Michigan Law Review

Volume 31 | Issue 8

1933

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Recommended Citation
CORPORATIONS - DISSENTING STOCKHOLDER'S SUIT -CONDITIONAL DECREE, 31 MICH. L. REV. 1157 (1933).
Available at: https://repository.law.umich.edu/mlr/vol31/iss8/16

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CORPORATIONS — DISSENTING STOCKHOLDER'S SUIT —CONDITIONAL DECREE — The directors and majority stockholders of a Minnesota mining corporation which needed financing were also the directors and majority stockholders of another Minnesota mining corporation which had a large surplus. They decided to consolidate the two in order to finance the one, offering the stockholders of each corporation a share for share exchange, which would result in the stockholders of the unsuccessful corporation having a 9/16 control of the consolidated corporation. Dissenting stockholders, holding 18/100 of 1% of the total stock in the successful corporation, brought a bill to restrain the consolidation and to have a receiver appointed to take possession of the property and to recover such as had been transferred to the new corporation. *Held*, the

division proposed was unfair to the stockholders of the successful corporation; but the plaintiffs will be fairly treated if they are given the highest value, market or intrinsic, between the date of the consolidation and the date of the trial, or, at their election, the stock of the new corporation on a fair basis. If they refuse both, judgment against them on the merits. If the defendants do not accept these terms, relief will be granted as prayed. *Paterson v. Shattuck Arizona Copper Co.*, (Minn. 1932) 244 N. W. 281.

"Neither of the two Minnesota corporations could require its stockholders to surrender the stock in exchange for the Shattuck Denn stock." [1] The dissenting stockholders have a legal right to be protected and yet it is undesirable to allow the holders of a few shares to bind the hands of the corporation. The use of the conditional decree in dissenting stockholder's suits is not unknown, but it has been the exception.[2] Many cases have denied the plaintiff an injunction if the defendant would post security to insure the plaintiff in getting the value of his stock.[3] Where the merger agreement included no provision for dissenting stockholders, the bill was dismissed if the defendant would give the plaintiffs an option to share in the new plan, otherwise the bill was retained for the assessment of damages.[4] The fact that the court found there was no fraud or conspiracy on the part of the majority makes the decree even more desirable. In cases where there is fraud there would be more justification for allowing the injunction. But even where there is fraud the better considered cases refuse an injunction and allow the dissenting stockholders a choice of the stock in the new corporation or the value of their old stock.[5] Dissenting stockholders have very properly been denied injunctive relief where they purchased their shares in the market after the consolidation,[6] and where by their laches other rights have intervened.[7] The plaintiffs in the present case are clearly entitled to an injunction and should be deprived of it only upon being fully protected, and the granting of the appointment of the receiver in case the defendants fail to compensate them seems an effective way to insure performance by the defendants. On the other

[1] Paterson v. Shattuck Arizona Copper Co., (Minn. 1932) 244 N. W. 281. The court discussed the "strict" and the "liberal" rules as to the right of the majority to sell the assets. There is hardly a State today that has not changed the "strict" rule by either statute or decision. See Weiner, "Payment of Dissenting Stockholders," 27 COL. L. REV. 547. For Minnesota, 2 Minn. Stats. (Mason, 1927) § 7447-1. The court holds, however, that this is not a sale as contemplated by the decisions, and the defendants did not rely on the statute. But it is not the purpose of this note to discuss the corporation problem.

[2] Jones v. Missouri-Edison Electric Co., (C. C. A. 8th, 1906) 144 Fed. 765; (C. C. A. 8th, 1912) 199 Fed. 64; (C. C. A. 8th, 1913) 203 Fed. 945; (C. C. A. 8th, 1916) 233 Fed. 49. Kremer v. Public Drug Co., 41 S. D. 365, 170 N. W. 571 (1919). See also Treat v. Hubbard-Elliot Copper Co., 4 Alaska 497 (1912).

[3] Venner v. Pennsylvania Steel Co. of N. J., (C. C. A. 3d, 1916) 233 Fed. 407; Damarest v. Winchester Repeating Arms Co., (D. C. D. Conn. 1919) 257 Fed. 162; Lauman v. Lebanon Valley R. R., 30 Pa. 42 (1858).

[4] Windhurst v. Central Leather Co., 105 N. J. Eq. 621, 148 Atl. 36 (1930).

[5] Wheeler v. Abilene Nat. Bk. Bldg. Co., (C. C. A. 8th, 1908) 159 Fed. 391; Treat v. Hubbard-Elliot Copper Co., 4 Alaska 497 (1912) (dictum).

[6] Johnson v. United Rys. of St. Louis, 227 Mo. 423, 127 S. W. 63 (1910).

[7] International & G. N. R. R. Co. v. Bremond, 53 Tex. 96 (1880).

hand, the shares have no sentimental value and if the plaintiffs are not willing to accept cash or shares in the new corporation, they should not be allowed to vex the defendants by further litigation.

G. E. L.