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Exercise of corporate powers and the presumption of regularity: Where and how to draw the line

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Abstract
The constitution of a company provides for the corporate powers of the company and stipulates how its directors, officers and agents are to exercise such powers on its behalf. For outside parties dealing with the company in contracts or transactions, legal consequences do arise where company officers exercise corporate powers on behalf of the company without the requisite authority or outside the provisions of the company's constitution. In order to minimize the risk for outside parties and prevent the company from evading contracts or transactions duly made on its behalf by its officers, the rule of presumption of regularity allows outside parties to make the assumption that officers exercising corporate powers act with authority and in compliance with the internal management rules of the company. This article examines the exercise of corporate powers by company officers acting without authority in relation to outsiders who deal with the company in the normal course of business. This article considers the limits to which outside parties are protected by the rule of presumption of regularity as originally enunciated under common law and as enacted in the Companies Act 2020.

Keywords: corporate powers, presumption of regularity, indoor management rule, *Royal British Bank v Turquand*, law of agency, companies act 2020

Introduction

To set the scene, we are concerned with the situation where a person (an 'outsider') deals with a company and a question arises as to whether the affixing of the company's seal to a document is authorised or whether the individual person or persons who act for the company – chairman of directors, managing director, de facto managing director, director, de facto director, ex-director, secretary, employee – have been properly appointed and have authority to act. The situation is not one in which a properly appointed and qualified board of directors, with authority under the company's memorandum and articles, has properly determined that the company should enter into the transaction and, where necessary, that the company's seal should be affixed to a document [1].

A company that is duly registered under the enabling law such as the Nigerian Companies Act 2020 acquires a corporate legal personality that makes it distinct from its shareholders, and becomes independent with its own rights and liabilities, including the capacity to enter into contracts or transactions with third parties in furtherance of its business [2]. These attributes of an incorporated company which were judicially recognized and affirmed in the seminal case of Salomon v Salomon & Co Ltd [3] have been statutorily enacted in the company law of common law jurisdictions. For instance, section 42 of the Companies Act provides that as from the date of registration the company shall be a body corporate capable of exercising all the powers and performing all functions of an incorporated company.

However, the corporate powers of the company are exercisable only through natural persons because the company is merely a fictional or artificial personality. Therefore, the Companies Act provides that a company shall act through its members in general meeting, board of directors, officers and appointed agents [4]. In the exercise of corporate powers, any person acting on behalf of the company must not exceed the provisions of the company's constitution which is made up of the Memorandum and the Articles of Association. The Memorandum of Association allows outside parties who enter into contracts or transactions with the company to ascertain the power and capacity of the company in relation to its objects and scope of business.

The duties of the directors and officers who exercise corporate powers on behalf of the company, and the rights and obligations of the members or shareholders of the company, including the rules and regulations which govern the internal affairs and management of the company are contained in the Articles of Association. The company's constitution therefore provides for the corporate powers and scope of business activities of the company, and also stipulates how its directors, officers and agents should exercise such powers on its behalf. Instructively, for outside parties dealing with the company in contracts or transactions legal consequences do arise where the directors, officers or agents act on behalf of the company without the requisite authority or outside the provisions of the company's constitution.

Contracts or transactions made with outside parties by officers of the company who acted without authority or beyond their legal powers may be unenforceable against the company by the outside parties. In order to minimize

the risk of unenforceability for outside parties and prevent the company from evading contracts entered by its officers on its behalf, the rule of presumption of regularity allows outside parties to make the assumption that company officers duly comply with the company's constitution and that they act with authority [5]. Thus, the rule presupposes that the acts of company officers exercising corporate powers are regular and in compliance with the internal management rules of the company.

The presumption of regularity of the acts of company officers is rooted in common law but has been enacted in section 93 of the Companies Act. Both at common law and under the Act the presumption aims to strike a balance where the company officers exercise corporate powers without requisite authority and the outside parties seek to enforce the contracts or transaction against the company. As hinted by Cain in the above quote, our concern in this article is not the situation ‘‘in which a properly appointed and qualified board of directors, with authority under the company’s memorandum and articles, has properly determined that the company should enter into the transaction’’ [6].

Our objective in this article is to examine the exercise of corporate powers by company officers acting without authority in relation to outsiders who deal with the company in the normal course of business transactions. This article considers the limits to which outside parties are protected by the presumption of regularity as originally enunciated under common law and as enacted in the Companies Act. The exercise of corporate powers by company officers necessarily implicates the general law of agency, therefore, the first part of this article examines the different forms of agency authority under which company officers may act as agents on behalf of the company as their principal. The second part examines the presumption of regularity under common law, its application and exceptions. And the final part focuses on the statutory provisions on presumption of regularity, its scope, and implications for the exercise of corporate powers by company officers.

1. Modes of Exercising Corporate Powers

The corporate legal personality which a company acquires upon registration is an artificial contraption since the company does not possess a human mind, human biological and physical organs like natural persons. A company therefore relies on its human agents as its brain and nerve centre which controls what it does, and as its hands which hold the tools and act in accordance with the direction from the nerve centre. According to Lord Denning in the case of Bolton Engineering Co. Ltd v Graham & Sons [7]: ‘‘Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company on what it does’’ [8].

Thus, under section 89 of the Companies Act ‘‘any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company, is treated as the act of the company itself and the company is criminally and civilly liable to the same extent as if it were a natural person’’. This statutory provision reflects the general law of agency as the company is deemed to be a principal acting through its agents which may be its members in general meeting or its employees such as the board of directors, managing director, secretary or other officers. And as a principal, the company is bound by the contracts or transactions made on its behalf by its agents if the agents acted within the scope of authority as conferred on them under the company’s constitution.

It follows, therefore, that the company would not be bound by the acts of its officers if such officers exercised corporate powers in the absence or in excess of authority. However, if the unauthorized act was in furtherance of the company’s business object as stated in its constitution the company may decide to ratify the act and be bound by it. An unauthorized act of a company officer made pursuant to a transaction which is beyond the power or business object of the company would be ultra vires, null and void, and incapable of being enforced by the outside party against the company [9].

But whether the act of a company officer would be binding on the company as in between agent and principal depends on the form of authority under which the officer exercised corporate powers. For instance, different legal consequences may flow from the exercise of corporate powers under different forms of agency authority, such as actual authority and apparent authority.

Actual Authority

For clarification, in applying the general law of agency to the corporate context, the company is the principal and its officers are the agents. The duties and powers of officers of the company are spelt out in the company’s constitution and such express powers give the officer actual authority to exercise corporate powers and bind the company in contracts and transactions made with outside parties. In addition, actual authority may be implied where the company consents to the exercise of corporate powers by the officer even when such powers are not expressly conferred on the officer under the company’s constitution [10].

The company’s consent to unauthorised exercise of corporate powers by its officer may be prior to the act or by subsequent ratification. Actual authority of a company officer to act on behalf of the company may also arise by necessary implication where the exercise of corporate powers is reasonably incidental to the effective discharge of the officer’s duties. And actual authority may be implied if the officer had been allowed to exceed express powers on previous occasions and may thereby have acquired actual authority to continue to so act [11].

For example, it is express actual authority where a director of the company is specifically authorised by the company’s constitution or the board of directors to contract or transact on behalf of the company. It is an implied actual authority if a director is appointed to the office of a managing director under the company’s constitution, and such office carries with it the authority to enter into particular transactions on behalf of the company [12]. The point to be noted is that an outside party can hold the company liable for contracts and transactions made by its officers in the exercise of corporate powers within actual authority, whether express or implied.

Apparent Authority

A company is bound under the contract or transaction made by its officer acting within apparent authority even where such officer lacks actual authority. Apparent or ostensible authority is a form of authority from the appearance of the duty or position of a company officer such that it can reasonably be expected that the officer has the requisite authority to bind the company in particular contracts or transactions [13]. It may also arise from the way the officer has been held out by the company to the extent that outsiders perceive the officer as having the authority to exercise certain corporate powers on behalf of the company. The liability of the company for any acts carried out under apparent authority of its officer is as a result of the company being estopped from denying that such officer had the power to act, after allowing the officer to appear as having the power to so act. According to Diplock LJ in the case of Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [14], the company would be bound by acts of its officers acting under apparent authority if: (a) there was representation to an outside party that the officer had authority to enter a particular contract or transaction on behalf of the company; (b) such representation was made by a person or persons with actual authority to manage the business of the company such as a managing director or the board of directors; (c) the outside party was induced by such representation to enter into the contract or transaction; (d) and the contract or transaction was within the power and the business object of the company as stipulated in its constitution.

It needs to be pointed out that in corporate governance, certain positions on the company board automatically confer a certain power, referred to as customary authority [15]. The customary authority of particular officers of the company assists in applying the general concepts of actual authority and apparent authority to the modes of exercising corporate powers on behalf of the companies. As noted by Lipton, it is often the case that an outsider does not know whether a company officer has actual authority or apparent authority, and the extent of such authority [16]; the outsider mostly relies on the appearance of authority and therefore, depending on the circumstances, the extent of the officer's apparent authority may be the same as the officer's actual authority, or it may exceed the scope of the officer's actual authority.

In some circumstances, a company officer may have apparent authority to carry out particular acts for the company even when the officer has not been given the actual authority to do such act. Therefore, in theory and under the general law of agency actual and apparent authority may rest upon entirely different grounds, but in practice and in the corporate context, they tend to intersect, or even converge. The customary authority of particular officers of the company is thus relevant in considering the limits of both implied actual authority and apparent authority. This is evident from the cases of Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [17] and Hely-Hutchinson v Brayhead Ltd [18] of which the latter is a classic example of implied actual authority of de facto managing directors, while the former is mostly cited as exemplifying customary and apparent authority.

In Freeman & Lockyer, a director who was never appointed managing director although that was permitted by the company's constitution, acted as de facto managing director to the knowledge of the board of directors. On behalf of the company he contracted with architects, which was the power within the customary and implied authority of a managing director, and the company was held to be bound by the contract. In the Hely-Hutchinson case, the chairman of board of directors of a company acted as de facto managing director to the knowledge and consent of the board. It was held that he had implied actual authority to sign letters of guarantee binding on the company. Although, both cases proceeded on different grounds under the general law of agency, their facts and decisions answer to similar, if not the same, form of implied actual authority in the exercise of corporate powers. However, it is instructive to note that while the company is bound by acts of its officers who exercise corporate powers within actual authority and apparent authority, the company may also be bound even where the officers acted without or in excess of their authority as conferred under the company's constitution. The company may subsequently ratify the act thereby becoming bound by it. Where it fails or refuses to ratify, the outside party affected by the act can seek to enforce it against the company pursuant to the rule of presumption of regularity. Therefore, the purport of the rule, which is examined in the next chapter, is that it attaches to the company liability for contracts or transactions made on its behalf by its officers exercising corporate powers without actual authority or apparent authority.

2. Presumption of Regularity

The rule of presumption of regularity provides that outside parties dealing with a company in good faith may assume that officers exercising corporate powers on behalf of the company are acting within the company's constitution and with requisite authority. This rule, which originated from common law, aims at protecting outside parties ''who are entitled to presume, just because they cannot know, that the person with whom they deal has the authority which he claims'' [19]. The application of this rule gives rise to an irrebuttable presumption of regularity that prevents the company from evading a contract or transaction by relying on the argument that the officer who acted on its behalf had no such power or was not unauthorised to so act.

The rule derived from the nineteenth century case of *Royal British Bank v Turquand* [20] in which it was held that outsiders dealing with a company are entitled to assume that all requirements with regard to the internal management of the company have been duly complied with in accordance with the Latin maxim ''*omnia praesumuntur rite et solemniter esse acta*'' – all things have been done properly which ought to be done. In the case, the company's constitution empowered the board of directors to borrow money as authorised by a resolution of the general meeting of the shareholders.

The company borrowed money from a bank with only two of its directors affixing and authenticating the company's common seal on the loan contract document without a resolution of the general meeting of the share-

holders. Based on this irregularity, the company refused to repay the loan and argued that the bank had constructive notice of the company's constitution and should have been aware of the irregularity and lack of authority of the two directors. The court held that outsiders dealing with a company did not need to inquire whether the company officers acting on its behalf were doing so in compliance with the company's internal regulations such as the passing of a resolution by the general meeting of the shareholders. The company was therefore bound to repay the loan contracted by its officers in the normal course of the company's business. The opinion of Jervis CJ is instructive on the rationale for the company's liability for the repayment of the loan; We may now take for granted that the dealings with these companies are not like dealings with other partnerships, and that the parties dealing with them are bound to read the statute and the deed of settlement. But they are not bound to do more. And the party here, on reading the deed of settlement, would find not a prohibition from borrowing, but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the documents appeared to be legitimately done [21] At common law, this decision of the court gave rise to the ''indoor management rule'' because the decision implied that outside parties transacting with a company do not need to go behind the doors of the company offices in order to ascertain whether there has been compliance with the company's internal regulations by officers exercising corporate powers on behalf of the company [22]. Such internal regulations mostly relate to procedural matters such as the conduct of meetings, passing of resolutions, appointment of directors and officers, quorum and notice of meetings, and the process of affixing and authenticating the company's common seal. These are internal matters of a company which an outsider cannot be able to ascertain before or during the time of entering into contract with officers exercising corporate powers on behalf of the company. Therefore, in the application of the rule, with the exception of an outside party the company itself cannot rely on the rule [23].

Application of Presumption of Regularity and its Exceptions

At common law, an outside party dealing with a company was deemed to have constructive notice of the company's constitution being a public document; that the outside party has clear knowledge and understanding of the business object and the powers of the company, including the capacity of company officers who exercise corporate powers. Consequently, where an outside party entered into a contract that was beyond the powers and scope of business of the company, or the contract was made by a company officer without authority, such contract was held to be unenforceable against the company [24]. The basis for the application of the rule of presumption of regularity is that while outside parties may have constructive notice of the company's constitution, they cannot reasonably be taken to have notice of internal matters of management of the company. The rule assigns to the company the risk of loss from unauthorised exercise of corporate powers by company officials instead of the innocent outsider who cannot have access to the internal affairs of the company [25]. Policy consideration for ease of doing business and promoting commerce in the overall interest of national economic development underpins the rule of presumption of regularity.

As Bray J stated in the case of Dey v Pullinger Engg Co [26]: ''The wheels of commerce would not go around smoothly if persons dealing with companies were compelled to investigate thoroughly the internal machinery of a company to see if something is not wrong''. Similarly, Lord Simonds noted in Morris v Kanssen [27] that: ''The people in business would be shy in dealing with the companies if they have to check completely the internal working of the companies''. What is significant is that the application of the rule of presumption of regularity aims at protecting outside parties such as lenders dealing with companies, thereby promoting business convenience and corporate diligence and accountability.

However, the application of the rule involves an equitable balance between competing interests. On the one hand, the rule is to protect and promote business convenience which would be at hazard if persons dealing with companies were under the necessity of investigating the internal management affairs of the companies in order to satisfy themselves about the actual authority of officers exercising corporate powers. On the other hand, a blanket application of the rule may facilitate the commission of fraud and unjustly favour those who deal with companies at the expense of innocent creditors and shareholders who are the victims of unscrupulous officers acting or purporting to act on behalf of companies [28].

Therefore, under some exceptional circumstances the rule of presumption of regularity would not apply. For instance, the rule is to the effect that persons dealing with a company in good faith may assume that acts within the company's constitution and powers have been properly and duly performed, and as such are not bound to inquire whether there is compliance with the internal management requirements of the company [29]. Consequently, a party will not be allowed to rely on the rule where he knows that the internal management procedures of the company have not been complied with by the officer purporting to contract on behalf of the company. In such situation the party would be considered as lacking in good faith and therefore not entitled to presume that the act of the officer is regular. The rule would not be applicable even where the outside party does not know whether there is compliance with the internal management requirements of the company but ought to have been put on inquiry due to the circumstances of the transaction or the manner in which the officer purports to exercise corporate powers on behalf of the company.

The case of Morris v Kanssen [30], decided on the authority of Royal British Bank v Turquand, exemplified that the rule of presumption of regularity would not avail a person who knows or ought to have known that the particular contract or transaction with the company through its officers exercising corporate powers is not regular or in compliance with the company internal procedures. In the case, during a meeting of the board in which he participated the appellant was appointed a director and some shares of the company were allotted to him on the

authority of two directors who were not validly in office. The whole process was not regular with the company internal procedures. The House of Lords held that appellant could not rely on the rule of presumption of regularity. According to Lord Simmonds; It is a rule designed for the protection of those who are entitled to assume, just because they cannot know, that the person with whom they deal has the authority which he claims. This is clearly shown by the fact that the rule cannot be invoked if the condition is no longer satisfied, that is, if he who would invoke it is put upon his inquiry cannot presume in his own favour that things are rightly done if inquiry that he ought to make would tell him that they were wrongly done [31].

This decision followed the earlier authority of Howard v. Patent Ivory Manufacturing Co [32] in which debentures of the company had been issued for an amount which, under the company's constitution, required authorization by a resolution of the general meeting. No such resolution had been passed. The court refused to allow all the debenture holders who were directors of the company to rely on the rule as they were taken to have known that the internal requirements of the company had not been observed, and the debentures were therefore held invalid.

The case of Underwood Ltd v Bank of Liverpool and Martins [33] is a leading example on the point that where the nature of the transaction or the surrounding circumstances are such that the outside party ought to have been put on inquiry to probe the transaction before committing to it, the rule cannot be called in aid. In the case, the sole director and main shareholder of the company paid cheques, which were drawn in favour of the company, into his own account. The court held that the fact that the cheques were paid by the bank into the personal account of the director was sufficient to have put the bank upon inquiry, and its failure to demand necessary clarification under the circumstances disentitled it to rely on the director's apparent authority and the indoor management rule or the rule presumption of regularity.

Another exception to the rule is in cases where the transaction was fraudulently consummated with a forged seal of the company or forged signature of the director or officer that has authority to exercise such corporate power. The rule is only applicable to genuine transactions where the company seeks to avoid liability on grounds of mere irregularity in the process leading to the transaction. Following Royal British Bank v Turquand, it was in the case of Ruben v Great Fingall Consolidated [34] that the House of Lords, for the first time, held that the rule would not apply to allow the enforcement of a corporate contract that is a product of fraud and forgery.

In the case, the appellant had advanced a sum of money for the personal purpose and benefit of the secretary of the company. The security for the loan was a share certificate of the company upon which the company seal was fraudulently affixed and also endorsed with the forged signatures of the two directors with authority to authenticate the company's seal and documents. The House of Lords held that the company was entitled to decline registration of the appellant in order to become the rightful owner of the shares, and that reliance on the indoor management rule does not apply to transactions that are not genuine. Subsequent cases that have upheld this exception to the rule of presumption of regularity include Kreditbank Cassel GmbH v Schenkers Ltd [35] and South London Greyhound Racecourses Limited v Wake [36]. How this common law rule and its exceptions have been reflected in the Companies Act is the focus of the next part.

3. Statutory Enactment of the Rule of Presumption of Regularity

As a common law jurisdiction, prior to the statutory enactment of the provisions on the rule of presumption of regularity Nigerian courts had applied the rule as established in the case of Royal British Bank v Turquand. In its substantive and exceptional respects the rule was applied as early as about the first half of the twentieth century in the case of Pool House Group (Nigeria) Ltd v African Continental Bank Ltd [37]; through the '70s in Metalimpex v A.G Leventis and Co. (Nig.) Ltd [38]; African Development Corporation Ltd v Lagos Executive Development Board & Anor [39]; Trenco (Nigeria) Ltd. v. African Real Estate and Investment Co [40]; and up till the '90s in Jobanor & Co Ltd v Cooperative Bank Ltd [41]; Spasco Vehicle and Plant Hire Co Ltd v Alraine (Nig) Ltd [42].

In these cases, irregular and unauthorized acts of directors and officers of companies were held binding on the companies according to the rule. And in the case of Onuh v United Nigeria Insurance Co Ltd [43] the exception to the rule as adumbrated by Lord Simmonds in Morris v Kanssen was adopted and applied. From the cases [44], the rule was mostly applied as an exception to the common law doctrine of constructive notice rather than as a substantive legal principle that imposes vicarious liability in the realm of the general law of agency. But in the enactment of the Companies Act the doctrine of constructive notice was expressly abolished under section 92, immediately preceding the provisions on the rule of presumption of regularity in section 93. Section 92 of the Act provides that except with respect to the register containing particular of charges [45], a person is not deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Corporate Affairs Commission or available for inspection at an office of the company.

Having so expressly abolished the doctrine of constructive notice, the Companies Act provides in section 93 that a person dealing with a company or with someone deriving title under the company is entitled to make the following assumptions and the company shall be estopped from rebutting such assumptions. The assumptions are to the effect;

a. that the company's constitution has been duly complied with
b. that every person described in the company's constitution as a director, managing director or secretary of the company has been duly appointed and has authority to exercise the powers customarily exercised by a director, managing director, or secretary of a company

c. that those representing the company and acting through its members in general meeting, board of directors, or managing director such as officers or agents of the company can discharge the duties customarily performed by an officer or agent of the type concerned
d. that the secretary of the company, and every officer or agent of the company having authority to issue documents or certified copies of documents on behalf of the company, has authority to warrant the genuineness of the documents or the accuracy of the copies so issued
e. that a document has been duly sealed by the company if it bears what purports to be the seal of the company attested by what purports to be the signatures of two persons who can be assumed to be a director and the secretary of the company

From the above provisions, it appears that the Companies Act does not only adopt the indoor management rule as laid down in Royal British Bank v Turquand, it also expands the scope of the rule and clarifies areas which constituted points of argument by companies seeking to evade, based on the doctrine of constructive notice, contracts or transactions made on their behalf by their officers or agents. For instance, unlike the rule at common law, the statutory provisions are a clear reflection rather than illustration of the principles of the law of agency. As shown below, it is evident from the provision which attaches to the company liability for irregular transactions by its officers and agents exercising corporate powers with customary and apparent authority, not only actual authority. Significantly, there is a clarification of a rather confusing point that constituted an exception to the rule under common law. In the case of Houghton and Co v Nothard Lower and Wills Ltd [46] the court held that an outside party could not rely on the rule where there was lack of knowledge of the content of the company's constitution even if the constitution allowed delegation of power to the company officer who exercised corporate power without authority. This was a ''negative operation of the doctrine of constructive notice'' [47] because the provision for delegated authority in the company's constitution ought to make the rule applicable where the officer acted without such delegated authority, notwithstanding the fact that the outside party had no knowledge of such provision in the company's constitution.

The statutory provisions now allow the rule to apply where the company's constitution describes the appointment of any person as a director, managing director or secretary, and contains delegation of authority to officers and agents even if the outside party does not have knowledge of the constitution. The main exception to the rule of presumption of regularity under the statutory provisions is the existence of actual knowledge by the outside party [48]. That is, where an outside party contracting with directors, officers or agents exercising corporate powers on behalf of the company had actual knowledge of the irregularity or the lack of authority of the persons purporting to act for the company.

The other statutory exception is that a contracting outside party is not entitled to assume that an officer or agent of the company has delegated authority of the committee of the board of directors even if the party has knowledge that under the company's constitution such delegation of the committee's authority is allowed [49]. This is directly contrary to the inverse or circuitous application of the doctrine of constructive notice which constituted an exception to the rule under common law as was held in Houghton and Co v Nothard Lower and Wills Ltd [50], and the Nigerian case of Ajayi v Lagos City Council [51]. Under the statutory provisions, the common law exception of fraud and forgery has been abrogated.

By virtue of section 94 of the Companies Act, a company would be liable to a third party for the acts of any officer or agent, notwithstanding that the officer or agent has acted fraudulently or forged a document purporting to be sealed by or signed on behalf of the company. The only ground upon which the company may avoid liability in this regard is where there is collusion between the officer or agent and the third party. Therefore, common law authorities such as Ruben v Great Fingall Consolidated [52] and its line of cases no longer represent the law. From the statutory provisions, the rule of presumption of regularity is more expanded in its substantive scope and restricted in its exceptions. The reason for this is that the statutory presumption of regularity implicates the principles of agency more than the common law indoor management rule as enunciated in the case of Royal British Bank v Turquand.

Implications of the Statutory Presumption of Regularity

The case law on the rule of presumption of regularity under common law displays some ambiguity, if not inconsistency, due to its functional relationship with the general law of agency as against judicial application of the rule as a theoretically independent substantive principle of law. Exceptions to the rule under common were malleable and amenable to a degree that almost suffocated the rule itself. More so, the rule was haunted by the twin doctrines of constructive notice and *ultra vires*. For instance, the case law indicates that in applying the rule, the courts tried to determine whether the company's constitution provided a procedural constraint or a substantive power of delegation of authority or appointment of the company officer exercising corporate power on behalf of the company Where there was a procedural constraint, the outside parties could assume that the procedure was complied with, notwithstanding whether they had actual knowledge of the company's constitution. But the rule as established in *Royal British Bank v Turquand* requires that the assumption made is consistent with the terms of the constitution, not necessarily with actual knowledge of it. If it appeared that the outside parties were actually seeking to assume the exercise of a power of delegation, then the existence of the power in the company's constitution was not sufficient to assume procedural regularity, regardless whether the outsider read it [53]. If the outside parties did not read it, the doctrine of constructive notice applied and the contracts or transactions were *ultra vires* the company.

The provisions on the rule of presumption of regularity under the Companies Act reflect, rather than reformulate, the rule in its substantive form. The Act does not only refine and clarify the rule, it strengthens it through the abolition of the doctrine of constructive notice and emasculation of the ultra vires doctrine [54]. Instructively, the provisions of the Act clearly show that the rule proceeds from the general law of agency and rests on the agency principles of implied, customary and apparent forms of agency authority more than actual authority of company officers exercising corporate powers on behalf of the company. Actual knowledge is only relevant in terms of liability for acts of the company by the general meeting, board of directors, or managing director [55].

With respect to officers and agents, section 90(1) provides that the acts of any officer or agent of a company shall be deemed to be acts of the company if the company, acting through its members in general meeting, board of directors, or managing director, expressly or impliedly authorise such officer or agent to so act. The company is also liable for the acts of the officer or agent if it represented the officer or agent as having its authority to act, except where the outside party had actual knowledge of the officer or agent's lack of authority [56]. Also, the authority of an officer or agent of the company may be conferred prior to the act or by subsequent ratification, and such ratification may be implied from acquiescence by members in general meeting, the directors or the managing director [57].

From the statutory provisions, the implication of the rule of presumption of regularity is that a company is liable for the acts of its directors, officers and agents to the extent permissible under the general law of agency. The interpretation and application of the statutory provisions on the rule would necessarily implicate the principles of agency but with guidance by the wordings of the provisions. Significantly, exceptions to the rule under the statutory provisions have to turn on the question of official status of companies' officers; whether the person purporting to exercise corporate power on behalf of the company is the company's employee of whatever description. This is the implication of the provision of section 90(3) of the Companies Act which states that nothing shall derogate from the vicarious liability of the company for the acts of its servants while acting within the scope of their employment.

Conclusion

The Companies Act does not replace the common law rule of presumption of regularity. The statutory provisions reflect, develop and refine the rule of its ambiguities which bedevilled it under common law. Under the statutory provisions the scope of the rule is expanded and its application situated within the context of the general law of agency. In particular, the statutory provisions narrow the exceptions to the rule down to the principles of customary, implied and apparent forms of agency authority. Therefore, in determining the limits of the rule the line has to be drawn along those principles of the law of agency, and in relation to the position or employment status of persons purporting to exercise corporate powers on behalf of a company.

By no means, the statutory rule does not provide absolute or unqualified protection to outside parties dealing with officers or agents of a company. Rather, in tune with its underlying commercial policy consideration the statutory provisions strive to advance the equitable balance between the interests of innocent outsiders and that of the company in order to ensure that no party is put at an unfair disadvantage while promoting corporate business transactions which contribute to economic development. Accordingly, the rule, as originally established in the case of *Royal British Bank v Turquand,* would continue to bear some relevance on the interpretation and application of the statutory provisions.

However, it has to be noted that the statutory provisions have delineated how and where to restrict the application of the rule. There is a presumption inherent in the relevant provisions of the Companies Act to the effect that a company is liable for the acts of its officers and agents until the contrary is proved. Constructive notice of the company's constitution to outsiders dealing with the company and fraud or forgery by company officers and agents no longer absolve the company of liability, including *ultra vires* acts by its officers and agents. The line between the exercise of corporate powers and the presumption of regularity is now drawn within positive statutory provisions and not on the quicksand of common law.

References

1. Cain TE. The Rule in British Bank v Turquand in 1989, Bond Law Review,1989:1(2):1. Available at: http://epublications.bond.edu.au/blr/vol1/iss2/8
2. In substantive provisions the Nigerian Companies and Allied Matters Act 2020 is representative of the Companies Act of major common law jurisdictions such as the United Kingdom Companies Act 2006 and the Australian Corporations Act 2001. As the latest of these similar Acts, reference to the Companies Act means the Nigerian Companies Act 2020, unless otherwise specifically identified.
3. [1897] AC 22
4. See section 87(1) of the Companies Act 2020
5. See section 93 of the Companies Act 2020
6. Cain TE. The Rule in British Bank v Turquand in 1989, *op.cit,* 1989.
7. 1 K.B, 1934, 57.
8. Ibid, at p.63
9. At common law, the right of the company to avoid liability for *ultra vires* act or transaction is borne out of the rule of constructive notice which deems outside parties as having notice of the business, power, and capacity of the company as contained in the company's constitution. However, under section 92 of the Companies Act, the rule of constructive notice has been abolished and *ultra vires* acts or transactions by the company is not invalid or a nullity. For an in-depth analysis of the limits of corporate powers and the effect of *ultra vires* transaction of a company under the provisions of the Companies Act 2020, Babajide S,

Shoroye. Companies' Power to Borrow at Common Law and Under Section 191 of the Nigerian Companies Act 2020: Identifying the Red Line, Journal of Law, Policy and Globalization,2021:116:24-31.

10. Gabriel Rauterberg. The Essential Roles of Agency Law, 118 MICH. L. REV. 609. Available at, 2020. https://repository.law.umich.edu/mlr/vol118/iss4/3
11. Phillip Lipton. The Authority of Agents and Officers to Act for a Company: Legal Principles, Parkville, Vic: Centre for Corporate Law and Securities Regulation, Faculty of Law, University of Melbourne, 1996, 60.
12. See the case of *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549
13. Phillip Lipton. The Authority of Agents and Officers to Act for a Company: Legal Principles, *op.cit*
14. [1964] 2 QB 480 (CA), at, 505, 506
15. Phillip Lipton. The Authority of Agents and Officers to Act for a Company: Legal Principles, *op.cit*
16. ibid
17. [1964] 2 QB 480
18. [1968] 1 QB 549
19. Per Lord Simonds in the case of *Morris v Kanssen* [1946] AC 459, 474
20. (1856) 6 E&B 327
21. At, 332
22. See the case that followed the authority of *Royal British Bank v Turquand* such as *Mahony v East Holyford Mining Co* (1875) LR 7 HL 869; *Biggerstaff v Rowatt's Wharf Ltd* (1896) 2 Ch. 93; *Freeman and Lockyer v Burkhurst Park Properties (Mangal) Ltd* (1964) 2 Q.B. 480
23. See the Australian case of *Hughes v NM Superannuation Pty Ltd* (1993) 11 ACLC 923
24. See the cases of *In Re Jon Beauforte (London) Ltd* (1853) 1 Ch 131; *Ernest v Nicholls* (1857) 6 HL 401; *Griffith v Paget (No.2)* (1877) 6 Ch 517
25. For an impressive analysis of ''risk'' and ''cost'' associated with exercise of corporate powers as it relates to corporate transactions with outside parties, see M Whincop, (1997). Nexuses of Contracts, the Authority of Corporate Agents and Doctrinal Indeterminacy: from Formalism too Law and Economics, 20 University of New South Wales Law Journal 274
26. (1921) 1 KB 77
27. (1946) 1 ALL ER 586
28. See the opinion of Mason J in the Australian authoritative case on presumption of regularity; *Registrar General v Northside Developments Pty Ltd & Ors* (1989) 7 ACLC 52 at 621
29. Per Lord Simonds in *Morris v Kanssen* [1946] AC 459 at 474
30. (1946) 1 All ER 546
31. At p.475
32. (1883) 38 Ch. D. 156
33. (1924) 1 K.B 775
34. (1906) A.C 439
35. (1927) 1 K.B. 826
36. [1931] 1 Ch 496
37. (1969) N.M.L.R. 347
38. (1976) 1. All N.L.R. Pt. 1. 94
39. (1978) NSCC 220
40. (1978) 1 L.R.N. 146
41. (1995) LPELR-24846 (SC)
42. (1995) LPELR 3110 (SC); The first Nigerian Companies Act was enacted in 1990, and repealed by the current Companies Act 2020.
43. (1974) 3 A.L.R. Comm. 15
44. In particular, see the case of *Pool House Group (Nigeria) Ltd v African Continental Bank Ltd* (1969) N.M.L.R. 347; one of the directors that executed the mortgage deed on behalf of the plaintiff company was a foreigner. The argument that defendant ought to have had constructive notice that under section 33(4) of the Immigration Act 1963 plaintiff company could not have named a foreigner as one of its directors in its constitution was held to be defeated by the rule of presumption of regularity.
45. See section 223, Companies Act 2020
46. (1927) 1 K.B. 246, at p. 266; a director of the defendant company contracted, without authority, on behalf of the company. Under company's constitution the Board was empowered to delegate its functions to a single director, but the plaintiff had no knowledge of the constitution. Sargent LJ held thus; "In a case like this where that power of delegation had not been exercised, and where admittedly (the plaintiffs) had no knowledge of the existence of that power and did not rely on it, I cannot for myself see how they can subsequently make use of this unknown power so as to validate the transaction. They could rely on the fact of delegation, had it been a fact, whether known to them or not. They might rely on their knowledge of the power of delegation, had they known of it, as part of the circumstances entitling them to infer that there had been a delegation and to act on that inference, though it were in fact mistaken one. But it is quite another thing to say that the plaintiffs are entitled now to rely on the supposed exercise of a power which was never in fact exercised and of the existence of which they were in ignorance at the date when they contracted". In

the Nigerian case of *Ajayi v Lagos City Council* (1967) (3) A.L.R. Comm. 213 this authority was adopted and applied.

47. Oshio PE. The indoor management rule and agency principles in Nigerian Company law, Modern Practice Journal of Finance and Investment Law,2016:9(1-2):70-87.
48. See section 93(d)(i)
49. See section 93(d)(ii)
50. (1927) 1 K.B. 246
51. (1967) (3) A.L.R. Comm. 213
52. [1906] A.C. 439
53. On this analysis, see Phillip Lipton, The Authority of Agents and Officers to Act for a Company: Legal Principles, op.cit, at, 40.
54. Babajide S Shoroye. Companies' Power to Borrow at Common Law and Under Section 191 of the Nigerian Companies Act 2020: Identifying the Red Line, Journal of Law, Policy and Globalization,2021:116:24-31.
55. See section 89(a)
56. See 90(b)
57. See section 90(2)