Trusts—"Sole Risk" of Corporate Trustee (Central Hanover Bank & Trust Co. v. Flint, 269 N.Y. Supp. 470 (2nd Dept. 1934))

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview
strued to be synonymous,9 as in the case at bar, and in other in-
instances, the courts have held them to be diverse.10

V. G. R.

TRUSTS—"SOLE RISK" OF CORPORATE TRUSTEE.—The appellant
bank was a trustee under a trust deed that permitted it to invest in
certain so-called "non-legals." It invested in its own mortgage par-
ticipations, two of which did not mature till after the period for
which the trust was limited. When the trust period expired, the
beneficiary was offered the participations which, owing to conditions
surrounding the real estate market, were worthless. He brought
suit, claiming that the investments were imprudently and negligently
made and that the bank guaranteed its investments under the New
York Banking Law.1 Held, that the investments were not impru-

The investing of trust funds in real estate mortgage securities was early recognized. The use of participations in trust funds was held not to be a violation of the trustee’s duty. The mere fact that two of the participations did not mature till after the expiration of the trust did not place the trust in such unrecallable shape as would violate the rule, especially inasmuch as at the time they were purchased, they were readily marketable for full value. The rapid decline of real estate values was unpredictable and unavoidable. Hence, no negligence could be imputed to the bank on that score.

“At its own risk” applies to corporate trustees in lieu of the bond required of the individual trustee. At any rate, that condition does not apply where the investment is permitted by the trust indenture.

The trustee was never allowed to deal with himself in investing trust funds, such transactions being set aside regardless of whether or not they benefited the beneficiary, lest by making exceptions the court permit the rule of undivided loyalty from trustee to beneficiary to be eroded. This is still the law except where changed by statute. The New York Banking Law permits the corporate trustee to deal with itself by complying with certain conditions, one of which is that the investments be legal under “the laws of the state.” The investment in “non-legal” mortgage participations was held to conform with this description.

It is well settled that a statute which gives a privilege unknown to the Common Law, or enlarges one already present, by implication, forbids it to be done in any other way, even though that other way should be better.

J. D. G.

---

2 King v. Talbot, 40 N. Y. 76, 83 (1869).
5 Supra note 1.
7 Supra note 1.
9 Supra note 1.
10 Instant case.