

Building and Loan Stock: The Subject Matter of a Perfect or an Imperfect Usufruct?

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Notes

BUILDING AND LOAN STOCK : THE SUBJECT MATTER OF A PERFECT OR AN IMPERFECT USUFRUCT?

A building and loan association may be incorporated under either federal or state statutes.¹ So long as the shares of a building and loan association are held in perfect ownership no serious problems arise because the relationship between the owner and the association is fairly well defined by statute. But when the shares reach the hands of a usufructuary, a question arises as to whether or not they are the object of a perfect or an imperfect usufruct.

"Usufruct may be established on every description of estates, movable or immovable, corporeal or incorporeal."² This servitude is classified as perfect or imperfect according to the subject matter.³ Things which may be enjoyed without changing their substance or consuming them are the subject matter of a perfect usufruct.⁴ The usufructuary of a perfect usufruct is entitled only to the fruits of its object and does not have the power to alienate it.⁵ Things which can be enjoyed only by consumption or by alienation are the subject matter of an imperfect usufruct.⁶ The usufructuary of an imperfect usufruct may expend it as he sees fit, but is obligated to return the same value to the owner at the expiration of the usufruct.⁷ It is clear, however, that the resolution of the question of whether building and loan stock is the object of a perfect or an imperfect usufruct will materially affect the rights of the usufructuary.

The Louisiana Supreme Court has classified ordinary corporate stock as being the object of a perfect usufruct,⁸ and a bank deposit as being the object of an imperfect usufruct.⁹ Building

1. 12 U.S.C. § 1464 (1928), 24 C.F.R. 141-148 (1949); LA. R.S. 6:721 *et seq.* (1950).

2. LA. CIVIL CODE art. 541 (1870).

3. *Id.* art. 534.

4. *Ibid.*

5. *Id.* art. 535.

6. *Id.* art. 534.

7. *Id.* art. 549.

8. *Leury v. Mayer*, 122 La. 486, 47 So. 839 (1908).

9. *Vivian State Bank v. Thompson-Lewis Lbr. Co.*, 162 La. 660, 111 So. 51 (1927). This case involved a time certificate of deposit. In practice, Louisiana courts, without any comment, treat checking or savings deposits simply as cash: See 2 McMAHON, LOUISIANA PRACTICE 1498 (1939).

and loan stock has characteristics of both corporate stock and bank deposits. This hybrid nature creates a question of classification which has not been squarely presented to the Supreme Court. Building and loan stock is similar to ordinary corporate stock in two respects. First, the owners of building and loan stock control the operation of the association through voting power,¹⁰ and, second, any return on investment paid to the owner of the stock is in the form of a dividend which can only be paid from the profits of the association.¹¹ These are two prime attributes of ordinary corporate stock and are often the factors on which courts have relied in classifying hybrid securities as corporate stock and not as evidence of indebtedness.¹² On the other hand, the owner of building and loan stock is entitled to repayment from the association of any amount which he has invested.¹³ This right is completely foreign to ordinary corporation stockholders who can only dispose of their stock in market transactions which are usually independent of the corporation itself. This right of return of investment from the association more nearly parallels the debtor-creditor relationship arising from a bank deposit.

The vast majority of courts in states other than Louisiana have held that building and loan shares represent credits against the association, not corporate stock.¹⁴ Consistent with this position, many courts have held that transfer of building and loan stock is not regulated by the Uniform Stock Transfer Act.¹⁵ These courts rest their decisions upon the proposition that the classification must depend upon the nature of the relationship

10. 24 C.F.R. 144.1 (1949); LA. R.S. 6:747 (1950).

11. 24 C.F.R. 144.1 (1949); LA. R.S. 6:744 (1950).

12. MERTENS, LAW OF FEDERAL INCOME TAXATION § 26:10 (1934).

13. 24 C.F.R. 145.4 (1949); LA. R.S. 6:790 (1950). *But see* LA. R.S. 741(2)(b), where there is provision for the issue of permanent reserve shares which are nonredeemable until dissolution of the association. Presumably this type share would be treated as an ordinary corporation stock.

14. *State v. Guaranty-Savings Assn.*, 225 Ala. 481, 144 So. 104 (1932); *Evinger v. MacDougall*, 147 Cal. 560, 82 P.2d 194 (1938); *Board of Commissioners of Orapahoe County v. Fidelity Savings Assn.*, 31 Colo. 47, 71 Pac. 376 (1903); *Harn v. Woodard*, 151 Ind. 132, 50 N.E. 33 (1898); *Benton's Apparel, Inc. v. Hegna*, 213 Minn. 271, 7 N.W.2d 3 (1942); *Lunati v. Progressive Bldg. and Loan Assn.*, 167 Tenn. 161, 67 S.W.2d 148 (1934); *Harrington v. Inter-State Fidelity Bldg. and Loan Assn.*, 91 Utah 74, 63 P.2d 577 (1933); *Wicks v. Puget Sound Savings Assn.*, 8 Wash.2d 559, 113 P.2d 70 (1941); *Aberdeen Savings & Loan Assn. v. Chase*, 157 Wash. 351, 289 Pac. 536 (1930); *Ohio Valley Bldg. and Loan Assn. v. Cabell County Court*, 42 W.Va. 818, 26 S.E. 203 (1896).

15. *Benton's Apparel, Inc. v. Hegna*, 213 Minn. 271, 7 N.W.2d 3 (1942); *First Nat. Bank v. Englewood Mut. Loan and Bldg. Assn.*, 124 N.J. Eq. 360, 1 A.2d 871 (1938); *Guarantee Trust & S.D. Co. v. Lye*, 129 Pa. Super. 481, 196 Atl. 618 (1938); *Harrington v. Inter-State Fidelity Bldg. & Loan Assn.*, 91 Utah 74, 63 P.2d 577 (1933).

and not the name of the security. The Louisiana courts have not been consistent in dealing with building and loan stock. In two instances the Uniform Stock Transfer Act was held applicable to the transfer of building and loan shares;¹⁶ however, in two other cases it was held that an association shareholder was a creditor of the association, and that upon the death of the shareholder the administrator of his estate was entitled to withdraw the value of the shares from the association.¹⁷ Followed to its logical conclusion the decisions holding that association stock is regulated by the Uniform Stock Transfer Act¹⁸ would definitely characterize association stock as ordinary corporation stock, which is the object of a perfect usufruct. That act regulates the transfer of corporate stock, while the transfer of negotiable instruments, which are evidences of debt, is regulated by the Negotiable Instruments Law.¹⁹ A different result may be reached by reasoning from the two decisions in which Louisiana courts have classified association stockholders as creditors of the association. Those two decisions, viewed in the light of the many decisions in which the courts have classified other evidences of indebtedness as being the objects of an imperfect usufruct,²⁰ are strong reason to presume that when the Supreme Court is squarely faced with the problem, it will classify building and loan stock as being the object of an imperfect usufruct.

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CORPORATIONS — RIGHT OF A STOCKHOLDER TO INSPECT THE CORPORATE BOOKS

In Louisiana the stockholder of a business corporation is granted the right to inspect the books of the corporation in which

16. *Lilley v. First Federal Sav. & Loan Assn.*, 194 So. 901 (La. App. 1940); *State ex rel. Moulin v. Ideal Sav. & Homestead Assn.*, 178 So. 521 (La. App. 1938).

17. *Dimitry v. Shreveport Mut. Bldg. Assn.*, 167 La. 875, 120 So. 581 (1929); *Succession of D'Anna*, 6 La. App. 142 (1927).

18. LA. R.S. 12:521 *et seq.* (1950) (The Louisiana Uniform Stock Transfer Act).

19. LA. R.S. 7:1 *et seq.* (1950) (The Louisiana Negotiable Instruments Law).

20. *Taylor v. Taylor*, 189 La. 1084, 1091, 181 So. 543, 544 (1938): ("Since the estate of the decedent consisted of negotiable bonds payable to bearer, the usufruct is an imperfect one."); *Vivian State Bank v. Thompson-Lewis Lbr. Co.*, 162 La. 660, 111 So. 51 (1927) (time certificate of deposit held to be the object of an imperfect usufruct); *Succession of Block*, 137 La. 302, 68 So. 618 (1915) (notes); *Minquez v. Delcambre*, 125 La. 176, 51 So. 108 (1910) (negotiable promissory notes held to be the objects of an imperfect usufruct, but notes were matured); *Johnson v. Bolt*, 146 So. 375 (La. App. 1933) (promissory notes held to be the object of an imperfect usufruct). For a complete discussion of the classification of promissory notes as being the object of an imperfect usufruct, see Comment, 4 TUL. L. REV. 104 (1929).