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CORPORATIONS - CORPORATE SEAL - WHEN AFFIXING SEAL MAKES THE INSTRUMENT A SPECIALTY

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CORPORATIONS — CORPORATE SEAL — WHEN AFFIXING SEAL MAKES THE INSTRUMENT A SPECIALTY — The plaintiff contracted to buy gasoline from a subsidiary of the defendant. The lengthy contract was signed at the end by the proper officers and in juxtaposition to the signatures were the corporate seals of both parties. The contract contained a recital of sealing. On a separate page, but attached to the contract, was a guaranty by the defendant of the subsidiary's performance. This also was sealed with the corporate seals of both parties adjacent to the signatures of the officers. No mention of sealing was contained in the guaranty. On default by the subsidiary, the plaintiff sued on the guaranty as a specialty. The defendant answered with the defense of the three-year period of limitations for simple contracts. The plaintiff demurred to this answer. *Held*, demurrer sustained on the technical ground that the declaration on a specialty cannot be answered by a plea of statute of limitations as to simple contracts. But the court, per dicta, intimates that the defendant is correct in contending that the instrument sued on is a simple contract. *General*

Petroleum Corp. v. Seaboard Terminals Corp., (D. C. Md. 1937) 19 F. Supp. 882.

The early common-law rule that a corporation could manifest its intention only by use of its corporate seal [1] has become nearly obsolete. It is now generally conceded that the corporate seal is essential only where the seal of a private individual would be required.[2] However, although a corporation can contract without the use of its seal, it does not follow that whenever the seal is used the instrument becomes a specialty.[3] The seal is always appropriate,[4] and, since it is a mark of genuineness and prima facie authentication that the document is the act of the corporation,[5] its use is expedient for any instrument of the corporation. Because of the difference in the period of limitation on specialties and simple contracts,[6] the necessity of appropriate pleading,[7] the effect on negotiability of instruments,[8] and the effect on consideration,[9] it becomes necessary

[1] BLACKSTONE, COMMENTARIES, 4th ed., 475 (1899); 1 MORAWETZ, PRIVATE CORPORATIONS, 2d ed., § 338 (1886), gives as a reason for this rule the ignorance in the art of writing in the dark ages.

[2] 14 C. J. 334 (1919); 6 FLETCHER, CORPORATIONS, rev. ed., § 2466 (1931); 1 MORAWETZ, PRIVATE CORPORATIONS, 2d ed., § 338 (1886); Homesteaders' Life Assn. v. Salinger, 212 Iowa 251, 235 N. W. 485 (1931); Warren v. Littleton Orange Crush Bottling Co., 204 N. C. 288, 168 S. E. 226 (1933).

[3] In Grand Lodge of Knights of Pythias v. State Bank, 79 Fla. 471, 84 So. 528 (1920), the court apparently makes this inference in laying down a rule that when the seal of the corporation, as a seal of a private individual, is placed on an instrument, the corporation is bound by the instrument as a specialty, unless there is a showing of fraud or something on the face of the instrument indicating a contrary intent.

[4] 6 FLETCHER, CORPORATIONS, rev. ed., § 2467 (1931); 3 THOMPSON, CORPORATIONS, 3d ed., § 2050 (1927).

[5] Cockrum Lumber Co. v. Sterchi, 157 Tenn. 440, 9 S. W. (2d) 704 (1928); Grand Allen Holding Corp. v. M. & S. Circuit, 236 App. Div. 2, 258 N. Y. S. 19 (1932); Amerson v. Corona Coal & Iron Co., 194 Ala. 175, 69 So. 601 (1915).

[6] In the instant case, for example, the period of statute of limitations on simple contracts was three years; on specialties, twelve years. 19 F. Supp. 882 at 883.

[7] If the declaration is on a specialty, a proper answer cannot plead a defense good only as to simple contracts, or vice versa. This technical rule of pleading resulted in sustaining the demurrer to the defendant's answer (19 F. Supp. 882 at 886). See also, Smith v. Woman's College, 110 Md. 441, 72 A. 1107 (1909); Grubbs v. Nat. Life Maturity Ins. Co., 94 Va. 589, 27 S. E. 464 (1897); Metropolitan Life Ins. Co. v. Anderson, 79 Md. 375, 29 A. 606 (1894), for other cases in which this pleading question arose.

[8] The early American cases established the rule that affixing the corporate seal to an instrument otherwise negotiable, converted it into a specialty and destroyed its negotiability. Clark v. Farmers' Woolen Mfg. Co., 15 Wend. (N. Y.) 256 (1836); Rawson v. Davidson, 49 Mich. 607, 14 N. W. 565 (1883); Brown v. Jordhal, 32 Minn. 135, 19 N. W. 650 (1884). But later cases, beginning with Bank v. Railroad, 5 S. C. 156 (1873), got away from the rule, and the Uniform Negotiable Instruments Law, § 6 (4), abolished it.

[9] The rule that a seal imports consideration applies to contracts executed on behalf of corporations as well as individuals. Sturtevants v. Alton, 3 McLean 393, 23 Fed. Cas. 13580 (1844); Royal Bank v. Grand Junct. Ry., 100 Mass. 444, 97 Am. Dec. 115 (1868). It has also been held that a seal is presumptive evidence of consideration. Taft v. Church, 162 Mass. 527, 39 N. E. 283 (1895); Gray v.

to ascertain just when affixing the corporate seal makes the instrument a specialty. Generally, the mere fact that the corporate seal appears on the instrument does not make it a specialty.[10] Professor Williston qualifies this rule by limiting it to the case when the corporate seal appears "other than in the usual place of private seal," [11] thus emphasizing the importance of the location of the seal on the document. While this is an important factor, it is not conclusive.[12] An intention that the use of the seal is to convert the instrument into a specialty is of prime importance. This intention is best manifest by a recital of sealing in the document itself. Such a recital usually is held to be conclusive of the showing of intent.[13] There are other factors, which, though not conclusive, when combined may be held sufficient to show that the instrument was intended as a specialty. As pointed out above, the place where the seal is affixed is important. The time when the seal was affixed is also important.[14] Does it appear to be affixed at the time of signing, or afterwards as part of the routine of the filing clerk? If the instrument is of the type normally requiring a seal, as a deed, or if statutes direct the use of the seal, it may fairly be inferred that the seal was affixed with the purpose of making the instrument a specialty.[15] If the seals of both parties appear, especially if one is the seal of a private person, it is easier to infer that the seal was not merely for purposes of authentication. But if its use is to cover figures to prevent alteration, it probably was not intended to affect the character of the document.[16] In addition to what appears on the face of the instrument, extrinsic facts and circumstances surrounding its

Barton, 55 N. Y. 68, 14 Am. Rep. 181 (1873). And that a sealed instrument conclusively imports consideration. Royal Bank v. Grand Junct. Ry., supra. In 3 THOMPSON, CORPORATIONS, § 2049 (1927) it is suggested that it would be more accurate to state that the seal is a "substitute" for consideration.

[10] McGillivray, "The Virtue of the Seal," 36 CAN. L. T. 289 (1916); Grubbs v. Nat. Life Maturity Ins. Co., 94 Va. 589, 27 S. E. 464 (1897); Weeks v. Elser, 143 N. Y. 374, 38 N. E. 377 (1894). But in Grand Lodge of Knights of Pythias v. State Bank, 79 Fla. 471, 84 So. 528 (1920), the court asserted that the corporate seal is the same as a private seal and an instrument containing such is a specialty in absence of fraud or an indication on its face of a contrary intent.

[11] 1 WILLISTON, CONTRACTS, rev. ed., § 271 A (1936).

[12] Its inconclusiveness is demonstrated in United States v. Mercantile Trust Co., 213 Pa. 411, 62 A. 1062 (1906), where the instrument was sealed at the top of the page not accompanying the signatures. There was no recital of sealing. The court held that the instrument was clearly intended as a specialty.

[13] Smith v. Woman's College, 110 Md. 441, 72 A. 1107 (1909); United States v. Mercantile Trust Co., 213 Pa. 411, 62 A. 1062 (1906); Brown v. Commercial Fire Ins. Co., 21 App. D. C. 325 (1903); Conowingo Land Co. v. McGraw, 124 Md. 643, 93 A. 222 (1915).

[14] In Brown v. Commercial Fire Ins. Co., 21 App. D. C. 325 (1903), where the corporate seal was impressed over some figures at the top of the document, the court drew the inference that it had been placed there by a clerk, *after* the signing of the instrument (hence not with intent to make it a specialty), and for the purpose of preventing alteration of the figures.

[15] Statutes directing the use of the corporate seal in certain contracts are generally construed to be mandatory. 6 FLETCHER, CORPORATIONS, § 2466 (1931).

[16] See discussion in note 14, supra.

execution may be used to ascertain the purpose of affixing the seal.[17] In the instant case, the seal was affixed in the usual place of private seal. The guaranty was sealed by both parties. But these facts are more than counterbalanced by the fact that the instrument is not one which ordinarily requires a seal, and, although accompanying a sealed contract containing a recital of sealing, there is no mention of the seal in the guaranty in question. It would seem, therefore, that the seal was used for purposes of authentication and not to make the instrument a specialty.

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[17] 1 WILLISTON, CONTRACTS, rev. ed., § 271A (1936); Weeks v. Elser, 68 Hun. 518, 23 N. Y. S. 54 (1893), affd. 143 N. Y. 374, 38 N. E. 377 (1894); Brooklyn Public Library v. City of New York, 222 App. Div. 422 at 434, 226 N. Y. S. 491 (1928). But in Smith v. Woman's College, 110 Md. 441, 72 A. 1107 (1909), cited by the principal case, the court indicates that only matters which appear on the face of the instrument will be considered.