Rev. ed. 1946) 137.

tions of the agent. While the court commented on the impracticality of going to Connecticut to read the minutes of the board of directors, it did not comment on the customary practice of requiring that a certified copy of the minutes be provided for the purpose of establishing authority.

RENEWAL FILING FEE REQUIRED OF FOREIGN CORPORATION

Texas. In the case of *Chicago Corporation v. Shepperd*[14] the plaintiff was a Delaware corporation that was issued a permit in 1941 to do business in Texas. A maximum filing fee of $2500 was paid as required by statute.[15] In 1951 plaintiff corporation applied for a renewal of its permit, and the Secretary of State refused to file the application until appellant paid another filing fee of $2500. This amount was paid under protest, and suit was filed for its recovery. Plaintiff claimed that, since it had previously paid the maximum filing fee required by law, it was entitled to file its application for a renewal of its permit without the payment of additional filing fees. Both the trial court and the appellate court held that an application for renewal of a permit must be construed as an application for a permit and, therefore, the renewal applicant would be required to pay the filing fee fixed by statute although the maximum fee had been paid for the period of the original permit.

This was a case of first impression, but the judgment of the court was supported by very strong authority.[16] Passage of pres-

[14] 248 S. W. 2d 261 (Tex. Civ. App. 1952).

[15] TEX. REV. CIV. STAT. (Vernon, 1948) art. 3914.

[16] In General Motors Acceptance Corporation v. McCallum, 118 Tex. 46, 10 S. W. 2d 687 (1928), it was held that when a limit of $2500 had been paid under a permit, additional amendments could be filed without payment of fees. If a new permit were taken out when an amendment is tendered, the statutory limit could be collected again. In Flowers v. Pecos River Railroad Co., 138 Tex. 18, 156 S. W. 2d 260 (1941), the Pecos River Railroad Company was a domestic corporation which filed a renewal of its corporate charter for 50 years. The court held that such renewal was the filing of a charter within the meaning of TEX. REV. CIV. STAT. (Vernon, 1948) art. 3914. It would follow that a foreign corporation should not be given privileges denied to a domestic corporation, and an Attorney General's Opinion of 1939 advised that a foreign corporation could not change its "purpose clause," since TEX. REV. CIV. STAT. (Vernon, 1948) art. 1314 prevented a domestic corporation from doing so.

ently proposed legislation would codify the question raised in this case.[17]

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[17] Article 136 of the Proposed Texas Business Corporation Act, as prepared by the Special Committee on Revision of Corporation Laws of Texas, State Bar of Texas, requires the Secretary of State to collect a filing fee of $50.00 for an original or renewal application of a foreign corporation for a certificate of authority to transact business in Texas.