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CORPORATIONS-RIGHT OF OFFICERS TO PURCHASE CLAIMS AGAINST THE CORPORATION AND ENFORCE THEM AT THEIR FACE VALUE

CORPORATIONS—RIGHT OF OFFICERS TO PURCHASE CLAIMS AGAINST THE CORPORATION AND ENFORCE THEM AT THEIR FACE VALUE—Defendant was enlisted by one of the insolvent corporation's creditors, a holder of preferred stocks and debentures, to buy up landlord's claims against the corporation. These claims were large in number and amounts and were crucial elements in a successful reorganization. By means of the stock vote of the creditor, defendant was elected director of the corporation and remained as such for one month, though during this time he was not active in acquiring landlord's claims. Upon resignation as director, defendant was successful in buying up most of the landlord's claims, it being a fair inference from the facts that information he acquired while director was of value to him in acquiring the claims. *Held*, that landlord's claims so acquired by defendant may be enforced for no more than he paid the landlord for them plus reasonable expenses. *In re McCrory Store Corp.*, (D. C. N. Y. 1935) 12 F. Supp. 267.

It is generally held that an officer of a going corporation can buy up claims

against the corporation and enforce them for their face value,[1] unless there are factors present that would make it inequitable[2] or a breach of fiduciary duty to do so.[3] Decisions following a contrary rule are based on the trust doctrine which precludes a person under a trust duty from making any profit from the purchase of trust property, though the facts of the particular purchase show no injury to the trust estate.[4] There is some authority to the effect that a corporate officer may not enforce a claim at its face value when he knew the corporation was insolvent at the time he purchased it.[5] In the usual case of a going concern the purchase of the claims presents neither injury to the corporation nor a situation in which the corporation would be deprived of the best judgment of its officer because of his ownership of the claim. It is submitted that the instant case does present a situation in which it would be highly inequitable to allow payment of the claim at face value, since the corporation was not only insolvent, but actively trying to compromise these claims which were key factors in a successful reorganization designed to benefit all creditors. The case is complicated by the fact that the claims were purchased after the director's term of office was at an end.[6] But relief to the corporation should not therefore be denied,[7] when as here, it can be inferred from the evidence that the directorship was sought with a view to obtaining access to information which would facilitate acquisition of the claims.

R. F. K.

[1] Seymour v. Spring Forest Cemetery Assn., 144 N. Y. 333, 39 N. E. 365 (1895); McIntyre v. Ajax Mining Co., 28 Utah 162, 77 P. 613 (1904); Glenwood Mfg. Co. v. Syme, 109 Wis. 355, 85 N. W. 432 (1901).

[2] Martin v. Chambers, (C. C. A. 5th, 1914) 214 F. 769; Hornor v. New South Oil Mill, 130 Ark. 551, 197 S. W. 1163 (1917); Todd v. Temple Hospital Assn., 96 Cal. App. 42, 273 P. 595 (1928).

[3] The Telegraph v. Lee, 125 Iowa 17, 98 N. W. 364 (1904); Wabunga Land Co. v. Schwanbeck, 245 Mich. 505, 222 N. W. 707 (1929); Young v. Columbia Land and Investment Co., 53 Ore. 438, 99 P. 936 (1909), rehearing denied 101 P. 212 (1909), where the breach of duty consisted of connivance with other directors to the end that the corporation would not purchase when it was able to do so; Kroegher v. Calivada Colonization Co., (C. C. A. 3rd, 1902) 119 F. 641, where the director was a member of a committee to settle claims but purchased for his own account.

[4] 1 PERRY, TRUSTS, 7th ed., § 428 (1929).

[5] Bonney v. Tilley, 109 Cal. 346, 42 P. 439 (1895); Bramblet v. Commonwealth Land & Lumber Co., 26 Ky. L. Rep. 1176, 83 S. W. 599 (1904).

[6] For decisions which say the fiduciary duty terminates when the directors are no longer in office either through their own resignation or by operation of law after a receiver has been appointed and therefore are free to buy up claims against the corporation, see Stanton v. Gilpin, 38 Wash. 191, 80 P. 290 (1905); Hammond's Appeal, 123 Pa. St. 503, 16 A. 419 (1889); In re Allen-Foster-Willett Co., 227 Mass. 551, 116 N. E. 875 (1917).

[7] In Rose v. First Nat. Bank of Stigler, 93 Okla. 120, 219 P. 715 (1923), the court extends the fiduciary duty to give a basis for an accounting against defendant as a director, for a transaction entered into while the defendant was temporarily out of office.