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CORPORATIONS-MEMBERSHIP CORPORATIONS-VOTING RIGHTS UNDER CALIFORNIA LAW

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CORPORATIONS—MEMBERSHIP CORPORATIONS—VOTING RIGHTS UNDER CALIFORNIA LAW—The original owner of a subdivision recorded a declaration of restrictions which provided that “the majority of the property owners within the subdivision may form . . . a non-profit cooperative corporation without capital stock, but with one share thereof appurtenant to each of the lots in such subdivision,” to approve plans for building on these lots. Defendants acquired 133

lots and commenced construction of homes in spite of the disapproval of their plans by the association organized under the authority of the declaration. The two defendants claimed to have acquired majority control of the association, claiming 133 votes as owners of 133 lots, being opposed by the votes of 39 persons owning 39 lots. On appeal from a decree denying an injunction against defendants' construction, *held*, reversed. Each member has only one vote regardless of number of lots owned. *Green Gables Home Owners' Assn. v. Sunlite Homes, Inc.*, (Cal. 1949) 202 P. (2d) 143.

At common law, in the absence of an express provision, a stockholder was entitled to one vote, but the number of votes which a stockholder may cast is now generally regulated by statute, charter, or by-law. By custom and usage, as well as by statute, the rule is now almost universal that each shareholder in a stock corporation is entitled to one vote for each share of stock. However, the common law rule has persisted with reference to the statutory nonstock or membership corporations¹ in which voting rights attach to membership, and each member has one vote, subject to other provisions in the articles of the corporation.² California follows the general rule, providing by statute that one vote per member is the rule in nonstock, non-profit corporations and in cooperative corporations without stock, unless otherwise provided in the articles or by-laws.³ The difficulty in the principal case lies in the ambiguous language of the declaration the conditions of which must be met by the corporation before it has authority to approve plans, and in the fact that this language of the declaration must be construed in the light of statutes which are not free from ambiguity. The court held that the term "one share" in the declaration of restrictions did not necessarily mean "one vote," and that it must mean one share of the corporation, since it could not refer to one share of stock. Since by statute "shares" is to be construed to include membership in nonstock corporations,⁴ the provision in question simply entitles the owner of one or more lots to membership in the corporation and does not mean that one becomes

¹ See generally, 18 C.J.S. §549; 63 A.L.R. 1106, 1107 (1929).

² 5 FLETCHER, *CYC. CORP.*, perm. ed., §2025 (1931); *Renselaer Co. A. & H. Soc. v. Weatherwax*, 255 N.Y. 329, 174 N.E. 699 (1931).

³ See 6a Cal. Jur. §481. Cal. Civ. Code (Deering, 1937) §603: "Unless otherwise provided in the articles or by-laws, every member of a non-profit corporation shall be entitled to one vote and may vote or act by proxy. The manner of voting may be by ballot, mail, or any reasonable means provided in the articles or by-laws. No member may cumulate his votes unless it is so provided in the articles or by-laws." [Now found in Cal. Corp. C.A. (Deering, 1947) §9601].

⁴ Cal. Civ. Code (Deering, 1937) §278: "Unless the context requires otherwise, 'Shareholder' or 'stockholder' or 'holder of shares' means 'holder of record of shares' or 'shareholder of record' and includes a subscriber to shares in cases in which no certificates are outstanding, and a member of a nonstock corporation." [Now found in Cal. Corp. C.A. (Deering, 1947) §103, omitting "Unless the context requires otherwise"].

"Member" includes each person signing the articles of a nonstock corporation and each person admitted to membership therein." [Now found in Cal. Corp. C.A. (Deering, 1947) §104].

"Shares" and "shares of stock" shall be construed to include membership in nonstock corporations unless the context requires otherwise." [Now found in Cal. Corp. C.A. (Deering, 1947) §115: "'Share' and 'share of stock' include membership in nonstock corporations"].

several members as the result of acquiring several lots. This result is avoided by the statutory provision "holder of shares' shall include 'member.'"⁵ Thus the holder of several lots is entitled to only one vote as a member. The dissenting judge, however, thought that the owners of a majority of the lots should have the control, and pointed out that the language of the statutes did not necessarily preclude a member of a nonstock corporation from having more than one vote.⁶ Since neither the language of the declaration, nor the statutes clearly point to only one result, the underlying policy considerations might have led to a result contrary to that reached by the majority. There is the possibility that allowing owners of a few lots to control a lesser number of owners of a much greater number of lots might lead to building restrictions which would decrease the salability of the greater number of lots, or, at least, unduly restrict land utilization. Since the sole purpose of the Association was to control the use of the property involved, perhaps its authority should rest in the owners of the majority of property because they have the greatest financial interest in the utilization of the property. On the other hand, the declaration clearly contemplated the formation of a nonstock corporation. It is reasonable to presume that the members of this type of corporation are to have equal rights and privileges unless the contrary intent is clear. The primary purpose of the declaration was to protect a majority of owners in the subdivision from the construction of unsuitable structures on the remaining lots. Giving one vote per lot would allow a commercial builder who might acquire the majority of the lots to defeat this purpose. Since persons rather than property were apparently intended to be primarily protected, the majority of landowners should have control, as the court holds.

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⁵ Cal. Civ. Code (Deering, 1937) §605d, ¶3: "The provisions of the General Corporation Law, title one of part four of division first of the Civil Code, as now existing or as hereafter amended, substituted, revised, or added to, shall apply to corporations formed under this title, except as to matters specifically covered by this title. For this purpose the term 'shareholder' or 'holder of shares' shall include 'member' and the term 'shares' or 'shares of stock' shall include memberships in nonprofit corporations." [Now found in Cal. Corp. C.A. (Deering, 1947) §9002, omitting last sentence].

⁶ Cal. Civ. Code (Deering, 1937) §605d, *supra*, note 5: "'shares' shall include 'memberships.'" Cal. Civ. Code (Deering, 1937) §603, *supra*, note 3: "no member may cumulate his votes."