

1936

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Recommended Citation

CORPORATIONS-RIGHT OF STOCKHOLDER TO INSPECT STOCK BOOK OF BANKRUPT CORPORATION UNDER SECTION 77B, 34 MICH. L. REV. 567 (1936).

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CORPORATIONS—RIGHT OF STOCKHOLDER TO INSPECT STOCK BOOK OF BANKRUPT CORPORATION UNDER SECTION 77B—Petitioner was the controlling stockholder of *B* corporation, which had its petition for reorganization under Section 77B of the National Bankruptcy Act approved. Being dissatisfied with the present board, he applied to the district court for an order directing the trustees of *B* to permit him to examine the stock book for the purpose of securing names of stockholders in order to call a meeting to elect a new board. Application was denied by the district court on the ground that calling a meeting

would impede rapidity of reorganization. On appeal, *held*, application should have been granted, for Section 77B (c) 4 (b) permits the court to allow inspection by stockholder; 77B (c) 11 gives the debtor the right to be heard on all questions; and 77B (d) gives the debtor the right to propose a reorganization plan; if the board does not truly represent stockholders, the rights granted in the latter two subparagraphs are in effect denied stockholders; and therefore the district court abused its discretion in denying the application. *In re Bush Terminal Co.*, (C. C. A. 2d, 1935) 78 F. (2d) 662.

The right of the stockholders to inspect the books of the corporation is based on their ownership of corporate assets through the medium of shares.¹ While the common law recognized such right, it is conferred specifically by statute or constitution in most states.² The right at common law is not absolute, but is discretionary with the court;³ the purpose of the stockholder is a proper subject for inquiry.⁴ The right is not affected though the corporation is in equity receivership.⁵ The instant case is governed by Section 77B primarily, but so far as not inconsistent therewith the common and statutory law on the subject in New York would seem to be applicable.⁶ Under Section 77B the stockholders are the real parties in interest.⁷ The stockholders "may" be permitted by the court to inspect the list of stockholders,⁸ which apparently leaves the right in the discretion of the court. Section 77B further provides that the debtor shall have the right to be heard on all questions, including the proposed confirmation of any reorganization plan,⁹ and that the debtor shall have the right to submit a plan

¹ 5 FLETCHER, CYCLOPEDIA OF CORPORATIONS, perm. ed., 572 (1931); *Varney v. Baker*, 194 Mass. 239, 80 N. E. 524 (1906); *Clawson v. Clayton*, 33 Utah 266, 93 P. 729 (1908); *State v. Whited & Wheless Co.*, 104 La. 125 (1901).

² 5 FLETCHER, CYCLOPEDIA OF CORPORATIONS, perm. ed., 571 (1931).

³ *Clawson v. Clayton*, 33 Utah 266, 93 P. 729 (1908); *Varney v. Baker*, 194 Mass. 239, 80 N. E. 524 (1906).

⁴ *Guthrie v. Harkness*, 199 U. S. 148, 26 S. Ct. 4 (1905).

⁵ A Pennsylvania district court issued a writ of mandamus to plaintiff stockholder compelling the receiver to allow him to inspect and take a copy of the stock list of the corporation, his purpose being to obtain proxies from other stockholders for an election. The court also observed that the receiver had nothing to do with the stock book. *Commonwealth v. Philadelphia & Reading R. R.*, 3 Pa. Dist. Ct. 115 (1893).

⁶ N. Y. Laws (1901), c. 354, § 29 [now Consol. Laws (1923 Supp.), c. 787, § 10] provides that the stockholder shall have an absolute right to examine the stock-book of the corporation. Applied in *People ex rel. Lorge v. Consolidated Nat. Bank*, 105 App. Div. 409, 94 N. Y. S. 173 (1905). See also, 3 CORP. PRAC. REV. 48 at 52 (1931).

⁷ *In re Nat. Lock Co.*, (D. C. Ill. 1934) 9 F. Supp. 432.

⁸ Sec. 77B (c), subd. 4b, provides: "the judge . . . may direct the debtor, or the trustee or trustees if appointed, to prepare . . . a list of the stockholders of each class of the debtor, with the last known post office address or place of business of each, which lists shall be open to the inspection of any creditor or stockholder of the debtor during reasonable business hours. . . ."

⁹ Sec. 77B (c), subd. 11, provides: "The debtor shall have the right to be heard on all questions. Any creditor or stockholder shall have the right to be heard . . . on the proposed confirmation of any reorganization plan. . . ."

of reorganization.¹⁰ These rights of the debtor under the statute clearly can only be secured by having a board that truly represents the debtor;¹¹ names and addresses of all stockholders are essential for holding an election, and the only practicable means for securing the same is through the stock book of the corporation. The court in the instant case properly held that the district court abused its discretion in denying the petitioner's application for an order directing the trustees to permit him to inspect the stock book, for impediment in rapidity of reorganization is unquestionably subservient to the protection of the stockholders' rights under Section 77B.¹² The statute properly establishes a discretion in the court to permit inspection of corporate books by the stockholder, to be exercised according to the law of the state of situs of the corporation, common or statutory, subject at all times, however, to the purposes of and rights granted in this section.

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¹⁰ Sec. 77B (d) provides: "plan of reorganization . . . may be proposed . . . by the debtor."

¹¹ The importance courts have attached to a truly representative board for the corporation under subd. (a) of Section 77B, setting out the parties that may bring an action for reorganization under 77B, is shown in *In re Kelly-Springfield Tire Co.*, (D. C. Md. 1935) 10 F. Supp. 414, where the following dictum is stated at page 416: "If it had been brought to my attention in any formal way on which I could have based a conclusion that the Executive Committee did not fairly at the present time legally represent the Corporation, I would have regarded that as unquestionably bearing on the validity of the filing of the petition. . . ."

¹² The instant case distinguishes *Graselli Chem. Co. v. Aetna Explosives Co.*, 164 C. C. A. 380, 252 F. 456 (1918), which granted an injunction staying a stockholders' meeting when the corporation was in receivership on the ground that such a meeting would interfere unduly with the reorganization plans. The instant case points out that in the *Graselli* case the receivers had made a good profit and could have paid off the preferred stockholders of the corporation and would pay them off in the near future, the preferred stockholders having been paid all past dividends. As their right to vote was limited to the question of mortgaging property of the corporation except where their dividends had not been paid for over eight months, permitting an election at that time would have given preferred stockholders control of the corporation when they would soon after be paid off and have no voice in the management of the corporation, and so be inequitable to the rights of the common holders.