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Private Law: Corporations

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CORPORATIONS

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In a mandamus suit to compel the corporate defendant to allow the plaintiff-pledgee of shares of stock in defendant to vote the pledged shares,[1] the debt, which the pledged secured, had matured and was due and demandable. The Business Corporation Law provides that a "person whose shares are pledged shall be entitled to vote thereon unless and until such shares are transferred on the books of the corporation to the pledgee; and thereafter the pledgee shall be entitled to vote thereon."[2] The Court of Appeal for the Fourth Circuit held that the statute granted no right to a pledgee to have pledged shares transferred on the books and thereby be entitled to vote thereon, but merely regulated entitlement to vote. The court relied on article 3165 of the Louisiana Civil Code which provides the procedure to be taken by a pledgee-creditor when his debtor defaults. This procedure requires a judgment in the ordinary course of law. In reaching its decision, the court relied on the Louisiana supreme court decision in *D'Amico v. Canizaro*.[3] The effect of the decision is that there is no conflict between the Civil Code and the corporation statute. If a pledgor consents, or the pledgee is otherwise authorized to have the pledged shares transferred on the books of the corporation, the pledgee may then, and only then, vote such shares. The fact that a debt is matured, due and demandable gives only the right to secure judgment and have the shares sold in accordance with Civil Code article 3165.

In a contest over who should be appointed receiver of the assets of a nonprofit corporation, it was contended that three co-receivers appointed by the court had shown a lack of interest and should be replaced.[4] The lack of interest alleged was a failure to file an oath. It was held that there is no requirement for filing an oath and that the "judgment appointing the receiver . . . is absolute and becomes executory upon its rendition . . . ."[5] Inasmuch as R.S. 12:258, governing the appointment of receivers for nonprofit corporations, and R.S. 12:151, governing business corporations, are idential with regard to

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1. Emile M. Babst Co., Inc. v. Commercial Enter., Inc., 274 So. 2d 742 (La. App. 4th Cir. 1973).

2. LA. R.S. 12:75(D) (Supp. 1968), *as amended by* La. Acts 1970, No. 50 § 4.

3. 256 La. 801, 239 So. 2d 339 (1970). *See also* Chappuis v. Spencer, 167 La. 527, 119 So. 697 (1928).

4. *In re* Westminster Presbyterian Church, U.S.A., 275 So. 2d 904 (La. App. 4th Cir. 1973).

5. *Id.* at 907.

the procedure, the case should be equally applicable to business corporations.

In two cases, the courts had occasion to consider the effect on the corporation of knowledge of facts by an agent[6] or by a member of a board of directors.[7] The Court of Appeal for the First Circuit[8] recognized the principle that information informally given to corporate agents or officers is imputable to the corporation. This was dictum inasmuch as the court found that the information, concerning a change in ownership which would affect the amount of insurance premiums, was not in fact given to an agent of the corporation. Although not stating the limitation, the court obviously intended to restrict its statement of the principle properly to cases where the information was within the scope of the authority of the agent to act on behalf of the corporation. In *D'Aubin v. Mauroner-Craddock, Inc.*,[9] the supreme court, in reversing the court of appeal,[10] held that knowledge of the chairman of the board of a corporation that unauthorized payments were being made was not the knowledge of the corporation. The basis for its correct decision in this regard was the finding that the knowledge in this case was not within the general authority of the board member to act for the corporation. The opinion implies that had the board member been a "dominant figure," or had administrative responsibilities related to the transaction, or had he acted for the corporation in the matter, his knowledge would have been equivalent to knowledge by the corporation, in which event there would have been a breach of fiduciary obligation.

6. Ed Jones, Jr., Inc. v. Southern Cas. Ins. Co., 268 So. 2d 62 (La. App. 1st Cir. 1972).

7. D'Aubin v. Mauroner-Craddock, Inc., 262 La. 350, 263 So. 2d 317 (1972).

8. Ed Jones, Jr., Inc. v. Southern Cas. Ins. Co., 268 So. 2d 62 (La. App. 1st Cir. 1972).

9. 262 La. 350, 263 So. 2d 317 (1972).

10. *See* 251 So. 2d 398 (La. App. 1st Cir. 1971).