Filed 5/11/98

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ROBERT SNUKAL,Plaintiff, Cross-Defendant and Respondent, v. FLIGHTWAYS MANUFACTURING, INC., Defendant, Cross-Complainant and Appellant.	B113630(Municipal Court, Malibu Judicial District No. 94V00283)

APPEAL from a judgment of the Municipal Court, Malibu Judicial District, for Los Angeles County. Terry Adamson, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed and remanded.

David B. Bloom, James E. Adler, Sandra Kamenir and Peter O. Israel, for Plaintiff, Cross-Defendant and Respondent.

Akre, Bryan & Chang and Geoffrey L. Bryan, for Defendant, Cross-Complainant and Appellant.

Heller Ehrman White & McAuliffe and Steven O. Weise; Wilson Sonsini Goodrich & Rosati and Meredith S. Jackson; Rodriguez, Horii & Choi and Albert R. Rodriguez; Sheppard, Mullin, Richter & Hampton and John D. Berchild, Jr.; Brobeck Phleger & Harrison and George A. Hisert; McCutchen, Doyle, Brown & Enersen, and Henry D. Evans, Jr.; Latham & Watkins and Linda Schilling; Hoffman, Finney & Klinedinst and William P. Hoffman, Jr.; Francis Mintz; and O'Melveny & Myers and R. Bradbury Clark, as Amici Curiae.

Defendant, cross-complainant and appellant Flightways Manufacturing, Inc. (Flightways) appeals a municipal court judgment in favor of plaintiff, cross-defendant and respondent Robert Snukal (Snukal), in an action to recover on a lease. The appellate department of the superior court affirmed and certified the case for transfer to the Court of Appeal. (Cal. Rules of Court, rule 63.) This court accepted transfer, having determined it was necessary to settle an important question of law.

The essential issue presented involves the proper interpretation of Corporations Code section 313, pertaining to the validity of corporate documents executed by certain corporate officers. We conclude the applicability of section 313 requires the signatures of two corporate officers to bind a corporation. The judgment of the appellate department therefore is reversed and the matter remanded for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The basic facts are largely undisputed. Kirt Lyle (Lyle) was corporate president and secretary and chief financial officer of Flightways. Lyle negotiated and signed a two-year lease agreement for a beach house in

Malibu on behalf of the corporation as tenant. The lease agreement indicates it was signed by Lyle in his capacity as president of Flightways. Snukal was the landlord.

Snukal and Lyle never met. The lease was negotiated by a leasing agent on Snukal's behalf. The deposit check of $11,000 was drawn on the account of the corporation. Lyle moved into the house with his child and the rent was paid with checks drawn on Lyle's personal account as well as on the corporate account. The checks were received by Snukal's secretary who deposited them in the bank.

After the rent for June, July, August and September 1993 was not paid, a three-day notice to pay rent or quit was served on "Flightways Manufacturing Inc.; Lyle Kirtisine; Kirt Lyle." Lyle vacated the premises at the end of October 1993.

Snukal instituted this action in the municipal court for breach of contract. Flightways cross-complained on common counts for a return of all corporate funds paid by Lyle to Snukal.

After a court trial, judgment was entered against Flightways for $22,300. In addition, attorney fees and costs were awarded totaling $12,935.36. The parties also stipulated that judgment on Flightways's cross-complaint was in favor of Snukal.

1. The appellate department's decision affirming the judgment.

The appellate department of the superior court affirmed, concluding section 313 is dispositive. It reasoned the purpose of the statute " 'is to allow third parties to rely upon the assertive authority of various senior executive officers of the corporation concerning the execution of any instrument on behalf of the corporation.' [Citation.] . . . Lyle was the corporate president, the chief financial officer, and the secretary of [Flightways], and [Snukal] was therefore entitled to rely upon . . . Lyle's asserted authority absent actual knowledge . . . Lyle lacked such authority. Since [Snukal] testified that he did not know why [Flightways] was named on the lease but assumed the corporation was leasing a home for . . . Lyle, that he had never met . . . Lyle, and that he had never communicated with Flightways about the lease, substantial evidence supports the trial court's implied finding that [Snukal] did not know . . . Lyle lacked authority to enter into the lease on behalf of [Flightways]."

The appellate department further found "[Flightways'] arguments that the signature of more than one person is required under . . . section 313, or in the alternative that one person must sign in the capacity of all of the requisite officers, are unpersuasive. [Flightways] allowed . . . Lyle to hold all of the requisite offices and thereby gave . . . Lyle the power to assert authority beyond his actual authority and enter into contracts binding on [Flightways]. While we recognize that . . . Lyle signed the lease agreement simply as president of Flightways, Mr. Luhnow, Flightways' president at the time of trial, confirmed that another corporate officer had admitted at the corporate deposition . . . Lyle was initially president, chief financial officer, and secretary of Flightways. We conclude that . . . section 313 applies under these facts to bind [Flightways]." (Italics added.)

Thus, the appellate department reasoned Flightways was bound pursuant to section 313 despite the fact Lyle signed the lease agreement solely in his capacity as president, because the evidence showed Lyle also was chief financial officer and secretary of the corporation.

In view of its determination Flightways was liable for the lease under section 313, the appellate department did not reach Flightways' contention that Snukal could not rely on Lyle's ostensible authority, or any other issues.

2. Subsequent proceedings.

Flightways petitioned the appellate department for certification of the case to the Court of Appeal.

Pursuant to California Rules of Court, rule 63, the appellate department certified transfer to the Court of Appeal is necessary "to settle an important question of law, specifically, when the same person is president as well as secretary and chief financial officer of a corporation, whether it is necessary under . . . section 313 for the written contract to specifically reflect a corporate office designation in addition to that of President as signatory in order to bind the corporation under the written contract."

In accordance with California Rules of Court, rule 62(a), this court ordered the case transferred to it for hearing and decision.

ISSUE

Along with the discretion to order transfer, the Court of Appeal has discretion to determine that only certain, limited aspects of a case will be heard and decided after the transfer. (People v. Dupuis (1992) 7 Cal.App.4th 696, 700.) This is consistent with the recognition that transfer to the Court of Appeal is " 'not primarily for the benefit of the party who lost in the superior court, but "to secure uniformity of decision or to settle important questions of law." ' [Citation.]" (Ibid.)

Hence, the sole issue considered herein is whether the signature of a corporate president, standing alone, is sufficient to bind a corporation pursuant to section 313.

DISCUSSION

1. General principles.

Corporations Code section 313 states: " Subject to the provisions of subdivision (a) of Section 208, any note, mortgage, evidence of indebtedness, contract, share certificate, initial transaction statement or written statement, conveyance, or other instrument in writing, and any assignment or endorsement thereof, executed or entered into between any corporation and any other person, when signed by the chairman of the board, the president or any vice president and the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation, is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same." (Italics added.)

Section 208, subdivision (a), referred to in section 313, states: "No limitation upon the business, purposes or powers of the corporation or upon the powers of the shareholders, officers or directors, or the manner of exercise of such powers, contained in or implied by the articles or by Chapters 18, 19 and 20 or by any shareholders' agreement shall be asserted as between the corporation or any shareholder and any third person, except in a proceeding (1) by a shareholder or the state to enjoin the doing or continuation of unauthorized business by the corporation or its officers, or both, in cases where third parties have not acquired rights thereby, or (2) to dissolve the corporation or (3) by the corporation or by a shareholder suing in a representative suit against the officers or directors of the corporation for violation of their authority." (Italics added.)

Thus, "limitations on the powers of officers may only be asserted between the corporation or a shareholder and a third party in specified proceedings." (9 Witkin, Summary of Cal. Law (9th ed. 1989) Corporations, § 115, p. 615.)

The purpose of section 313 "is to allow third parties to rely upon the assertive authority of various senior executive officers of the corporation concerning the execution of any instrument on behalf of the corporation." (23E West's Ann. Corp. Code, Legis. Com. com. foll. § 313, p. 192.)

2. Flightways was not bound pursuant to section 313 due to the lack of a second signature.

The appellate department reasoned Flightways was bound by the lease agreement pursuant to section 313, despite the fact Lyle signed the instrument solely in his capacity as president, because the evidence showed Lyle also served as chief financial officer and secretary of Flightways. As explained below, the signature of a single officer is inadequate to bind a corporation pursuant to section 313. The fact Lyle also served as chief financial officer and secretary is not a substitute for the requisite number of signatures demanded by section 313. Therefore, the judgment must be reversed and the matter remanded for further proceedings.

As indicated, section 313 provides that a contract, "executed or entered into between any corporation and any other person, when signed by the chairman of the board, the president or any vice president and the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation, is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the same." (§ 313, italics added.)

The statute is not a model of drafting. "Ordinarily, the word 'and' connotes a conjunctive meaning, while the word 'or' implies a disjunctive or alternative meaning. [Citations.]" (Melamed v. City of Long Beach (1993) 15 Cal.App.4th 70, 79; accord People v. Skinner (1985) 39 Cal.3d 765, 769.) Thus, under the plain meaning of section 313, it is arguable the signature of either the chairman of the board or the president is sufficient to bind the corporation, and that it is the other officers enumerated in the statute who must sign in the specified combinations to bind the corporation.

However, two leading treatises have construed section 313 as requiring the signatures of two officers.

Marsh's California Corporation Law explains: "In lieu of the mechanics of using a corporate seal to establish presumptive validity of corporate instruments, Section 313 of the 1977 Law provides that any instrument which is signed by two specified corporate officers, i.e., the chairman of the board, the president or any vice-presidentand the secretary, any assistant secretary, the chief financial officer or any assistant treasurer, is binding on the corporation in the absence 'of actual knowledge on the part of the other person [to the contract or instrument] that the signing officers had no authority to execute the same.' " (1 Marsh's Cal. Corporation Law (3d ed. 1997) § 4.51, p. 266, first italics added.)

Similarly, Ballantine & Sterling states: "Present law provides that any instrument in writing, including assignments and endorsements of such instrument, entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers did not have the appropriate authority, when signed by the chairman of the board, the president, or any vice president and also by any one of the following officers: [fn. omitted] [¶] (1) The secretary; [¶] (2) Any assistant secretary; [¶] The chief financial officer; or [¶] (4) Any assistant treasurer of the corporation." (1 Ballantine & Sterling, Cal. Corporation Laws (4th ed. 1997) § 89.04,

pp. 5-52.1, 5-52.2, italics added.)

Construing section 313 to require two signatures would seem to be in accord with the Legislature's purpose, which was to enable "third parties to rely upon the assertive authority of various senior executive officers of the corporation concerning the execution of any instrument on behalf of the corporation." (23E West's Ann.

Corp. Code, Legis. Com. com. foll. § 313, p. 192, italics added.) Such reliance by third parties is strengthened when the instrument is executed by two senior executive officers of the corporation. Further, the requirement of two signatures serves to protect a corporation from the mischief of a single rogue officer. Therefore, we concur with the treatises that section 313 requires the signatures of two corporate officers.

Hence, Lyle's signing the lease solely in his capacity as president of Flightways was inadequate to bind the corporation pursuant to section 313.

We emphasize our holding is limited to an interpretation of section 313. This statute provides one basis for validating a corporate document. However, section 313 is not the exclusive means of establishing whether a corporate signatory or signatories bind a corporation. Nothing in our opinion is intended to affect in any way other validating concepts or means of proving the actual, apparent or ostensible authority of a corporate signatory.

3. Remaining issues to be determined on remand.

Flightways urged a number of grounds for reversal of the municipal court's decision. The appellate department's decision upheld the trial court's finding of corporate liability and concluded: "As we have determined that Corporations Code section 313 is dispositive, we need not address the remaining contentions."

We ordered transfer for the limited purpose of examining whether the signature of a corporate president is sufficient to bind a corporation under section 313. Having resolved that issue, we remand the matter to the appellate department for its consideration of any remaining pertinent contentions and whether there exist other grounds, such as ostensible authority, for affirmance of the municipal court's judgment.

DISPOSITION

The judgment of the appellate department is reversed and the matter is remanded to the appellate department for further proceedings consistent with this opinion. Each party to bear respective costs on appeal.

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KLEIN, P.J.

We concur:

CROSKEY, J.

ALDRICH, J.

The following was add to the above opinion on June 10, 1998

Filed 6/10/98

NO CHANGE IN JUDGMENT

THE COURT:

1. On page 10 of the slip opinion, line 8, insert footnote 6 at the end of the sentence.

2. Insert footnote 6 as follows:

We are aware California Rules of Court, rule 68, pertaining to transfer of cases on appeal within the original jurisdiction of the municipal court, provides: “The remittitur, upon issuance, shall be transmitted . . . to the court from which the appeal was originally taken, . . .” (Italics added.) The question thus arises whether this matter should be remanded to the municipal court, where this case originated, or to the appellate department of the superior court. We conclude that in view of the posture of this matter, the proper disposition is a remand to the appellate department for further proceedings.

Code of Civil Procedure section 43, which is controlling, states: “The Supreme Court, and the courts of appeal, may affirm, reverse, or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had. . . . Its judgment in appealed cases shall be remitted to the court from which the appeal was taken.” (Italics added.)

Here, further proceedings are required in the appellate department, from which this case came to us, rather than at the trial court level. As discussed, in upholding the municipal court’s finding of corporate liability pursuant to section 313, the appellate department found that issue was dispositive and did not reach any of the remaining contentions. We exercised our discretion to limit the issues on our review, and ordered transfer solely to address whether the signature of a corporate president is sufficient to bind a corporation pursuant to section 313. We determined a single signature is insufficient to bind a corporation under the statute. Consequently, it is necessary to remand the matter to the appellate department for its consideration of the other issues raised in the appeal to that court. No useful purpose would be served by a remand to the municipal court at this juncture. (See People v. Gonzalez (1996) 12 Cal.4th 804, 825 [remand from Supreme Court to Court of Appeal of case originating in municipal court].)

No change in judgment.