

**IN THE COURT OF APPEAL BELIZE  
A.D. 2001**

**CIVIL APPEAL NO. 17 OF 2000**

**BETWEEN:**

**BELIZE AIRPORT AUTHORITIES**

**APPELLANT**

**AND**

**UETA OF BELIZE LIMITED**

**RESPONDENT**

**BEFORE:**

**The Honourable Mr. Justice Ira Rowe - President**  
**The Honourable Mr. Justice Elliott Mottley - Justice of Appeal**  
**The Honourable Mr. Justice Boyd Carey - Justice of Appeal**

**Mr. Fred Lumor for the Appellant**  
**Mr. Dean Barrow S.C. for the Respondent**

6 March 2001 and 21 June 2001

**JUDGMENT**

**MOTTLEY, J.A.**

1. The issue that arises on this appeal is whether the leases granted by Belize Airports Authority (the Authority) to Ueta of Belize Limited (UETA) dated 18 August 1998 were valid.

In deciding the question whether the leases were valid, it is necessary to examine whether they were properly executed in accordance with the provisions of the Act.

2. The Authority is a statutory corporation established by the Belize Airport Authority Act Cap 196B, (the Act). It is empowered to enter into contracts and may acquire, hold, mortgage, lease and dispose of all kinds of property. The Authority has a Board of Directors which has the responsibility “for the policy and general administration of the affairs of the Authority. The Board of Directors of the Authority (the Board) is appointed by the Minister responsible for civil aviation and shall consist of not less than five and not more than 9 persons. The chairman of the Board is appointed by the Minister from among the directors.
3. Under the Act, whenever the seal of the Authority is used, it has to be “authenticated by the signatures of the chairman, or any director authorized to act in the behalf, and the secretary.” Every document under seal must therefore be signed by the secretary and the chairman or a director so authorized to sign. In order for a director to sign he must be specifically authorized to do so by the Board.
4. In the exercise of its function the Authority is authorized (inter alia) to:

“grant leases, subleases or other interest or concessions in respect of land or buildings within a prescribed airport on such terms and conditions and subject to the payment of rent or other consideration as the Authority may think fit.”

This discretion is wide and is circumscribed only by the requirement that rent or some other consideration should be paid.

Thus it is clear that the Authority has power to grant leases. When such leases are required to be under seal, and the seal of the Authority is to be affixed to the lease, it has to be authenticated by the signature of the chairman or one director authorized to sign and the secretary.
5. In the leases to UETA, the seal of the Authority was affixed to the lease and authenticated by the signatures of the chairman and the secretary. This is in accordance with the provisions of the Act.
6. The Authority is empowered by the Act to delegate to any of the directors, secretary or any of its employees such function as the Authority may from time to time determine.

7. Counsel for the Authority appellant concedes that, under the Act, the Authority has the power to grant the leases. However, he questions the legal capacity of the chairman to sign the leases. He contends that no meeting of the Board of the Authority took place on the date in question at which the chairman claimed his authority. He further contends that there are no Minutes of Meetings of the Board of the Authority showing:

- (i) the leases were granted;
- (ii) the terms of the leases were approved;
- (iii) authority was delegated to the chairman to negotiate and grant the leases;
- (iv) a resolution passed authorizing the chairman to affix the common seal of the Authority to the leases.

He submits that it was clear that the Authority did not conform to the specific provision of the Act which it was required to follow. The judge ought to have applied the provision of the Act more particularly the provision of Sections 17 (2), 13 (1), (2) (4). He points out that under 13 (4) the decision of the Board “shall be by majority vote.”

He states that the Authority is a statutory corporation enacted by Act of Parliament, and its duties and powers are set out in that Act. The Minutes of each meeting of the Board shall be kept by the Secretary. In the absence of any references in the Minutes to the granting of the leases to UETA, then, the inference he contends, must be drawn that the Board did not take any decisions relating to the leases.

The Minutes of the Board of Directors of the Authority do not contain any mention of the Board consenting to grant the leases to UETA. Counsel submits that the absence of this consent in the Minutes has the effect of making the lease null and void.

Counsel further submits that the trial judge erred in deciding that the former Chairman of the Authority had been authorized to enter the leases with UETA. He contends that the judge erred in treating the Authority as an incorporated private company and applying principles of company law. The judge, he says, misapplied the “Ostensible Authority Doctrine.”

8. The requirement for Minutes of each meeting of the Board to be kept by the Secretary is, in my view, no more than a requirement for the proper administration of the Board. Failure to keep the Minutes in proper form, while it may be the subject of adverse comment on the conduct of the secretary, cannot, in my opinion, rise to the level of invalidating leases which have been properly authenticated. The Act does not contain any provision requiring that a resolution must be passed by the board and duly recorded in the Minutes before the leases are granted. Nor does it contain any provision that, the failure to record in the Minutes a decision to grant leases invalidates those leases if they were otherwise properly authenticated.
9. The Act is a Public Act and the powers of the Board of the Authority are set out under the Act. UETA must be taken to have had knowledge what the Act required before the Authority could enter into a lease. No restriction was imposed other than the requirement that the seal of the Authority must be authenticated by the signature of the chairman or a director so authorized and the secretary. The seal of the Authority was in fact authenticated by the chairman and the secretary. UETA was therefore entitled to conclude that the Authority had fulfilled all internal conditions required to enter into the leases.
10. In my view, the failure to record in the Minutes of the meeting of the Board the decision to grant the leases to the UETA in the circumstances of this case is nothing more than an omission on the part of the secretary and cannot be used by the Authority to invalidate the leases signed by the chairman.

It is my opinion that, having regard to the requirement of the Act, the leases signed by the Authority were in fact valid. Had the Act set out as a condition precedent those factors for which the appellant was contending, then other consideration would have applied.

11. In ground 1 of the amended grounds of appeal it is complained that UETA was incorporated contrary to the prohibition contained in sections 8, 9 and 13 of the Exchange Control Regulations S.1. 30 of 1976 and section 6 of the Exchange Control Regulation Act Cap 43 and therefore has no legal capacity to institute an action.

13. It is submitted by counsel that UETA Inc, a foreign company, subscribed to the Memorandum of Association of Ueta of Belize Limited and was allotted shares without the permission of the Central Bank of Belize or the Director of Exchange Control. It is also submitted that this failure on the part of UETA Inc. before subscribing to the Memorandum of Association is a crime by virtue of the provision of section 6 of the Exchange Control Regulation Act. It follows therefore, counsel contends, that while the Minister has power to exempt persons from the provision of the Regulations, he cannot waive a crime through the exercise of the powers delegated to him under the provisions of sections 3 and 4 of the Exchange Control Regulations Act, which he alleged, that the Minister sought to do under the Exchange Control Regulation. Counsel relies on the maxims “Ex maleficio non contractus” or “Ex turpi causa non oritur actio.”

13. Section 3 of the Exchange Control Regulation Act Cap 43 empowers the Minister to make such regulations as he deems expedient in respect of any matter or thing connected with Exchange Control. He made regulations known as Exchange Control Regulations and they were published as S. I. 30 of 1976.

14. Regulation 8 (2) the Regulation provides as follow:

“The subscription of the memorandum of association of a company to be formed under the Companies Act, by a person resident outside the schedule territories, or by a nominee for another person so resident, shall, unless he subscribed the memorandum with the permission of Central Bank of Belize, be invalid in so far as it would on registration of the memorandum have the affect of making him a member of or a shareholder in the company, so, however, that this provision shall not render invalid the incorporation of the company ...”

15. The effect of this Regulation is that the subscription of the memorandum of association by a person who is resident outside the schedule territories, is invalid unless he has the permission of the Central Bank of Belize. However, this invalidity is limited to preventing the subscriber from becoming a member of or shareholder in the company. But the invalidity does not extend to the incorporation of the company. The company remains a validly incorporated company. So, if a person does not obtain the permission

of the Central Bank of Belize before subscribing to the memorandum of association of the company, he would not be able to be registered as a member of or shareholder in the company when the memorandum of association was being registered. However, the incorporation of the company however remains valid and effective.

16. The Authority alleges that Ueta Inc, a foreign company, owns 75% of the shares in Ueta of Belize Limited. It states that, when Ueta Inc subscribed to the memorandum of association of Ueta of Belize Limited and took allotment of 7,500 of the 10, 000 issued shares of Ueta of Belize Limited, it did not comply with the Exchange Control Regulations Act and the Exchange Control Regulations.
17. Counsel for the Authority submits therefore that, "Ueta of Belize Limited, is not properly registered under the Exchange Control Regulations Act and the Regulations as a company to do business in Belize and as a result it is not a legal person with a legal capacity to mount an action in the Court of Belize." He states the company is the product of crime and therefore has no legal status. The offence to which reference is made is contravention of the provisions of Section 6 (1) of the Exchange Control Regulation which makes it an offence for any person to fail to comply with or contravene any regulation made under the Act.
18. In my view this submission must fail. Regulations 8 (2) expressly states that failure of a person resident outside the schedule territories to obtain the permission of the Central Bank of Belize before subscribing to the memorandum of association prevents the person subscribing the memorandum from becoming a member of or shareholder in the company. It does not, as expressly stated in Regulation 8(2), affect the incorporation of the company. The company retains its legal persona and as such is competent to institute legal proceeding.
19. As regard the appeal against the award of damages I have read the judgment of my brother Rowe and I agree with the conclusion he has reached as regard this aspect of the appeal.

20. For these reasons I would dismiss the appeal with costs to be paid by the Appellant such cost to be taxed if not agreed. The judgment below is therefore affirmed.