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CORPORATIONS-ACCOMMODATION GUARANTY-EFFECT OF CHARTER PROVISION

CORPORATIONS — ACCOMMODATION GUARANTY — EFFECT OF CHARTER PROVISION — The articles of the complainant business corporation authorized it "to guarantee interest, dividends, or other returns to the holders of securities or other obligations of other persons or companies in cases wherein it shall be advan-

tageous to this company to do so." The corporation pledged to the defendant bank some of its bonds held in its treasury to secure the previously incurred personal indebtedness of its treasurer. In affirming a decree adjudging that the corporation was complete owner of the bonds, that the bank had no interest therein, and that the guaranty-pledge was ultra vires, the court *held*, that the advantage to the corporation referred to in the articles could not be dissociated from the furtherance of the business which the corporation was organized to carry on. *Fidelity Nat. Bank & Trust Co. v. Southern United Ice Co.*, (C. C. A. 8th, 1935) 78 F. (2d) 438.

It is generally said that in the absence of express power a corporation has implied authority to guarantee the obligation of another where such act "directly" tends to promote the purposes for which the corporation was organized.[1] The few cases which have involved an interpretation of express grants by charter or statute to enter into contracts of suretyship or guaranty have indicated a tendency to construe such provisions almost as narrowly as the scope of the common law implied power, in that any guaranty contract which will only indirectly benefit the corporation's business is ultra vires.[2] Into such class of cases the principal decision evidently falls. But in view of the quite broad language used in the instant charter, and the fair assumption that the incorporators believed that an almost unlimited power was being obtained, it may be doubtful whether this interpretation was here correct since there appears to be no specific rule of public policy opposed to the granting of generous guaranty powers.[3] On another approach, it is submitted that it would not have been impossible for the court to have found an *implied* power to guarantee the indebtedness. Probably the management believed it was maintaining its officer's morale, popularly thought to be imperative during the severe stock market declines of the depression,[4] by guaranteeing his

[1] 6 FLETCHER, CYCLOPEDIA CORPORATIONS, §§ 2591 ff. (1931); 3 THOMPSON, CORPORATIONS, 3rd ed., §§ 2282-2283 (1927). The cases are numerous, each particular fact situation being of considerable importance.

[2] Western Md. R. R. v. Blue Ridge Hotel Co., 102 Md. 307, 62 A. 351, 111 Am. St. Rep. 362, 2 L. R. A. (N. S.) 887 (1905); Food Products Co. v. Pierce, 154 Va. 74, 152 S. E. 562 (1930); Norfolk Mattress Co. v. Royal Mfg. Co., 160 Va. 623, 169 S. E. 586 (1933). *Contra*: Thomas v. E. G. Curtis Sons Co., (D. C. Mich. 1934) 7 F. Supp. 114 (dictum), criticized in 33 MICH. L. REV. 94 (1934).

[3] 6 FLETCHER, CYCLOPEDIA CORPORATIONS, § 2587 (1931). A growing number of courts have upheld corporate acts otherwise ultra vires, including guaranty contracts of an accommodation nature, where all the stockholders have assented (or merely "acquiesced," according to some), where the rights of creditors are not involved, and where the state will not object. The corporation is said to be estopped. Santos v. Nat. Bank, 130 Misc. 348, 223 N. Y. S. 817 (1927); Norfolk Mattress Co. v. Royal Mfg. Co., 160 Va. 623, 169 S. E. 586 (1933); 6 FLETCHER, CYCLOPEDIA CORPORATIONS, § 2493 (1931); 9 L. R. A. (N. S.) 193 (1907) (note); 4 COOK, CORPORATIONS, 8th ed., § 774 (1923); and see the oft-quoted paragraph in 1 COOK, CORPORATIONS, 8th ed., § 3, p. 17 (1923). See Osborn v. Montelac Park, 89 Hun. 167, 35 N. Y. S. 610 (1895), affd. 153 N. Y. 672, 48 N. E. 1106 (1897), for a fact situation closely in point with the principal case. The opinion of the principal case does not indicate that the stockholders had affirmatively ratified or how the rights of creditors would be affected by the guaranty in question; the pleadings apparently did not raise these points.

[4] The treasurer's indebtedness was already secured by a pledge of stock in an Insull holding company, and a representative of the bank had called on the indebted officer

indebtedness. And if emphasis be placed on the principle that the courts will not, in a doubtful situation, interfere with the discretion of the directors in determining whether or not an act is for the corporation's advantage,[5] it might be said that the guaranty in the instant case was within the corporation's implied power to maintain its employees' welfare as leading directly to the benefit of the company.[6] An auto sales company has been held authorized to guarantee a loan to one of its salesmen who had several "live" prospects in order to dissuade him from quitting employment.[7] It has also been suggested that the implied power to make an advancement in salary [8] or to loan money to an officer [9] authorizes the corporation to guarantee a loan by a third party to the officer.[10] However, it may be supposed that the courts would limit the exercise of such powers to within reasonable bounds, both as to the amount involved as well as the purpose of the accommodation. So that it may be doubtful whether in the principal case the pledge of $18,000 worth of bonds to secure an evidently speculative indebtedness of the officer would meet these requirements of reasonableness.[11]

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several times to request additional security (December 1931). In asking for the corporation's help the treasurer explained it was being done "under the direst pressure I ever knew in my years of experience."

[5] See Woods Lumber Co. v. Moore, 183 Cal. 497, 191 P. 905, 11 A. L. R. 549 (1920), for an application of the principle to a corporate guaranty.

[6] It has been held that a corporation has an insurable interest in the lives of its officers whose services are essential to the success of the corporation's business. Mutual Life Ins. Co. v. Board, Armstrong & Co., 115 Va. 836, 80 S. E. 565, L. R. A. 1915F 979 (1914); United States v. Supplee-Biddle Hardware Co., 265 U. S. 189, 44 S. Ct. 546 (1924); Wurzburg v. N. Y. Life Ins. Co., 140 Tenn. 59, 203 S. W. 332, L. R. A. 1918E 566 (1918); 6 FLETCHER, CYCLOPEDIA CORPORATIONS, § 2516 (1931).

[7] Burg & Sons v. Twin City Four Wheel Drive Co., 140 Minn. 101, 167 N. W. 300 (1918). Cf. Warren Creamery Co. v. Farmers' State Bank, 81 Ind. App. 453, 143 N. E. 635 (1924). For decisions which have refused to find an implied power in fact situations somewhat similar to the principal case, see: Park Hotel Co. v. Fourth Nat. Bank, (C. C. A. 8th, 1898) 86 F. 742, hotel company held not authorized to make accommodation paper for one of its officers; Heidler v. Werner & Co., 97 N. J. Eq. 505, 128 A. 237 (1925), corporation may not execute bond secured by mortgage on its property as pure accommodation to one of its officers (dictum); Germania Safety-Vault & Trust Co. v. Boynton, (C. C. A. 6th, 1896) 71 F. 797, malting corporation may not pledge its bonds to secure personal indebtedness of its officers despite possible benefit to corporation in that it did business with the guarantee.

[8] A search has failed to disclose any real authority except dictum [M. Burg & Sons, Inc. v. Twin City Four Wheel Drive Co., 140 Minn. 101, 167 N. W. 300 (1918)] that a corporation may make an advance to its employee on his salary or expected commissions, but it is believed that such power may reasonably be exercised, as evidenced by the frequent appearance of such items on corporate balance sheets. Cf. Norton Grocery Co. v. People's Nat. Bank, 151 Va. 195, 144 S. E. 501 (1928).

[9] 3 FLETCHER, CYCLOPEDIA CORPORATIONS, § 955 (1931), citing Garrison Canning Co. v. Stanley, 133 Iowa 57, 110 N. W. 171 (1907).

[10] 28 COL. L. REV. 1080 (1928); Burg & Sons v. Twin City Four Wheel Drive Co., 140 Minn. 101, 167 N. W. 300 (1918).

[11] Whereas we might expect a loan or guaranty of a smaller amount to be allowed to prevent the loss of the officer's home by foreclosure proceedings.