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BANKRUPTCY - CORPORATE REORGANIZATION - SECTION 77B - CHAPTER X OF THE CHANDLER ACT - BOYD CASE RULE

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RECENT DECISIONS

BANKRUPTCY — CORPORATE REORGANIZATION — SECTION 77B — CHAPTER X OF THE CHANDLER ACT — BOYD CASE RULE — A subsidiary of the defendant corporation filed a reorganization petition under Section 77B of the Bankruptcy Act and defendant presented a claim of over nine million dollars as a creditor, the claim being grounded upon moneys paid by defendant to the subsidiary for its benefit, management and supervision fees, rental and interest charges, and declared but unpaid dividends. Defendant owned about ninety-eight per cent of the common stock of the subsidiary. As the result of objections by the trustee and preferred stockholders of the subsidiary, defendant's claim was compromised at five million dollars. The reorganization plan provided in part that the preferred stockholders should receive twenty per cent of the common stock in the new corporation, while the defendant was to receive seventy-three per cent of such stock. On appeal by some of the preferred stockholders, it was *held* that the trial judge abused his discretion in approving the plan as fair, since the preferred stockholders should have received stock giving them priority on dissolution over the defendant, and at least an equal voice in the management of the new corporation. *Taylor v. Standard Gas & Electric Co.,* 306 U. S. 307, 618, 59 S. Ct. 543 (1939).

The decision seems to be an application of the *Boyd* case [1] rule which requires that the plan be fair to all concerned, and more specifically that the rights of creditors and stockholders be enforced as though on dissolution. Both Section 77B [2] and Chapter X of the Chandler Act [3] provide that the plan must be "fair and equitable" before it can be approved by the trial judge, and the statutes have usually been regarded as a codification of the *Boyd* case.[4] If the defendant's claim as a creditor is rejected, either because not valid or because the defendant had mismanaged its subsidiary, the defendant's only rights are those of a common stockholder, in which case the preferred stockholders' rights must receive prior recognition.[5] On that basis the result reached in the principal case is eminently proper.

[1] Northern Pacific Ry. v. Boyd, 228 U. S. 482, 33 S. Ct. 554 (1913).

[2] 48 Stat. L. 919, § 77B (f), 11 U. S. C. (1937), § 207 (f): "The judge shall confirm a plan if satisfied that . . . (2) the plan is fair and equitable, and feasible. . . ."

[3] 52 Stat. L. 897, 11 U. S. C. (Supp. 1938), § 621: "the judge shall confirm the plan if satisfied that (1) it is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible. . . ."

[4] Gerdes, "A Fair and Equitable Plan of Corporate Reorganization under Section 77B of the Bankruptcy Act." 12 N. Y. UNIV. L. Q. REV. 1 (1934); Friendly, "Some Comments on the Corporate Reorganizations Act," 48 HARV. L. REV. 39 (1934); 34 MICH. L. REV. 992 (1936).

[5] In re 1775 Broadway Corp., (C. C. A. 2d, 1935) 79 F. (2d) 108; Farlee & Co. v. Springfield-South Main Realty Co., (C. C. A. 1st, 1936) 86 F. (2d) 931; Continental Ins. Co. v. Louisiana Oil Refining Corp., (C. C. A. 5th, 1937) 89 F. (2d) 333; Provident Mutual Life Ins. Co. v. University Evangelical Lutheran Church of Seattle, (C. C. A. 9th, 1937) 90 F. (2d) 992; In re Celotex Co., (D. C. Del. 1935) 12 F. Supp. 1; In re McCrory Stores Corp., (D. C. N. Y. 1935) 12 F. Supp. 267, 30 Am. Bkcy. Rep. (N. S.) 670; In re Burns Bros., (D. C. N. Y. 1936) 14 F. Supp. 910; In re Parker-Young Co., (D. C. N. H. 1936) 15 F. Supp. 965.

It cannot, however, be determined from the Court's opinion whether it would uphold the five million dollar compromise amount of defendant's claim as creditor in any new plan.

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