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Abe L. Shugerman

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INTRODUCTION

It has been suggested that corporate law is statutory; and on this basis, one should focus his attention only upon a state's legislative enactments.[1] No supposition could be further from correct.

It is true that corporate law is of a rather late historical development; and for this reason, one does not encounter the niceties that the law merchant impressed upon such fields as negotiable instruments or partnerships. Corporations existed at an early date; however, their economic activities were large in scope, and there were likewise only a relatively few such organizations in operation. Corporations, therefore, did not generate the large amounts of litigation that were found, for example, in such areas as negotiable instruments, partnerships, and agency — all of which enjoyed an intricate development at common law.[2] It remained for the advent of the twentieth century to create the large body of court-made law that is such an important part of corporate jurisprudence.

How does all this affect a summary of Florida laws? The answer lies primarily in a point of perspective. It is important to realize that statutes continue to be a basic source of authority;[3] but it is equally important to realize that a vast body of corporate principles must be obtained from judicial decisions. It may be correct to say (as some have suggested) that "there is no such thing as a common law of corporations," but practicality demands that one respect the accumulation of court-made principles.

There has been a fair amount of judicially-enunciated principles in Florida, although the quantity has certainly not been excessive. This does not necessarily mean that every conceivable question has been settled by either a Florida statute or case. It does mean, though, that prospective litigants show a propensity to look to the principles settled in other states — on the rationale that Florida courts will generally apply accepted concepts of corporate law. This inclination on the part of the Florida courts is apparent in an examination of the cases in the last two years. Such a viewpoint by the judiciary is wholesome. Commercial law of all types should be predictable; and such predictability may be achieved by pre-

*Associate Professor of Law, University of Miami School of Law.

1. STEVENS, *Handbook of the Law of Private Corporations*, 1-14 (2nd ed. 1949).
2. In fact, uniform statutes governing negotiable instruments and partnerships are largely reflective of the long-acceped principles of the law merchant.
3. In Florida, the great bulk of laws affecting corporations is found in FLA. STAT. chapters 608, 613, and 614 (1953).

supposing that the Florida courts will adopt commercial principles adopted in other jurisdictions.

The Corporate Entity

It is basic corporate law that the corporate entity (or fiction) will not be disregarded except upon a showing of the most compelling circumstances.[4] This basic doctrine continues to be recognized in Florida. A deadlock of directors is not such an impasse as to warrant a disregard of the entity.[5] Instead, the court suggested that relief be sought under the Florida statutes permitting a dissolution.[6] The remedy was statutory dissolution; and not a disregard for the corporate entity.[7] The separateness of the corporate entity has also been re-affirmed in other recent decisions.[8]

Names

In Florida, it would now appear that even slight dissimilarities are adequate enough to bar an enjoinment of the use of a previously pre-empted corporate name.[9]

In one case,[10] a Florida corporation sought to enjoin a foreign corporation from using a corporate name already pre-empted by the Florida firm. The effort of the Florida corporation was unsuccessful. Thus, United Life Ins. Co., a Florida corporation, was denied an injunction against the foreign corporation's use of the name United Life Ins. Co. *of Illinois*. The court ruled that the two corporate names were sufficiently dissimilar; and in its opinion, the court said:

> Where the words selected (by a corporation) for a corporate name are chosen from the public domain and imply a national business, and where the territory in which it operates is one that will probably be reached through the natural expansion of an established institution, which is in fact national in scope, (said corporation) cannot demand a complete exclusion when the (established institution) bids entry, but must be content with such explanatory matter as will prevent deception, although it may not entirely eliminate confusion by the careless.[11]

Distinctions between corporate names are naturally a matter of relativity.[12]

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4. Gross v. Cohen, 80 So.2d 360, 361 (Fla. 1955), where the court said, "the complaining party must show that the corporation was actually organized or used to mislead creditors or to perpetrate a fraud upon them."
5. Kay v. Key West Development Co., 72 So.2d 786 (Fla. 1954).
6. Fla. Stat. § 608.28 (1953).
7. The court stated, "As we view the matter, full relief can be granted without destroying the legal existence of the corporation." Kay v. Key West Development Co., 72 So.2d 786, 789 (Fla. 1954).
8. Scheiner v. Adamco, Inc., 81 So.2d 205 (Fla. 1955); Gross v. Cohen, 80 So.2d 360 (Fla. 1955).
9. United Life Ins. Co. v. United Life Ins. Co., 70 So.2d 310 (Fla. 1954).
10. *Ibid.*
11. *Id.* at 312.
12. Federal Sec. Co. v. Federal Sec. Corp., 129 Ore. 375, 276 Pac. 1100 (1929).

Foreign Corporations

As might be expected, litigation arose in the area of foreign corporations.[13] Experience has shown this area to be a fertile ground for litigation in Florida.[14]

In one instance, the Supreme Court stated that the presence of a mere salesman in Florida did not constitute "doing business" by a foreign corporation;[15] and service upon the Secretary of State was therefore not binding upon the corporation.[16] In another instance,[17] the court ruled that a corporation's business activities were extensive enough to warrant a finding of "doing business" in Florida; and hence, service under Section 47.16 of the Florida Statutes was proper. In that case, more than a mere sales solicitation was involved. The foreign corporation furnished its local brokers with instructions and supplies for presenting a "credit indemnity plan," and the performance of a contract which could take place only in Florida. Such a situation is indeed different than a mere solicitation of a sales order which is to be filled and shipped from another state. In another case, the court emphasized that a contract of employment with a foreign corporation was valid even though the corporation had failed to domesticate itself in Florida.[18] The view is a reasonable one, and also in accord with the Florida Statutes.[19] Certainly, a plaintiff who sues such a non-qualifying corporation should be required to do so on the hypothesis that he is suing a firm that has both the rights and responsibilities of a duly-qualified corporation.[20]

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13. Statutes concerning foreign corporations appear in Fla. Stat. chapter 613(1953).
14. This is due to the fact that a great deal of difficulty is encounered in interpreting what acts of a foreign corporation constitute "doing business," so as to make it amenable to domestication in a state. Thus, in Mason v. Mason Products Co., 67 So.2d 762, 763 (Fla. 1953), the Supreme Court of Florida said,

> Each case of this kind must rest on its own bottom for the simple reason that whether service is valid depends on what the facts are. There is no way to lay down a general principle applicable to all cases.

15. Mason v. Mason Products Co., 67 So.2d 762 (Fla. 1953).
16. The procedure for such service appears in Fla. Stat. § 47.16 (1953).
17. State v. Harrison, 74 So.2d 371 (Fla. 1954).
18. Frantz v. McBee Co., 77 So.2d 796 (Fla. 1955).
19. Fla. Stat. § 613.04 (1953).
20. This view was summarized by the Supreme Court of Florida in Frantz v. McBee Co., 77 So.2d 796, 797 (Fla. 1955), wherein the court said:

> Section 613.04, Florida Statute, F.S.A., provides that 'The failure of any such foreign corporation to comply with the provisions of this chapter shall not affect the validity of any contract with such corporation * * *' Thus, the contract of employment between McBee and plaintiff's decedent was a valid and subsisting one, despite McBee's failure to qualify under Chapter 613. It contemplated work to be performed wholly within this State, wherever it was executed (which is not shown by the record). If the death of plaintiff's decedent had occurred without the fault of anyone, and was otherwise within the terms of the Act, could McBee be heard to say that it was not liable for the death benefits awarded by the Act, since it had not qualified to do business in this state? We do not think so. By the same token, it has the right to say that its liability under the Act carries with it a corresponding right as to the limit of its liability under the Act.

CORPORATE MANAGEMENT

Cases arising in the corporate management area usually reduce themselves to a question of personal responsibilities of officers and directors. Management, in an economic sense, is a matter of managerial personalities; and it is therefore not surprising that litigation centers around this element of personalities.

An effort was made in one Florida case to impose a personal liability[21] upon directors for preferential transfers of the assets of a corporation in financial distress.[22] The statute states:

> The directors or officers of a corporation who shall violate or be concerned in violating any provision of this section shall be personally liable to the creditors and stockholders of the corporation of which they shall be directors or officers to the full extent of any loss such creditors and stockholders may respectively sustain by such violation.[23]

Such a notion of liability is based on the "trust fund doctrine," which has been adopted in Florida.[24]

In ruling upon the alleged preferential transfer, the court stated that "there is no provable loss to appellants by virtue of this transfer;" and hence, recovery was denied.[25] The view of the court is based on the rationale that a mere exchange of one form of security for another does not necessarily indicate a preference. More must be shown. In addition to the exchange it was necessary to show some *detriment* resulting from the preference. Such a detriment was not shown.

Another case[26] recognized that a corporation's officers and directors did not have the authority to borrow at usurious rates. The court emphasized the Florida usury laws[27] were applicable with equal force to "artificial persons as well as individuals."[28] The court's opinion also emphasized that the broad grant of powers in Section 608.13[29] does not

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21. The imposition of liability was attempted under FLA. STAT. § 612.45 (1951).
22. The court mentions a prohibition against intentionally preferential transfers by actually or imminently insolvent corporations. Middletown v. Plantation Homes, 71 So.2d 503 (Fla. 1954).
23. FLA. STAT. § 612.45 (1951).
24. Middleton v. Plantation Homes, 71 So.2d 503 (Fla. 1954).
25. *Ibid.*
26. Sodi, Inc. v. Salitan, 68 So.2d 882 (Fla. 1953).
27. FLA. STAT. § 687.03 (1953).
28. See note 26 *supra.*
29. FLA. STAT. § 608.13(11)(a)(1953), which states:
Every corporation shall, unless otherwise provided by its certificate of incorporation or by law have power to: * * * Contract debts and borrow money at such rates of interest and upon such terms as it, or is board of directors may deem necessary or expedient and shall authorize or agree upon, issue and sell bonds, debentures, whether secured or unsecured, and execute such mortgages, or other instruments upon or encumbering its property or credit to secure the payment of money borrowed or owing by it, as occasion may require and the board of directors deem expedient.

authorize borrowing at usurious rates. The court's opinion reaches a sound conclusion of statutory construction. Certainly, the policy of the usury laws should be applied to all business transactions. There would appear to be no justification for exempting corporations from their purview. This should be accepted even though some corporations might find it difficult to borrow money at a legal rate of interest. As the court indicates, any relief from such difficulty must come from "the Legislature — not the Courts."[30]

Receivers

In one very brief opinion the court indicated the extraordinary nature of a receivership appointment. Thus, the court said:

> The power of appointment of a receiver for a corporation should be exercised only where the exigencies demand it and no other protection to the applicant appears.[31]

The court then noted that there had been "no sufficient allegation of fraud, insolvency, mismanagement, or other meritorious considerations."[32]

On the basis of this decision, it would appear necessary that the petition for appointment of a receiver indicate, in clear-cut language, the necessity for such appointment — and the need for resort to such extraordinary relief. Pleading tactics are important. As the court suggests, it becomes the responsibility of the petitioner to justify his request by indicating facts to support his position. Such facts, as also suggested by the court, may qualify if they constitute "fraud, insolvency, mismanagement, or other meritorious considerations." The facts must be affirmatively pleaded by the petitioner.

Transfer of Capital Stock

The question of transfers of capital stock has often come before the court. This has been a prolific source of litigation in Florida, as elsewhere.

In *Gerken v. Streit*,[33] the court refused to find that a wife had been subjected to duress in forcing her to endorse stock certificates. The opinion of the court leaves little doubt that the Florida courts will require clear and convincing evidence of alleged duress before ruling a contract voidable. The tone of the opinion indicates that a party alleging duress must be able, clearly and definitely, to sustain his burden of proof. In expressing its attitude toward allegations of a husband practicing contractual duress on his wife, the Florida court quoted from Oliver Twist in saying:

> If the law presumes that what the wife does in the presence of her husband she does under compulsion the law is an ass and a bachelor.[34]

30. See note 26 *supra*.
31. Papazian v. John Kulhanjian, 78 So.2d 85 (Fla. 1955).
32. *Ibid.*
33. 66 So.2d 245 (Fla. 1953).
34. *Id.* at 247.

Another case[35] held that where purchasers of the capital stock of a business alleged fraudulent statements made to them in the sale of the stock, the subsequent execution of a new contract by the purchasers waived any claims based on such allegations of fraud. The decision suggests a caveat to be followed in negotiations subsequent to a fraud allegation. Thus, a purchaser would be well advised *to reserve* his right to damages where he enters into a new contract relative to an alleged stock fraud, otherwise the purchaser is apt to find himself precluded from recovery on the previous fraud on the rationale that part of the consideration for the new contract was a waiver of his fraud claim.

An interesting point arose in a case construing the Uniform Stock Transfer Act.[36] The following statement appeared on an endorsed stock certificate:

> The original of this stock is subject in all respects to the terms of a stockholders' agreement made under date of March 13, 1946, the text of which is included among the minutes of the meeting of the Board of Directors and Stockholders held on March 13, 1946, and all persons to whom these presents may come are referred to the said minutes for the text of said stockholders' agreement.[37]

It was alleged that such notice on the certificate (*as a reference to the minutes*) was inadequate under the provisions of the Uniform Stock Transfer Act, which provides,

> There shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to . . . the restriction is stated upon the certificate.[38]

The precedent established is an important one. In effect, a restriction upon transfer may be effected *by a reference* to the corporation's minutes. This would apparently also include a reference to the other official documents of the corporation (such as its articles or by-laws).

Dissolution

Will a court compel the dissolution of a corporation because of disagreement or animosity among its stockholders? It has been held that a dissolution will be decreed in only the most aggravated and compelling circumstances. Mere animosity among the stockholders is not enough.[39] Thus, in a case refusing such a decree, [40] the Supreme Court said:

> The liquidation of a corporation and the distribution of its assets cannot be accomplished unless the corporation has practically dis-

35. Benn v. Key West Propane Gas Corp., 72 So.2d 910 (Fla. 1954).
36. This Act has been adopted in Fla. Stat. c. 614 (1953).
37. Weissman v. Lincoln Corp., 76 So.2d 478, 483 (Fla. 1954).
38. Fla. Stat. § 614.17 (1953).
39. Freedman v. Fox, 67 So.2d 692 (Fla. 1953).
40. *Ibid.*

> continued all of its business, or is no longer capable of being made to carry out the corporate functions for which it was chartered. . . . The drastic action of dissolving a corporation will not be justified unless its affairs have reached the sorry state where the purposes for which it was organized are no longer possible of attainment.[41]

Here again, the court has expressed its strong inclination to preserve the corporate entity. The corporation is a healthy creature. Few animals can equal its vitality. Much formality is required in its creation; and an even greater degree of formality is required for its extinction.[42]

Statutory Changes

A few corporate statutes were enacted during the 1955 session of the Florida Legislature. These enactments, of course, have modified the fabric of corporate law. Completeness, therefore, suggests that the scope of this legislation be summarized.

Agricultural co-operative articles must now state whether or not the corporation is to have a perpetual life; or, if not, the term of years of the corporation.[43] The previous life was limited to 50 years.[44] Now, either a perpetual life or a life for a period of years is permissible, this also being the situation in corporations organized for private profit.[45] In this same connection the new law[46] permits the majority stockholders or members of a co-operative to convert it into a corporation for private profit.[47]

A statute has provided for the organization of development credit corporations. These firms may be organized under the general laws of Florida subject to certain limitations.[48] The statute contains detailed prescriptions. It opens the way for a new and useful form of business organization in Florida, and both the statute and the form of authorized business organization will find a welcome reception in the state's economy.

The maximum rate of interest for corporate debtors has now been raised to 15%.[49] This change has been made in order to enable firms in financial difficulties to extricate themselves. Often, such extrication is possible only by the payment of an unusually large interest rate.[50]

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41. *Id.* at 693.
42. Where a corporation is dissolved, though, a trustee situation is created. Thus, in Trueman Fertilizer Co. v. Allison, 81 So.2d 734 (Fla. 1955), a corporation was dissolved because of nonpayment of the capital stock tax. The court held that beneficial title to the corporate assets accordingly vested in the stockholders, with the directors having legal title, as trustees. This is in accord with Fla. Stat. § 608.30(6) (1953).
43. Laws of Fla., c. 29813 (1955).
44. Fla. Stat. § 618.04(4)(1953).
45. Fla. Stat. § 608.03(2)(e)(1953).
46. Laws of Fla., c. 29813 (1955).
47. Such a conversion would be under Fla. Stat. c. 608 (1953).
48. Laws of Fla., c. 29776 (1955).
49. Laws of Fla., c. 29705 (1955).
50. There is an amendment of Fla. Stat. §§ 687.02 and 687.03 (1953).

A statute now requires non-profit corporations to secure a permit to solicit funds for charitable purposes. Such a permit is obtained from the clerk of the circuit court, and the corporation is further required to file an annual financial statement.[51] This statutory change is an important one. Some kind of licensing arrangement for such solicitations has long been the subject of debate and discussion, and the permit requirement appears to be a conspicious step in this direction.

There has been some modification[52] in the requirements of the articles of incorporation.[53] Many of the changes deal with the firm's financing, although organization is also considered. For example, the articles may now contain a provision for cumulative voting for directors. Other basic doctrines concerning corporate organization and management appear in the statute. The enactment[54] represents a detailed description of a large array of important changes in Florida corporate laws. It is an important statute, and from the business man's point of view, one of the most important enactments of the legislative session. The lawyer engaged in corporate practice would therefore be well-advised to read the vast array of detailed prescriptions — which should be read in their original text — and which do not lend themselves to summarization.

51. Laws of Fla. c. 29992 (1955).
52. Laws of Fla. c. 29886 (1955).
53. FLA. STAT. § 608.03 (1953) contains these requirements.
54. See note 52 *supra*.