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## CORPORATIONS--VOTING TRUSTS--NON-COMPLIANCE WITH STATUTE AS BASIS FOR JUDICIAL TERMINATION

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CORPORATIONS—VOTING TRUSTS—NON-COMPLIANCE WITH STATUTE AS BASIS FOR JUDICIAL TERMINATION—Common stockholders of a corporation which had on December 15, 1938 made a valid five year extension of a voting trust agreement originally entered into on January 22, 1929 attempted on May 27, 1939, to extend further the agreement for an additional five years. Following a dispute over the election of corporate directors almost two years after the termination of the first extension, certain holders of voting trust certificates brought bills in chancery to compel redelivery of the common stock registered in the names of the voting trustees and to declare the invalidity of the election. *Held*, the instrument of May 27, 1939 cannot be sustained as a new agreement because it uses language of extension without sufficient innovations to distinguish it from the original agreement. It cannot be sustained as a valid extension since it was not executed within the year immediately preceding the expiration date of the agreement sought to be extended.<sup>1</sup> Further, the public policy of this state as announced by the legislature will not be disturbed by the application of the doctrines of clean hands or estoppel. *Belle Isle Corp. v. Corcoran*, (Del. 1946) 49 A. (2d) 1.

<sup>1</sup> "At any time within one year prior to the time of expiration of any such voting trust agreement as originally fixed or as extended as herein provided, one or more beneficiaries of the trust under such voting trust agreement may, by agreement in writing and with the written consent of such Voting Trustees, extend the duration of such voting trust agreement for an additional period not exceeding ten years . . . provided, however, that no such extension agreement shall affect the rights or obligations of persons not parties thereto." Del. Rev. Code (1935) § 2050.

This decision continues the Delaware judicial policy of terminating at the suit of interested parties voting trusts not executed in strict conformity with the voting trust statute,<sup>2</sup> even though such trusts, could be sustained by judicial interpretation of the trust instrument. Prior to the decision in the principal case, the Delaware courts had occasion to announce that its voting trust statute is applicable only to strictly defined arrangements,<sup>3</sup> that some of its provisions are enforceable as duties rather than mandatory as pre-requisites to validity,<sup>4</sup> but that any voting trust which does not conform<sup>5</sup> to that statute's mandatory requirements will be terminated as invalid.<sup>6</sup> However, aside from a general statement that "the provisions of our statute governing voting trusts are mandatory,"<sup>7</sup> non-compliance with the duration provision<sup>8</sup> was the only decided ground of statutory invalidity until the present case.<sup>9</sup> This case, although admitting that the stockholders could have entered into a new agreement on the same day they executed the invalid extension,<sup>10</sup> flatly refused to interpret the extension agreement as a new agreement in order to save it. The decision will probably be criticized for its interpretation of statutory policy,<sup>11</sup> particularly by those commentators who feel that voting trusts are necessary business devices which should be fostered rather than restricted by court and legislature.<sup>12</sup> It may also be criticized for its refusal to determine whether third persons would be injured by termination<sup>13</sup> or whether complainants sought termination in order to further a fraudulent purpose.<sup>14</sup> However, recent thought has returned to the belief that except where necessary the law should not allow the stockholder to be deprived

<sup>2</sup> Del. Rev. Code (1935) § 2050.

<sup>3</sup> Aldridge v. Franco Wyoming Oil Co., 24 Del. Ch. 126, 7 A. (2d) 753 (1939).

<sup>4</sup> Hirschwald v. Erlebacher, Inc., (Del. Ch. 1943) 29 A. (2d) 798.

<sup>5</sup> For a comment on the distinction between substantial and strict compliance, see 44 MICH. L. REV. 1048 (1946).

<sup>6</sup> Perry v. Missouri-Kansas Pipe Line Co., 22 Del. Ch. 33, 191 A. 823 (1937).

<sup>7</sup> Id. at 42.

<sup>8</sup> "... for any period of time determined by such agreement, not exceeding ten years . . ." Del. Rev. Code (1935) § 2050.

<sup>9</sup> Perry v. Missouri-Kansas Pipe Line Co., 22 Del. Ch. 33, 191 A. 823 (1937). Cf. Kittinger v. Churchill Evangelistic Assn., 151 Misc. 350, 271 N.Y.S. 510 (1934), noted in 33 MICH. L. REV. 804 (1935). Also Hanley v. Most, 9 Wash. (2d) 429, 115 P. (2d) 951, 118 P. (2d) 1946 (1941); Venner v. Chicago City Ry. Co., 258 Ill. 523, 101 N.E. 949 (1913).

<sup>10</sup> Principal case at 4. See also decision in the lower court, (Del. Ch. 1946) 46 A. (2d) 749 at 757.

<sup>11</sup> Principal case at 4. See also decision in the lower court, (Del. Ch. 1946) 46 A. (2d) 749 at 759. However, this decision places no obstacles in the way of corporations wishing to use the voting trust device, for they need only hire attorneys not averse to reading the statutes.

<sup>12</sup> Gose, "Legal Characteristics and Consequences of Voting Trusts," 20 WASH. L. REV. 129 (1945); Horne, "Voting Trust Agreements in Indiana," 19 IND. L. J. 225 (1944); Burke, "Voting Trusts Currently Observed," 24 MINN. L. REV. 347 (1940); 38 COL. L. REV. 508 (1938); 34 MICH. L. REV. 727 (1936).

<sup>13</sup> Principal case at 4. Cf. Unckles v. Colgate, 148 N.Y. 529 at 536, 43 N.E. 59 (1896); Felt v. United States Mortgage & Trust Co., 231 Ill. App. 110 at 142 (1923) and the criticism of the latter case in CUSHING, VOTING TRUSTS 130 (1927).

<sup>14</sup> Principal case at 4. See also decision in the lower court, (Del. Ch. 1946) 46 A. (2d) 749 at 760.

of his last vestige of corporate control.<sup>15</sup> In this light, the decision in the principal case may be commended. For although statutory invalidity has no necessary correlation to the necessity for a voting trust, the Delaware Supreme Court actually refused to interpret the extension agreement so as to find statutory compliance in a case where it was alleged<sup>16</sup> that the purpose of the trust had been accomplished.<sup>17</sup>

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<sup>15</sup> 28 GEO. L. J. 1121 (1940); LEAVITT, *THE VOTING TRUST*, c. 8 (1941); Ballantine, "Voting Trusts, Their Abuses and Regulation," 21 TEX. L. REV. 139 (1942).

<sup>16</sup> See report of the principal case in the lower court, (Del. Ch. 1946) 46 A. (2d) 749 at 760.

<sup>17</sup> Perhaps the court was merely following the suggestion that "in the long run, the courts might do well to leave the amendment of statutes to the legislature." Gose, "Legal Characteristics and Consequences of Voting Trusts," 20 WASH. L. REV. 129 at 146 (1945).