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CORPORATIONS — SHAREHOLDERS — DELEGATION OF DIRECTOR'S PRINCIPAL DUTIES INSUFFICIENT TO INVALIDATE A VOTING TRUST—The directors of an intermediate unit in a string of holding companies caused the corporation's sole substantial asset, the stock representing control of a subordinate holding company, to be deposited in a voting trust. Most of these directors, serving one-year terms, comprised the majority of the trustees who were to serve for the life of the ten-year trust. This act served to insulate the lower companies from the control of plaintiffs who were majority shareholders of the top holding company. The plaintiffs sought an injunction restraining the use by the trustees of the stock controlled by the trust to effect a merger of Theodore Gary and Co., one of the lower controlled companies, with General Telephone Co., the largest independent telephone company in the nation,¹ and asked for the invalidation of the voting trust. Disregarding the stated purpose for the trust, i.e., the maintenance of management stability to aid the refinancing of a lower company, the plaintiffs charged that the delegation of duties by the directors and the resulting self-perpetuation of control were conditions which should invalidate the voting trust. The Delaware Court of Chancery denied plaintiff's motion for injunctive relief. On appeal, *held*, affirmed. Absent a showing of abuse or fraud by the directors, the delegation of principal duties and possibility of extended control via the trust instrument are not conditions sufficient to invalidate an otherwise lawful voting trust. *Adams v. Clearance Corp.*, (Del. 1956) 121 A. (2d) 302.

Voting trusts have outlived the stigma earlier attached to them and are now, by decision or legislation, generally recognized as valid instruments

¹ Plaintiff's interests, by reason of the merger, were cast in a minority role in the resulting company.

of corporate management.² The requirement of a lawful purpose is the principal limitation on the use of such trusts today,³ and because of the lack of affirmative guidance by the statutes,⁴ the validity of a particular trust seems to depend on the reviewing court's view of "lawful purpose" and wise "public policy."⁵ Insofar as the instant case recognized the validity of a voting trust where no fraudulent purpose has been revealed, it does not seem vulnerable to attack; but it does pose a question of the extent to which a court will hold other conditions insufficient to invalidate the trust. Among "other grounds" for invalidation which have been employed are statutory compliance requirements which test the necessary degree of adherence to the terms of the corporation laws.⁶ Voting trusts which contemplate a period of duration exceeding that permitted by statute (usually ten years) may be declared void.⁷ Likewise, the policy against restrictions on alienation of trust certificates has led to the abrogation of otherwise sound voting trusts.⁸ A voting trust has been approved, however, even where the use made by the trustees of corporate funds would have been an *ultra vires* act if done by the corporation,⁹ and apparently avoidance of the effects of governmental regulation is sufficiently compatible with the "public policy" favoring voting trusts to escape criticism.¹⁰ In the principal case the court was required to choose between the policy against delegation

² See *Mannheimer v. Keehn*, 41 N.Y.S. (2d) 542 at 548 (1943). See generally LEAVITT, *THE VOTING TRUST* (1940); 105 A.L.R. 123 (1936); 28 GEO. L. J. 1121 (1940). For resumé of leading articles tracing the growth of the voting trust, see Giles, "Is the Voting Trust Agreement a Dangerous Instrumentality?" 3 CATH. L. REV. 81 (1953).

³ See 105 A.L.R. 123 at 129 (1936); 5 FLETCHER, *CYC. CORP.*, perm. ed., §2081 (1952). Ballentine in "Voting Trusts, Their Abuses and Regulation," 21 TEX. L. REV. 139 at 152 (1942), lists various lawful purposes.

⁴ See Ballentine, "Voting Trusts, Their Abuses and Regulation," 21 TEX. L. REV. 139 at 157 (1942). See also 42 ILL. L. REV. 401 (1947).

⁵ See *Herman v. Dereszewski*, 312 Mich. 244, 20 N.W. (2d) 176 (1945); *Boericke v. Weise*, 68 Cal. App. (2d) 407, 156 P. (2d) 781 (1945).

⁶ Leading case on strict compliance is *Matter of Morse*, 247 N.Y. 290, 160 N.E. 374 (1928). But see *Herman v. Dereszewski*, note 5 *supra*. For excellent discussion see 44 MICH. L. REV. 1048 (1946). On extension failure see *Belle Isle Corp. v. Corcoran*, 29 Del. Ch. 554, 49 A. (2d) 1 (1946), but see *Oppenheimer v. Cassidy*, 345 Ill. App. 212, 102 N.E. (2d) 678 (1951).

⁷ The entire trust may be void, *Perry v. Mo.-Kansas Pipe Line Co.*, 22 Del. Ch. 33, 191 A. 823 (1937); partially invalid, *Kittinger v. Churchill Evangelistic Assn.*, 151 Misc. 350, 271 N.Y.S. 510 (1934); or perhaps valid for statutory period and thereafter common law limitations govern, 25 COL. L. REV. 951 (1925). Cf. *Boyle v. John M. Smyth Co.*, 248 Ill. App. 57 (1929) (possible fifty-year period approved).

⁸ *Tracey v. Franklin*, 30 Del. Ch. 407, 61 A. (2d) 780 (1948), *affd.* 31 Del. Ch. 477, 67 A. (2d) 56 (1949). For the suggestion that a reasonable suspension incidental to the voting trust would be valid see 16 UNIV. CHI. L. REV. 742 (1949). However, when incidental to the maintenance of constant management, restrictions allowing a transfer with a waiver of voting rights may not be fatal to the arrangement, see *Trefethen v. Amazeen*, 93 N.H. 110, 36 A. (2d) 266 (1944).

⁹ *Alderman v. Alderman*, 178 S.C. 9, 181 S.E. 897 (1935) (good faith controlling).

¹⁰ See *Aldridge v. Franco Wyoming Oil Co.*, 24 Del. Ch. 126, 7 A. (2d) 753 (1939); *affd.* 24 Del. Ch. 349, 14 A. (2d) 380 (1940); *Byllesby Co. v. Doriot*, 25 Del. Ch. 46, 12 A. (2d) 603 (1940).

of directors' principal duties¹¹ and legislation permitting the use of voting trusts¹² and relied upon its interpretation of public policy in recognizing the superiority of the voting trust statute where its application was not tainted with fraud.¹³ The decision is an example of the extreme lengths to which a particular court's view of sound public policy can be carried to justify a desire to continue present management.¹⁴ It would seem that the purpose of the holding company, i.e., whether nominal or real control is contemplated, and the nature of the duties delegated, i.e., whether they are ministerial in nature or require the exercise of considerable discretion, should be strong considerations in fixing boundaries for the valid use of such voting trusts.¹⁵ Notwithstanding the disturbance surrounding the duty delegation issue and the sophisticated view taken on the lesser important self-perpetuation aspect,¹⁶ the court's approach in the principal case is not shocking in the context of liberal modern treatment of voting trusts, and the decision is understandable as a result of inadequate guidance by the legislature. Appeals for comprehensive statutory treatment which would assure more complete protection and furnish affirmative policy guidance in voting trust cases have been numerous.¹⁷ Piecemeal judicial legislation, a less desirable alternative, has proved itself unsatisfactorily cumbersome in the voting trust area. Until aid from the legislature is forthcoming, little more should be expected from the courts in the way of judicial limitations than those based on fraud or other specifically illegal purposes.

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¹¹ "The business of every corporation . . . shall be managed by a board of directors. . . ." Del. Code Ann. (1953) tit. 8, §141 (a).

¹² ". . . stockholders may . . . deposit capital stock . . . with or transfer . . . to . . . any person . . . authorized to act as trustee . . . the right to vote. . . ." Del. Code Ann. (1953) tit. 8, §218 (a).

¹³ But cf. *Knickerbocker Inv. Co. v. Voorhees*, 100 App. Div. 414, 91 N.Y.S. 816 (1905), distinguished in the principal case.

¹⁴ Cf. *Ecclestone v. Indialantic, Inc.*, 319 Mich. 248, 29 N.W. (2d) 679 (1947); 47 MICH. L. REV. 547 (1949); 61 HARV. L. REV. 1062 (1948) (permitting, without the aid of a trust, the divorce of voting rights from legal and equitable ownership to preserve constant management).

¹⁵ For criticism of the court's decision in the principal case, see 69 HARV. L. REV. 1321 (1956); 104 UNIV. PA. L. REV. 712 (1956).

¹⁶ Cf. *Boyle v. John M. Smyth Co.*, note 7 *supra*.

¹⁷ LEAVITT, *THE VOTING TRUST* 159-180 (1940); Ballentine, "Voting Trusts, Their Abuses and Regulation," 21 TEX. L. REV. 139 (1942); Giles, "Is the Voting Trust Agreement a Dangerous Instrumentality?" 3 CATH. L. REV. 81 (1953).