Is a contract of sale signed by a trustee acting without authority valid?

Is an agreement signed by a trustee on behalf of a trust valid where that trustee did not have authority when the agreement was signed, but obtained ratification of the authority thereafter? This question was considered in a recent decision by the Supreme Court of Appeal (Thorpe v Trittenwein 2006 SCA 30 (RSA)).

From the facts it appears that the trustee had been orally authorized by the other trustees of the trust to enter into the agreement of sale and that this authority had been subsequently ratified in writing. The court, however, held that as he did not have written authority at the time the sale was entered into ratification could not rectify an agreement that was void for lack of written authority.

The court did not deal with the question whether the requirement of a prior written authority would be complied with where there is a resolution signed by one trustee confirming the decision of the trustees at a meeting to enter into the contract of sale. This might indeed be the case. We would, however, advise you not to take that chance and rather ensure that all trustees sign the contract of sale, alternatively that all trustee sign a resolution authorizing one of the trustees to sign the contract of sale on behalf of the trust.

This case is therefore another indication that the legal position should be carefully considered where an agreement is entered into by trustees on behalf of a trust, either as seller or as purchaser.