

BUSINESS ORGANISATIONS LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 4

PROBLEM QUESTION

Camilla and Henry are the only directors and shareholders of Vision Pty Ltd. Without Henry's knowledge, Camilla has incurred personal debts that she is unable to pay because of her gambling problem. Camilla telephones Val Bank and request a loan of \$100 000. She informs the bank that Vision Pty Ltd needs the money to expand its business. She asks the bank to pay the money into the company's bank account. She plans to withdraw the money from the company's account and transfer it to her own account later on. The bank agrees, and sends her the paperwork for the loan, which she fills out. Camilla fixes Vision Pty Ltd's common seal to the loan documents, signs her own name, and forges Henry's signature.

Advise Val Bank.

ANSWER

This question relates to the company's liability for contract. The relevant law to look at first is s 127(2) of the *Corporations Act*, which provides that a company may enter into contract through the use of its common seal and the signature of two of its directors (or one director and one company secretary). This seems to be what happened in this instance. The common seal was affixed to the contract and the two signatures of the directors were there.

However, Henry's signature was forged. Under s 128(3), the assumptions under s 129 still apply even if a document is forged. Further, s 129(6) provides that if a contract appears to have been signed in accordance with s 127(2), the outsider may assume that the document has been duly executed. Accordingly, Val Bank is protected. Section 128(4) does not seem to apply in this situation.

Consequently, Val Bank can enforce the contract against Vision Pty Ltd.