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Tingle: The Stockholder's Remedy of Corporate Dissolution

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THE STOCKHOLDER'S REMEDY OF CORPORATE DISSOLUTION. By *James O'Malley Tingle*. Missoula, Montana. Montana State University Press. 1959. Pp. 238. \$12.

The availability to minority shareholders of the remedy of involuntary corporate dissolution has been one of the truly gray areas of corporation law. Whether dissolution was sought as relief from majority oppression or as escape from the corporate paralysis of a director deadlock, courts have viewed it as a harsh and drastic sanction, one to be invoked, if at all, only in the most critical of situations. Indeed, for many years judicial pronouncements were abundant that equity had no jurisdiction to dissolve corporations even where majority oppression was fraudulent. Although the face of the law is changing in this respect, the advance of judicial policy, as Professor Laylin James observes in the foreword to this volume, "is likely to be a slow tortuous development. . . ."

The present status of the availability of the remedy, both at common law and under governing statutory provisions, reflects no marked degree of judicial harmony. The attorney's task of presenting an intelligent and convincing argument, either for or against the invocation of the remedy, is difficult indeed. The author has made that task an easier one.

Mr. Tingle's book presents three significant contributions to practicing attorneys and students dealing with this troublesome question: (1) a careful background analysis, both in terms of the common law and modern statutes; (2) an exhaustive and yet clear and concise treatment of many of the leading cases; (3) a common-sense approach to proposed legislative changes.

The first of the volume's five chapters traces, in terms of majority oppression, the historical development of equity's role in granting relief, via dissolution, to minority shareholders. Well aware of the continuing judicial resistance to invocation of the remedy, the author is nevertheless quick to observe that courts are increasingly receptive if the requested relief will serve to "enforce the duty of honest management even to the extremity of liquidation." (p. 36) Although noting that the "trend is clearly toward the remedy," (p. 41) Tingle emphasizes that relief will be denied unless the harm complained of is directly affecting a vital and material aspect of corporate operation. In short, the mismanagement or oppression must be of major proportions; disagreement on relatively minor matters, even in deadlock situations, will not merit sufficient consideration to invoke the chancellor's affirmative action.

The problem of deadlock, peculiar to close corporations, is given extensive treatment by the author. Appropriate distinction is made between situations wherein the board is deadlocked through equal division of controlling shares ("complete deadlock") and situations wherein shareholders cannot agree on an odd-numbered directorate so that the old directors hold over ("incomplete deadlock"). In the latter situation it is obvious that, inasmuch as the voting strength is equally divided, there is purely fortuitous

control of the board of directors. Yet relief has been denied on the ground that such a corporation was a "solvent, prosperous, going organization, with a full board of directors governing its affairs."¹ The author rightly criticizes such an approach as imposing an unjust penalty upon shareholders by forcing them to act at their peril. Such cases, he observes, "make gamblers of stockholders of close corporations with holdover boards: if there is a deadlock of stockholders exclusive control devolves upon that faction fortuitously represented by a majority of the board, and the other faction loses." (p. 108)

After discussing in detail the leading deadlock cases, the author presents a summary of the common-law theories of liquidation used in various jurisdictions. This summary should prove to be of practical value to attorneys as an organizational guide. Equally cogent treatment is accorded to modern deadlock statutes and their application.

Perhaps the most controversial portion of Tingle's book, at least to legislators and students of this area of corporation law, will be the critique of existing legislation and the proposals for change. First of all, present statutory standards of liquidation are criticized as being too broad and too vague. The answer may be given that broad and vague standards permit judges "running room" in applying governing statutes in the most equitable manner. But the author feels that the price of such flexibility is too high. He fears an uncalled-for continuation of judicial hostility to the remedy. "They [the judges] will remain relatively free, even in the face of proved incorrigibility, to apply traditional alternatives in lieu of liquidation." (p. 176) Accordingly, Mr. Tingle advocates express legislation of a definite nature as the best route to genuine effectiveness of the remedy.

The legislative proposals of the author provide for dissolution in both complete and incomplete deadlock situations. His standards for invocation of the remedy represent an advance in both clarity and effectiveness: "when those in continuing control of the corporation have by illegal, fraudulent, oppressive, or other action or inaction demonstrated that they can no longer be trusted to control the corporation in good faith toward all of its stockholders." (p. 180)

Mr. Tingle, however, wisely does not limit his proposed changes to a formulation of standards. Instead, he provides for practical alternatives short of liquidation. The plaintiff, for example, is granted the right to withdraw his investment whenever the corporate business is endangered by an oppressive majority or whenever he is excluded from participation in executive management. (p. 196) Similarly, receivership, dissolution and liquidation may be avoided through a purchase of the plaintiff's shares by the controlling faction. Determination of value is by the court or court-appointed appraisers, thus mitigating the danger of a purchase of the oppressed stockholder's shares at forced sale prices. (p. 204)

¹ *Hepner v. Miller*, 130 Colo. 243, 246-47, 274 P.2d 818, 819 (1954).

Mr. Tingle's book is scholarly throughout. More than that, it is loaded with practicality from cover to cover. It represents a real contribution to a phase of corporation law heretofore lacking in topflight coverage.

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