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Corporations - Extent to Which Vote of Proxy Binds the Shareholders

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CORPORATIONS—EXTENT TO WHICH VOTE OF PROXY BINDS THE SHAREHOLDERS—Plaintiff, in a derivative action, charged certain directors of the corporation with appropriating a corporate opportunity to their own benefit. Defendant directors moved for summary judgment on the ground that the questioned transaction was ratified by the stockholders, with plaintiff's stock being voted by proxy in favor of ratification. *Held,* motion for summary judgment denied. The plaintiff was not estopped from suit even though her proxyholder, the corporation management, voted her stock for the ratification, since she had no notice that the question was to be voted on when she gave her proxy. *Gottlieb v. McKee,* (Del. Ch. 1954) 107 A. (2d) 240.

Proxy agreements have been examined carefully by the courts in an effort to prevent their abuse by those in control of a corporation.[1] It is generally agreed that the authority of the holder of a general proxy is limited to ordinary matters. He may not vote for fundamental changes or on unusual transactions unless specifically mentioned in the proxy.[2] The difficulty lies in determining what is a fundamental change or an unusual transaction. It has been held that the proxyholder can vote to ratify an unauthorized gift of stock to the president of the company,[3] ratify an unauthorized chattel mortgage of company assets,[4] ratify a contract between the corporation and its president,[5] exercise a corporate option to purchase stock,[6] amend the corporate by-laws,[7] and elect a different director than expected.[8] The shareholder is not bound when his general proxy is voted to liquidate assets[9] or dissolve the corporate business.[10]

1 For the problems involved in the use of proxies see 53 HARV. L. REV. 1165 (1940); 33 ILL. L. REV. 914 (1939).

2 Farish v. Cieneguita Copper Co., 12 Ariz. 235, 100 P. 781 (1909); Rossing v. State Bank of Bode, 181 Iowa 1013, 165 N.W. 254 (1917). See also BALLANTINE, CORPORATIONS, rev. ed., §178 (1946).

3 Gray v. Aspironal Laboratories, (5th Cir. 1928) 24 F. (2d) 97.

4 McClean v. Bradley, (D.C. Ohio 1922) 282 F. 1011, affd. (5th Cir. 1924) 299 F. 379.

5 Holmes v. Republic Steel Corp., 84 Ohio App. 442, 84 N.E. (2d) 508 (1948).

6 Elster v. American Airlines, (Del. Ch. 1953) 100 A. (2d) 219.

7 Gow v. Consolidated Coppermines Corp., 19 Del. Ch. 172, 165 A. 136 (1933).

8 Hauth v. Giant Portland Cement Co., (Del. Ch. 1953) 96 A. (2d) 233.

9 McKee v. Home Savings & Trust Co., 122 Iowa 731, 98 N.W. 609 (1904).

10 Shield v. Lone Star Life Ins. Co., (Tex. Civ. App. 1918) 202 S.W. 211.

Some courts go so far as to say that the shareholder is bound unless the proxyholder acts in bad faith or for personal aggrandizement.[11] It is apparent from the relevant cases that there is no definite test available for determining the scope of authority delegated by a general proxy. Whether the meeting at which the shares are voted is a general or special one,[12] and the specific wording of the proxy, are factors which may influence the court's decision.[13] Even though it is determined that the shareholder will not be bound by his proxyholder's vote, he still is under a duty to repudiate that vote immediately lest he become bound by laches.[14]

When a shareholder acquiesces to the protested action he is disqualified from bringing suit thereon.[15] By virtue of the agency relationship inherent in a proxy,[16] a proxy voted within the scope of its authority constitutes acquiescence on behalf of the shareholder to the matter voted on.[17] The court, in the principal case, found that the proxyholder's vote for ratification was within the authority of the general proxy given him.[18] The court's reliance on the plaintiff's lack of knowledge, an element essential to the defense of estoppel,[19] is undercut by the acceptable practice of imputing to a shareholder the knowledge of a proxyholder who is acting within his authority.[20] The situation is analogous to the acquiesence imputed to a bona fide purchaser from a ratifying stockholder for the purpose of estopping the former from suing on the transaction ratified by the latter.[21] Nevertheless, it is likely that the court reached the correct decision in the principal case. But rather than becoming tangled in estoppel theory, the court might better have justified its decision by finding that the vote to ratify was not a proper exercise of the authority conferred on the proxyholder, and thus not binding on the shareholder. The fact that the plaintiff had no prior knowledge of the vote to ratify (in fact, she had been advised that these resolutions would not be submitted to a vote) and the

11 Blair v. Smith Co., 18 Del. Ch. 150, 156 A. 207 (1931); Lowman v. Harvey R. Pierce Co., 276 Pa. 382, 120 A. 404 (1923).

12 Synnott v. Cumberland Bldg. Loan Assn., (6th Cir. 1902) 117 F. 379.

13 It should be possible to word a proxy statement broadly enough to cover any matter that might be voted on.

14 Fidelity Building and Loan Assn. v. Thompson, (Tex. Civ. App. 1930) 25 S.W. (2d) 247, revd. on other grounds in (Tex. Com. App. 1932) 45 S.W. (2d) 167, reh. den. (Tex. Com. App. 1932) 51 S.W. (2d) 578. See also Synnott v. Cumberland Bldg. Loan Assn., note 12 supra.

15 Matthews v. Headley Chocolate Co., 130 Md. 523, 100 A. 645 (1917). For a discussion of the ways in which acquiescence may be shown see STEVENS, CORPORATIONS, 2d ed., §171 (1949).

16 Patterson v. Henrietta Mills, 219 N.C 7, 12 S.E. (2d) 686 (1941); Seaman v. Ironwood Amusement Corp., 283 Mich. 220, 278 N.W. 51 (1938); Steinberg v. American Bantam Car Co., (D.C. Pa. 1948) 76 F. Supp. 426.

17 Chounis v. Laing, 125 W.Va. 275, 23 S.E. (2d) 628 (1942); Gray v. Aspironal Laboratories, note 3 supra; McClean v. Bradley, note 4 supra.

18 Principal case at 244.

19 Nolop v. Spettel, 267 Wis. 245, 64 N.W. (2d) 859 (1954).

20 See Gray v. Aspironal Laboratories, note 3 supra.

21 BALLANTINE, CORPORATIONS, rev. ed., §148 (1946).

unusual nature of the resolutions seem to be ample evidence that the vote was not authorized by the proxy.[22] In addition, where, as here, the directors have successfully solicited the shareholder's proxy, the courts should look with skepticism at their attempt to vote the proxy on a matter affecting them personally, but which was not mentioned in the proxy solicitation.

Herbert R. Brown, S.Ed.

[22] Even if the matter is unusual in nature, the stockholder might be bound by his proxy's vote if he had actual notice that this matter was to be brought to a vote at the meeting for which the proxy was given. The question of shareholder's knowledge would then become a vital element in determining the authority of the proxyholder.