IN THE SUPREME COURT OF BELIZE, A.D. 2014

CLAIM NO. 158 of 2013

D'MARS STONE COMPANY LIMITED CLAIMANT

AND

ORANGE WALK TOWN COUNCIL DEFENDANT

BEFORE THE HONOURABLE MADAM JUSTICE SONYA YOUNG

Hearings
2014
31st July
16th September

Mr. Darrell Bradley for the Claimant.
Mr. Eamon Courtenay SC for the Defendant.

Keywords: Contract - Statutory Corporation – Authority of Mayor – Ratification – Modification – Formalities – Negative Seal Rule – Exceptions to Rule.

JUDGMENT

1. During the sweltering summer months of 2011 the D'Mars Stone Company Limited (The Company) carried out works on the public roads in Orange Walk. Amidst the dust and noise these works were somehow expanded to include the resurfacing of the Benque Viejo, Cotton, Stadium and New Hope

Streets (The Project). Under a contract (The Contract), purportedly made with the Orange Walk Town Council (The Council) and dated 21st July, 2011, The Company undertook and completed The Project. Having been paid part of the $138,277.40 stipulated under The Contract, The Company subsequently agreed in writing dated 15th February, 2012 to the payment of the balance by an installment plan 'The Agreement'. Both The Contract and The Agreement are purported to be signed by the Mayor on behalf of The Council but neither bear the council's seal. The then Council members have since been replaced. The current Council says neither they, nor the past Council, ever knew of The Contract or The Agreement nor was the Mayor authorized in anyway to conduct such business on its behalf. They have refused to pay any further money. The court has been invited into the settling dust at the behest of The Company.

2. As part of its Case Management both parties were ordered to file skeleton arguments. The Defendant complied. The Claimant with neither explanation nor apology, did not. Both parties requested to file closing submissions and although they were out of time the court found them to be most helpful and extends its gratitude. Allow me now to introduce the players and their parts.

3. **The D'Mars Stone Company**

Is a registered Belizean Company located in the Orange Walk District and is engaged in the business of road construction and repairs. From all appearances it seems mostly to be a family affair. They presented copies of The Contract and The Agreement and two witnesses – Javier Nunez, The Project Manager and Denny Grijalva, a director of The Company. Mr.

Nunez is responsible for the supervision of the road construction and repair projects. He supervised The Project and prepared the quotation which formed the basis of The Contract. Immediately on the signing of The Contract he commenced work. Around 15th February, 2012, the works were completed to a very high standard. On a date, which he could not recall, those works were inspected by The Council's representatives and accepted as completed.

4. Denny Grijalva explained how he had negotiated with The Council and subsequently entered into a signed contract for The Project. He claimed that the work was completed to a very high standard and that he never received any complaints from The Council about it. The Council owed $88,642.57 under The Contract. He offered The Agreement as proof. He admitted that The Company had received payments from The Council totalling $90,000. but he was unsure what that payment was for. His brother was the accounting officer.

5. **The Orange Walk Town Counci**l:

Is a statutory body created and empowered by the Town Council Act (The Act) Cap 87 and the Subsidiary Legislation there under. By Section 3(1) of The Act it is stated to be a body corporate with perpetual succession and a common seal. It is the most local level of Government in Belize and its duties and powers are restricted to those outlined in The Act. Generally, these involve considering and addressing the issues and needs of the community by providing and maintaining local amenities and facilities. The Council is comprised of a Mayor, a Deputy and 5 Councillors.

6. They presented two witnesses – Kevin Bernard, the current Mayor and Josue Carballo, a current Councillor. Both served as Councillors under the previous Mayor. Bernard presented minutes from The Council meetings of 14th June, 2011 and 16th August, 2011(that of 16th August, 2011 hereinafter The Minutes). He stated that at the meeting of the 16th August, 2011 the previous Mayor made it clear that a contract had been granted to The Company to commence The Project and concerns were raised by the previous Council about payment. Nonetheless, The Project remained the same and the previous Mayor proposed to offer The Company $10,000. per month until full payment. This proposal, like The Contract, was never agreed upon by The Council. When he became Mayor, perusal of The Council records showed no outstanding debt to The Company. He subsequently received a copy of The Contract from The Company in March 2012, during The Company's effort to elicit payment. He realized that The Contract did not bear The Council's seal. Neither he, nor any of the current Council members were aware of The Contract. He later discovered that two cheques totalling $90,000. had been paid to The Company by the previous Council, purportedly towards the debt. He produced copies of those cheques and his quick books printout in support. As a member of the previous Council he was never aware of the payments either. Mr. Carballo, corroborated most of what was said by Mayor Bernard he added nothing new.

7. **The Mayor:**

Section 10(7) of The Act, which is made subject to the provisions of The Act and any regulations, outlines in a general way the duties of the Mayor. As

the Chief Executive Officer, he is to provide effective leadership and direction for The Council and manage its day to day affairs. He is to supervise the Town Administrator and ensure that he (The Town Administrator) implements the decisions of The Council. Section 38 of the Town Council's (Standing Orders) Regulations (The Standing Orders) speaks to the powers of the Mayor. These include control of all officers and employees of the Council and by the authority of The Council to immediately effectuate their resolutions and adoption of any minutes or report.

The previous Mayor, the seeming architect of contention, was not called as a witness by either side.

8. **The Issues**:

1. Was a binding contract made between The Council and The Company?
2. Is The Council bound by The Contract and/or The Agreement to which its seal is not affixed?

9. **Was a binding contract made?**

In order for a corporation to effect a binding contract the common law, which is applicable in Belize, demands three necessaries.

1. **The corporation must have power to do the act in question**: There is no doubt that The Council could enter into a contract for the resurfacing of roads. Although there is no specific provision in The Act which deals with the power or procedure for entering into contracts, Section 56(1) clearly contemplates this for the sole purpose of executing the Act.

> *56(1) No matter of thing done and no contract entered into by a Council and no matter of thing done by any member, office or servant of the Council shall, if the matter or thing were done or the contract were entered into bona fide for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.*

Further, one of the most important functions of The Council is the care and management of the town's streets – see Section 24 – 28 of The Act. In fact by Section 30 (c) The Council is obligated to construct, repair, alter, widen, lay out and make surveys of streets in its town in an efficient and timely manner.

2. **The Corporation must reach a decision:** This particular requirement is in strong contention. The Defendant claims that the Mayor must be authorized by The Council to bind The Council and since he was never so authorized and The Council had reached no agreement whatsoever to enter into the contract, they are not bound.

10. **The Mayor's jurisdiction to contract as agent of The Council:**

In its capacity as a body corporate, The Council may certainly contract through The Mayor and Section 36 of The Standing Orders clearly indicates this. But for The Mayor to do so he must be duly authorized. Such authority must come from The Council and no where else – see also Section 38 of The Standing Orders. This court could find no precedent for the assertion that the office of Mayor carried with it the implied actual authority to bind the corporation. I therefore could not agree with Counsel for the Claimant in this regard.

11. I am of the view that The Mayor, a creature of statute, with well defined powers and duties must have expressed actual authority to contract as agent for The Council. That, of course, is a question of fact. Based on the evidence presented by the Defendant, especially the absence of the corporate seal on The Contract and The Minutes (the contents of which have not been refuted in any way by the Claimant), this court finds that the Mayor was not so authorized to contract.

12. An excerpt from The Minutes follows:

"The Mayor informed the council that initially, funds from the Ministry of Works were to have been used for drainage systems that needed urgent attention however changes have been made and that two streets will be resurfaced namely New Hope Street and Benque Viejo Street. D'Mar's Stone Company has been given the contract to execute these projects. Initial cost of these projects exceed the funds available and D Mar's Stone Company has expressed their desire to assist the council by providing a credit facility interest free to complete the entire project. Councillor Joel Madera suggested that perhaps the Council should consider engaging in paving a shorter street so as not to exceed funds available. First suggestion was to offer to pay D Mar's Stone Company monthly a sum of twenty five thousand dollars until the entire credit facility has been serviced. Councillor Rozel voiced that we need to consider that we have an overdraft that we need to clear and maybe a commitment of this magnitude will over burden the finances of the Council. Councillor Kevin Bernard was of the opinion that the Council needs to consider abiding to its budget. The Mayor reiterated that this company is providing the facility interest free and that any changes made will delay the use of the funds available. The Deputy Mayor, Enid Morales commented that it is the responsibility of the Area Representative to seek finance to construct streets and that of the Council is to give maintenance to these infrastructures. The Mayor commented that the Council can also consider not completing Benque Viejo Street however it is not practical to do so. It

is either absorb the cost or change the street on the project. It was agreed to propose to D Mar's Stone Company monthly payments of ten thousand dollars commencing on January, 2011. The project remains the same."

In The Minutes, the Mayor is recorded as having simply informed the Council that a contract to execute The Project had been granted by The Council to The Company. It is clear from the language used and the discussion which ensued, that The Council was not aware of any contract and clearly then, had not authorized the Mayor or anyone else to enter into any such contract on their behalf. The court also considered The Minutes of June 14th 2011 which shows no discussion whatsoever of a contract/proposal to contract in relation to the Orange Walk streets.

13. The Claimant then asks the court to consider ostensible or apparent authority and cites ***Victoria Park Golf Clubs v. Brisbane City Council [2001] QCA 528***. Counsel submitted that the office of the Mayor and Town Administrator are "offices which perhaps are held out by virtue of their nature to have ostensible or apparent authorities to bind the Council." Such a presumption, if at all proper, may go to usual authority but certainly not to ostensible. However, ***Western Fish Products v Penwith District Council [1981] 2 All ER 204*** showed that in the absence of a holding out by the authority an unauthorized act of an officer within his usual authority is not binding. Further, by citing ***Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd. [1964] 2 QB 480*** counsel indicates that he is well aware of the conditions to prove ostensible authority. Moreover, the case of ***Lever Finance Ltd. v Westminster (City) London Borough Council [1971] 1 QB 222*** which he also relied on, clearly demonstrated the established

practice of the planning officers and why authority could have been assumed. The Claimant has however produced no evidence of any act by the Council capable of giving rise to the presumption that the Mayor had been authorized to conclude The Contract on its behalf or that he was held out by the Council as having the authority to do so. No evidence at all was lead by the Claimant relating to the belief they held about the Mayor contracting on behalf of the Council and ostensible authority is grounded on that belief. Reliance is placed on ***Victoria Park***. (ibid)

I therefore find that when The Mayor entered into contract with The Company on 21st July, 2011 he was not then acting as the Council's agent but rather of his own accord - see ***Haynes v The Mayor and Councillors of Sibiaco [1899] WA Law Rep 35*.** The Council can therefore not be held responsible for any action which he took without their knowledge or authorization; unless they subsequently ratified his actions. The effect of ratification would be to clothe the agent with authority from the outset of the transaction in question and the contract would be treated as valid from its inception.

14. **Was the contract ratified:**

The Council states that it knew nothing of The Contract. They ask the court to disregard the very precise wording of the minutes in so far as they relate to The Council agreeing to propose, to The Company, monthly payments of $10,000 commencing on January, 2011 or that The Project was to remain the same. They say those minutes were never confirmed by The Council and may contain errors. They state further that The Contract issue was never tabled and no resolution was made at that meeting on 16th August, 2011.

15. The court is reluctant to disregard the only written record provided. The Town Administrator by Section 26(1) of The Standing Orders is duty bound to keep a full and exact journal of the proceedings. This officer is appointed by The Council and by Section 13(1) of The Act, must be suitably qualified to assist The Mayor in the day to day management of the affairs of The Council and The Town. He is obviously no fool. Further, those unconfirmed minutes pursuant to Section 26(2) of The Standing Orders, are sent to the Minister, so they do have good value before confirmation. The court accepts minute and obvious errors such as "January, 2011" (a date which clearly had already passed). It is however highly unlikely that such a detailed and lengthy part of the minutes could be incorrect and suspiciously so only as it negatively impacts the Defendant's case. The Minutes are set out in a rationale manner. The writing is precise and effective. I chose to believe its contents.

16. Both witnesses for the defence, in their witness statements agreed that the Mayor made it clear that the contract had been granted. Whether that issue was properly tabled or not is, not a concern for The Claimants. The Rule in Turquand's case would apply – ***Royal British Bank v. Turquand [1856] 6 E & B 327, [18 43-1860] All ER 435***. Why is it even an issue now when it clearly was not an issue for the completely and regularly constituted Council then. No one objected and they fully participated in the discussion which followed in relation to the subject matter of that contract. Whether that contract was written or oral is of no moment now. None of the Council members questioned it's existence, requested terms or even asked how much the entire project would be or how much the payment plan would cover. Throughout the debate no one objected to The Mayor's contracting without

their authority or even rebuked him for doing so. There was a distinct absence of disapproval and this tells loudly.

17. The Council is entrusted with the good governance of the town. The members were all under oath to exercise the powers and perform the duties of their office to the best interests of the residents in accordance with the laws of Belize. Yet they all sat back and made no attempt to disown The Mayor's conduct or to control him when clearly he had exceeded his powers and breached all manner of laws and regulations. I impute therefrom that they had no regard for the circumstances in which the contract was made or the specific terms of the contract. Their only issue was how can we fix the damage, not how can we repudiate this contract. As Josue Carballo puts it "we sought options to finish the work." I find that they were not only alarmingly passive but they acted recklessly. They undertook the risk by agreeing to propose payment regardless of the circumstances and lack of material facts. By agreeing to the Project, to pay part of the contract and to propose a payment plan, they approved the whole of The Contract. Their resolution in effect ratified the unauthorized contract. The Council is thereby bound by it as if they had agreed it or authorized it in the first place and the parties will derive rights and obligations accordingly – ***Presentaciones Musicale SA v Secunda [1994] 2 All ER 737.***

18. Moreover, I also find that by issuing two cheques, which they claim was in pursuance of The Contract, The Council made a public show of their ratification. They thereby performed the necessary contractual act. The two defence witnesses say they did not know payments were made. That is again an internal issue for them. This court finds that although they may not

have known the precise amount or the precise date of payment, they certainly knew that The Council was expected to pay under The Contract. For this position, the court again relies on The Minutes. The court also considers the fact that one cheque for payment was signed by The Mayor and the other by The Deputy Mayor. Both members of The Council.

19. Finally, the inference of ratification becomes more compelling when this court looks at the lapse of time between when The Mayor informed The Council of having entered into the unauthorized contract and when The Council is attempting to disown The Mayor's conduct or dispel The Company's false impression as to the Mayor's authority. In my view The Council stood by and did nothing while The Company continued taking action. It is impossible for The Council members to deny that they knew the streets were paved. They even asserted in their defence that the work was defective. At common law the third party's reliance on the appearance of ratification on the principal's part estops the principal from denying that ratification has occurred. I find that The Council is thereby estoped.

20. **The Agreement:**

The Defendant urges that The Agreement was entered into with neither its knowledge or consent. This court considers Section 38 of the Standing Orders which states, in relation to The Mayor, "... forthwith upon the passing of any resolution or the adoption of any minutes or report he shall have authority to give effect thereto unless The Council otherwise determines." I find that when The Council recklessly resolved to make the proposal to The Company, The Mayor was authorized to do all that was necessary to give effect thereto. Once the proposal was accepted it was certainly in keeping

with the required formality for a written agreement to be entered into with regard to the new payment structure. The Mayor in my view did have actual authority to enter into The Agreement upon acceptance.

21. From the language of The Agreement the court did not draw an inference that the parties had entered into a new agreement which would supersede The Contract. It appeared to be a modification of The Contract only and contained all that was salient to the proposal made by The Council – the completion of The Project at $10,000 per month until full payment.

22. Counsel in his closing submissions raised that The Mayor signed The Agreement in breach of the Accounting Orders. This was never raised at trial nor was any evidence at all presented in support.

23. This court therefore finds that The Council did reach a decision to enter into contract with The Company and that both The Contract and The Agreement are so far binding, providing the third requirement is fulfilled.

24. 3. **The Corporation must act with the requisite formalities**: The execution of a contract by a statutory corporation in Belize is governed by the common law, unless there are specific statutory provisions applicable to that particular corporation. Under the common law a corporation can only contract by deed, that is, in writing and under seal. The common seal is considered the sole mode of expressing the corporate contractual assent. The most frequently cited expression of this Rule comes from Rolfe B's statement in ***Ludlow Corporation v. Charlton 6 M & W 815 at 823 "****The seal is the only authentic evidence of what the Corporation has done or agreed to do .... It is a great mistake, therefore, to speak of the necessity for a seal, as a relic of ignorant*

times. It is no such thing: either a seal, or some substitute for a seal, which by law shall be taken as conclusively evidencing the assent of the whole body corporate." The effect of this rule is that even where the corporate mind had regularly decided to contract, there is no contract in the absence of the common seal. The Negative Corporate Seal Rule as it is often referred to could be harsh and in certain circumstances exceptions have been allowed both by statute and at common law. In most jurisdiction legislation has been enacted abolishing this rule altogether. No such legislation exists in Belize.

25. **Statute:**

Although there are no specific provisions, within The Act which govern the execution of contracts or the use of the seal, Section 19 (2) (c) allows The Council to regulate its own proceedings regarding the use, mode and form of attestation of the seal. The Council, by Standing Order 36 and 37 does just this:

> *"36. Except where otherwise provided by law the common seal shall not be impressed on any document or paper whatsoever without an express order of the Council:*
>
> *Provided that any authority given to the Mayor to enter into an agreement or contract on behalf of the Council shall be deemed to carry with it an order to affix the common seal to such agreement or contract.*
>
> *37. Every document to which the common seal is hereafter affirmed by order of the Council shall be signed by the Mayor and counter signed by the Town Administrator and the form of attestation shall be as follows:*
>
> *"In pursuance of an order of the Town Council of .....*
>
> *made on the ..... the common seal was hereunto affixed*
>
> *by .....Mayor.*
>
> *Town Administrator of .....Town.*

These Sections, however, provide only for sealing of documents by order of Council and how such order may be generally expressed or implied (as in the case of any authority given to the Mayor to contract on The Council's behalf). It is the distinct view of this court that neither The Act itself nor these two sections have affected the common law rule in anyway. If anything, the Standing Orders have only restated the rule particularly as it relates to contracts and agreements entered into by the Mayor under the authority of the Council, nothing more.

26. **Reasoning:**

It is a well established principle that statutes should set out the policy of the law, while regulations may provide the detail necessary for the implementation of the law. Regulations ought not to, in general, deal with matters of substantive policy, levy taxes or purport to amend primary legislation. These are matters of such importance that they are properly the domain of Parliament. More importantly, any regulations made must be confined to what it is empowered to address within the Substantive Act. Section 19(1) of The Act limits this power to regulating Council meetings and proceedings. Subsection (2) is made without prejudice to the general limit given in subsection (1). Therefore, the matters listed in subsection (2) cannot go beyond regulating the meetings and proceedings of the Council. Any reference to the seal, its use and form of attestation in the regulations can only be of an internal nature. It ought not to be given the general effect of validating or invalidating a contract which the Defendant wishes it to have when they submitted the case of ***Hoare v. Kingsbury Urban District Council [1912] 2 Ch. 452***. That decision was based on consideration of the

Public Health Act 1875 which clearly and expressly altered the common law position.

27. I feel equally that Counsel for the Claimant has been misled by his submitted authorities. He presented the Australian position for consideration and guidance. I humbly refrain from doing either. Australia by its enactment had clearly and loudly altered their law. He also referred to the case of ***North West Leicestershire District Council v East Midlands Housing Association Limited [1981] 1 WLR 1396 [1981] 3 All E.R. 364***. However, what he failed to appreciate about this case was that the common law position had already been altered in England through the Corporate Bodies' Contracts Act 1960. No such alteration has been made in Belize. It is therefore also unnecessary for me to pursue any lengthy discussion on the precise meaning of Section 36 or 37 or their similarity or otherwise to the Belize Companies Act Cap 250. The Council is in any event not governed by The Companies Act.

28. The court instead relies on the case of ***A.R. Wright & Son Limited v. Romford Borough Council [1957] 1 Q.B. 431*** which is similar in many regards to the instant case. Here, an agreement, in writing but not under seal, signed by the Council's agent was held to be unenforceable. The common law rule was held to be unaffected by Section 266 of the Local Government Act, 1933 which stated:

> *(1) a local authority may enter into contract necessary for the discharge of any of their functions;*
>
> *(2) All contracts made by a local authority or by a committee thereof*

shall be made in accordance with the standing order of the authority.....: Provided that a person entering into a contract with a local authority shall not be bound to enquire whether the standing orders of the authority which apply to the contract have been complied with, and all contracts entered into by a local authority, if otherwise valid, shall have full force and effect notwithstanding orders applicable thereto have not been complied with.

29. The Standing Order then set out the procedure for sealing and how authority for sealing should be given but not which documents should be sealed. Lord Goddard had this to say at page 435:

"from very early times in our law the general rule has been that any unsealed contract is enforceable neither by nor against a Corporation."

30. He continued in reference to Section 266;

"I cannot agree that this section affects the age-old requirement of the common law as to the necessity of a seal to bind a corporation. Had Parliament intended to make so drastic an alteration in the law it would surely have so provided in clear terms. Standing orders deal with the internal affairs of the body making them and, as the proviso shows, do not affect other persons such as those who contract or desire to contract with the corporation. The statute requires that the standing orders shall provide for certain steps to be taken before contracts are made and the orders provide for the carrying out of these directions. The party contracting or proposing to contract with the corporation is not concerned with whether the corporation has acted in accordance with their standing orders and, if otherwise valid, a contract will be binding though the orders may not have been followed, but I can find no words entitling me to say that if a corporation does comply with their standing orders the seal is no longer necessary either to bind them or to confer contractual rights upon them."

31. **Validity:**

It is important that certain distinctions be made. For non-compliance with a statute, (primary legislation) which mandates that a contract be made in a particular form, the Statute will always prevail ***Young v Leamington Corporation [1882] 8 QBD 579***. Non-compliance with the Standing Order only would, in my view, be an internal procedural irregularity from, which an outsider may find protection under the Internal Management Rule or the Rule in *Turquand's* Case (Supra). Non-compliance with the common law rule is generally fatal, save for certain exceptions.

32. This court finds that The Contract and The Agreement are both non-compliant with the common law requirement. All that is left to be considered is whether this non-compliance invalidates either.

33. **The Exception:**

There are no statutory exceptions in Belize. However, a consideration of the many old cases and the wide ranging exceptions (small, frequent urgent, essential, necessary) reveals that there seemed to be really no single rationale to explain them all except perhaps, an awareness of the potential harshness of the rule and a recognition of some equity which should be allowed to prevail over the requirement of form. Lord Goddard in ***A.R. Wright & Son Limited v. Romford Borough Council (Supra)*** relied on the statement made by Lord Denman CJ in ***Church v. Imperial Gas Light and Coke Co***. 6 Ad, El. 846 "Whenever to hold the rule applicable would occasion great inconvenience, or tend to defeat the very object for which the corporation was created, the exception has prevailed."

34. I find the only exception worthy of consideration in this case is whether The Contract or The Agreement was necessary. The nineteenth century cases show an inherent ambiguity of this word and concept. It sometimes meant the realities of commerce and at other times was sometimes used to signify the making of certain contracts which were essential to the achievement of the purpose for which the particular corporation was created. It is this latter interpretation that concerns us.

35. This concept was first illustrated in ***Sanders v St. Neot's Union [1846] 8 QB 810*** when iron gates for a Union's workhouses were held to be essential to the achievement of the work house purposes. Lord Denman observed that the Defendants could not be permitted to take the objection that there was no contract under seal. Similarly in ***Clarke v Cuckfield Union [1852] 21 LJ QB 349*** (which became the leading case on the subject), water closets were held to be "necessarily incidental' to the purpose of incorporation of a law union. Wightman J had this to say

> *"whenever the purposes for which a corporation is created render it necessary that work should be done or goods supplied to carry such purposes into effect, as in the case of the guardian of a poor law union, – and orders are given at a board, regularly constituted and having general authority to make contracts, for work or goods necessary for the purposes for which the corporation was created, and the work is done, or goods are supplied and accepted by the corporation, and the whole consideration for payment executed, the corporation cannot keep the goods or the benefit, and refuse to pay on the ground that though members of the corporation who ordered the goods or work were competent to make a contract and bind the rest, the formality of a deed or of affixing the seal were wanting, and then say, no action lie, we are not competent to make a parole contract, and we avail ourselves of our own disability."*

36. The exception was also applied in ***Haigh v. The Guardians of the North Bierley Union [1858] EB & E 873*** (presented by Counsel for the Claimant). The retainer of the plaintiff to investigate defalcations by the Guardians clerks and to do accounting work was held to be necessary for the protection of the Union's funds. Even stronger reliance may be placed on ***Wells v Kingston – Upon Hill Corporation [1875] LK 10 CP 402*** where Dennon J stated at page 411 – 412:

> *"the principle of necessity which applied to all corporations alike, only authorizes corporations to do certain acts without using their seal, because such acts are necessary for the very purpose of their existence, which is not the case with other corporations."*

37. Necessity is clearly a question of fact. In the present case, there is no doubt that road repairs are essential to the purpose of The Town Council and to no other Corporation. Its importance has already been highlighted. Having found that the agreed Proposal ratified The Contract there can be no doubt that The Council agreed by resolution to the original contract and The Agreement. Further, The Project was completed in its entirety. The Defendant seems to have abandoned its assertion that the work was defective as they offered no useful evidence in support. The Council will not now be allowed to avail itself of its own disability. This court finds that both The Contract and The Agreement fall within the common law exception of necessity and are thereby both valid.

38. **The sum outstanding:**

The Agreement presented to the court modified The Contract. Therefore the Claimants are entitled to interest on that sum from the date of breach of The

Agreement. The Defendant raised issue with that sum and have presented cheques which the Claimant has admitted receiving. However, these cheques were issued before The Agreement was entered into. The Mayor was authorized to make a proposal for payment of $10,000 per month for completion of The Project. The Agreement is for a total of $88,642.57. The Claimant says no payment was ever made on that amount. The Defendant, unless they prove otherwise, are bound by the terms of the written agreement to which they are signatories. They have failed to do so in my view.

Judgment is therefore for the Claimant in the sum of $88,642.57 with interest thereon at the rate of 6% per annum from February, 2012.
Costs to the Claimant in the sum of $3,000.00 as claimed.

39. **Conclusion:**

This matter raised serious concerns about the static state of the law as it relates to statutory bodies contracting. It must not be forgotten that it was the courts' concern with relief from formalism in the 19th and 20th centuries, which formed the basis for the historical development of the law governing contracts of registered companies. Now here we are in the 21st century, constrained still to grapple with the requirement of form. Perhaps it is time to take a fresh look at a fairly harsh and fairly dusty rule.

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SONYA YOUNG
JUDGE OF THE SUPREME COURT