

IN THE SUPREME COURT OF BELIZE A.D. 2004

CLAIM: No. 444 of 2004

BETWEEN: ROBERTO MATUS CLAIMANT

AND

BELIZE WESTERN ENERGY DEFENDANT
LIMITED

Ms. Deshawn Arzu for the claimant.

Mr. Aldo Reyes for the defendant.

AWICH J.

28.4.2009

J U D G M E N T

1. *Notes: Company Law and the Law of Contract, whether as a matter of fact, the claimant loaned money to the defendant company; if so, whether the claimant can succeed in claiming payment of the loan by the company when the manager acted without authorization by a resolution of the board of directors. Agency; ostensible authority of an agent; whether the manager had ostensible authority.*

2. The claimant, Mr. Roberto Matus, claimed against the defendant, Belize Western Energy Limited, the sum of \$51,119.06 made up of \$41,900.00 capital, and \$9,216.06 interest thereof from the date of lending to the date the claim was filed. He also claimed interest at 15% per annum from the date the claim was filed, and costs at 20% of the judgment sum.
3. The capital sum claimed \$41,900.00, was said to be part of a loan of \$46,000.00 obtained by the claimant on 24.4.2001, from a bank, Holy Redeemer Credit Union, in Belize City, specifically to loan the money further to the defendant. It was the claimant's case that the defendant would pay the loan instalment of \$2,000.00 per month directly to the bank.
4. The defendant denied the claim totally. It denied that it made any arrangement with the claimant to borrow money for its use; and denied having received \$41,900.00 or any sum from the claimant.
5. The circumstances leading to the loan were rather unusual. The claimant was "a finance clerk" employed by the defendant company.

The business of the defendant company was the supply and distribution of butane gas to retailers in Belize. Its country manager was Mr. Perfecto Angel Matus, the brother of the claimant. The directors and shareholders of the defendant company lived in Guatemala.

6. The testimony of Perfecto was that because the defendant company was in dire need of money to buy stock from Guatemala, he on behalf of the defendant, asked his brother Roberto to help by borrowing money from Holy Redeemer Credit Union, and loan it to the defendant company; and that the company has not paid the loan. He explained that the arrangement was necessary because the defendant had an earlier loan to pay to Holy Redeemer Credit Union, and could not get another loan from the same bank. He said, he had made such loan arrangements with individual lenders before. Mr. Perfecto Matus is no longer employed by the defendant company, he resigned on 20.5.2005, following a general adverse audit report of the company, filed by Mr. Walter Calderon. He succeeded Mr. Perfecto Matus as country manager in Belize.

7. ***Determination.***

The defendant adduced evidence that the manager had no power to borrow money, and that the power was given in the articles of association to directors, not to managers. For an example, a resolution of the directors passed on 18.12.1998, that authorized Mr. Perfecto Matus to borrow \$200,000.00 on behalf of the company was produced as exhibit to prove that Mr. Perfecto Matus had to get specific authorization of the Board of directors to borrow money.

8. I accept that it was important to point out that the articles of association did not grant to the manager any power to borrow money on behalf of the company. Strictly speaking, had the articles of association given the power to the manager, that would have been void or at least voidable in my view, because it would be an unlawful usurpation or delegation of directors powers of management – compare, *Re County Palatine Loan and Discount Co, Cartmell's Case (1874) 9 Ch App 691.*

9. Should the claimant prove that he made the loan which he said he and his brother, the country manager, understood was loan to the

defendant company, the question of law will be whether the company can be held liable on the loan contract, to pay the loan when the manager acted without a resolution of the board of directors authorizing or directing the manager to borrow the money. A company acts by resolution of its directors. A manager is appointed, instructed and supervised by directors. It follows that the functions of a manager are merely formal and administrative, or pursuant to resolutions of directors.

10. It was submitted for the claimant that the rule in, *Royal British Bank v Turquand (1855) 5.E. & B 248* applies to this case. With respect, I do not accept the submission. If it is proved that the loan was made to the company, that will not raise the question of the directors acting *ultra vires*, that is, exceeding their power provided in the objects clause in the memorandum of association of the company, or acting outside procedures or other requirements in the articles of association, so that the court may apply the rule in the *Turquand Case*, in aid of a person contracting in good faith with a company. The facts of this case present the question of the manager, as an agent of the defendant company, contracting with the claimant when the manager in fact had

no authorization by the directors to enter the loan contract on behalf of the defendant company, although the defendant company has power to borrow money. Would the company be liable on the loan?

11. It is my view that, the circumstances in this claim warrant a conclusion that Mr. Perfecto Matus, the manager and an agent of the company, had ostensible, that is, apparent authority to borrow money on behalf of the defendant company. He was the country manager; all the directors of the defendant resided outside Belize. The evidence from both sides proved that Mr. Perfecto Matus ran the business of the company in Belize with very little oversight, if any, from Guatemala. He had been presented by the company as having very wide authority. It was also in evidence that Mr. Perfecto Matus had made similar loan arrangements with other people before. Again he had been allowed by the company to present himself as having authority to arrange loans for the company. The cases cited: *Freeman and Lockyer (a firm) v Buckhurst Park Properties (Mangal) and Another [1964] 1 All ER 630*, *Racing UK Ltd v Doncaster Racecourse Ltd & Another [2005] EWCA Civ 999*, and *Hely – Hutchinson v Brayhead Ltd and Another [1967] 3 All ER 99*, give good explanations as to when

authority of an officer of a company to carry out a task may be implied, or when the officer may be deemed to have ostensible authority – see also, *Rolled Steel Products (Holdings) Ltd v B.S.C. [1968] Ch 246*. On the other hand, there must be proof that the claimant acted in good faith for him to succeed in his claim.

12. Despite what I have stated above about ostensible authority of Mr. Perfecto Matus, the question of his authority arises only if I find as a fact that the loan was obtained by the claimant from Holy Redeemer Credit Union and reloaned to the defendant. As far as it concerns Holy Redeemer Credit Union, there is ample evidence that the claimant borrowed money from the Credit Union, and that he failed to make instalment payments of the loan since 27.7.2004. The claimant, of course, contended that on his agreement with the defendant company, it was the company to make the loan payment, it failed to make the payment, so the claimant has brought this claim.

13. I do not believe the story of the Matus brothers about the loan to the defendant. There are many facts in the evidence that make their testimonies improbable. Some of them are the following.

14. When the auditor, Mr. Walter Calderon, carried out audit in February 2003, he did not find any record of the loan from Roberto Matus to the company. The claimant and his witness did not explain that omission. The financial statements covering the date the loan was taken, sent by Perfecto Matus to the directors, did not record the loan at all. The subsequent two managers who took over the operations of the company had not by the year 2007, seen any records of the loan in the books of the company. The claimant testified that the sum borrowed by him and relented to the company was \$46,000.00; Perfecto testified that it was \$45,000.00. The explanation by the claimant was that the defendant gave back \$5,000.00 to the claimant. That still leaves some discrepancy.

15. The bank statement of the defendant exhibited by the claimant should have recorded the loan which the claimant said he gave to the defendant in the form of a cheque; it did not. If the claimant deposited the cheque in his own account, and made payment out to the defendant, he could have exhibited his own bank statement to show the transactions. According to a letter from Holy Redeemer Credit Union to the claimant, payment of the loan instalments were made to

the Credit Union upto 27.7.2004. There has been no evidence to prove that the payments from May 2001 to 27.7.2004, were made by the defendant company, pursuant to the agreement relied on by the claimant.

16. The claimant has failed to prove his claim. The claim is dismissed.

The claimant shall pay costs to the defendant, to be agreed or taxed.

17. Delivered this Tuesday the 28th day of April, 2009
At the Supreme Court
Belize City

Sam L. Awich
Judge
Supreme Court