

Michigan Law Review

Volume 52 | Issue 3

1954

Corporations - Sale of Assets as a Means of Avoiding State Constitutional Limitation on Corporate Life

Judson M. Werbelow
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Business Organizations Law Commons](#), [Constitutional Law Commons](#), and the [Securities Law Commons](#)

Recommended Citation

Judson M. Werbelow, *Corporations - Sale of Assets as a Means of Avoiding State Constitutional Limitation on Corporate Life*, 52 MICH. L. REV. 450 (1954).

Available at: <https://repository.law.umich.edu/mlr/vol52/iss3/10>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

CORPORATIONS—SALE OF ASSETS AS A MEANS OF AVOIDING STATE CONSTITUTIONAL LIMITATION ON CORPORATE LIFE—Defendant, a Michigan corporation, was incorporated in 1923 for a term of thirty years, the maximum

-

term permitted by the Michigan constitution.¹ Shortly before this thirty-year term was to expire, majority and minority stockholders engaged in unsuccessful negotiations, each group attempting to purchase the other's interest in the corporation. A special stockholders' meeting was then called to consider a proposed renewal of the corporate term. This proposal failed to garner the vote of two-thirds of the outstanding shares which was required for approval.² The attorneys representing the majority shareholders proceeded to organize a dummy corporation, which in turn offered the entire issue of its corporate stock to defendant corporation in consideration for all of the assets of defendant corporation. Defendant corporation, by a majority vote, accepted this offer.³ The newly acquired stock was distributed among the shareholders of defendant corporation, and thus the majority stockholders in effect caused defendant corporation to extend its corporate life for another thirty-year term. A request by the minority shareholders for an injunction prohibiting the sale of the entire assets of defendant corporation was dismissed by the circuit court. On appeal, *held*, affirmed. The acts of defendant corporation were constitutional and sanctioned by the Michigan General Corporation Act. *Porter v. C.O. Porter Machinery Co.*, 336 Mich. 437, 58 N.W. (2d) 135 (1953).

At common law, the general rule is that a single shareholder may restrain a sale of the entire assets of a corporation.⁴ Michigan and other states, have enacted statutes relaxing this common law requirement and providing that a prescribed portion of the stockholders may approve the sale of all or substantially all of the corporate assets.⁵ The purpose of these statutes is to prevent a small minority from forestalling corporate action which is desired by the overwhelming majority.⁶ However, it is doubtful that the Michigan legislature intended its statute to be used as a means of circumventing the Michigan constitution⁷ and provisions enacted pursuant to this constitution.⁸ The state supreme court rejected the argument that extension of corporate life by the sale of assets on the basis of majority approval is in contravention of the state constitution.⁹ The

¹ MICH. CONST., art. XII, §3, states: "No corporation shall be created for a period longer than 30 years, . . . but the legislature may provide by general laws . . . for 1 or more extensions of the term of such corporations . . . on the consent of not less than 2/3 of the capital stock of the corporation. . . ."

² Mich. Comp. Laws (1948) §450.60 provides: "Any stock corporation whose term is about to expire by limitation, may . . . by the consent of the holders of at least 2/3 of its outstanding shares . . . direct the continuance of its corporate existence for such further term as permitted by law, as may be expressed in a resolution for that purpose."

³ Mich. Comp. Laws (1948) §450.57 provides: "Every corporation . . . may sell . . . all or substantially all of its property and assets . . . for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation . . . as its board of directors shall deem expedient and for the best interests of the corporation, when and as authorized by the affirmative vote of the holders of a majority of the shares issued and outstanding. . . ."

⁴ 6A FLETCHER, CYC. CORP. §2947 (1950).

⁵ Note 3 *supra*.

⁶ BALLANTINE, CORPORATIONS 668 (1946).

⁷ Note 1 *supra*.

⁸ Note 2 *supra*.

⁹ Note 1 *supra*.

court described its decision as an interpretation of the constitution which adapts it to the necessities of a changing law. A more accurate description is that the court simply read the applicable provision out of the state constitution. The stockholders of defendant corporation are parties to a contract, the terms of which contain the Michigan constitution,¹⁰ the renewal statute,¹¹ and the statute authorizing the sale of corporate assets on majority approval.¹² When interpreting contract provisions, the courts are supposed to give effect to the reasonable expectations of the parties.¹³ Thus the question is whether the stockholders of defendant corporation contemplated approval of an extension of corporate life by a two-thirds or a majority vote of the outstanding shares. It seems most likely that the stockholders placed their emphasis on the constitutional provision, and contemplated extending the corporate life only on the approval of two-thirds of the shareholders. As a practical result of the decision in the principal case, however, the majority stockholders are afforded a ready means of frustrating these contractual expectations by circumventing the constitutional requirement. It is difficult to discover a sound policy basis for the limitation imposed by the Michigan constitution; it would appear that the provision has lingered on from the days of general hostility toward the corporate form of business association. The lack of underlying policy may well be the motivation which caused the Michigan Supreme Court to strike this provision such a telling blow.

Judson M. Werbelow

¹⁰ *Ibid.*

¹¹ Note 2 *supra*.

¹² Note 3 *supra*; *Trustees of Dartmouth College v. Woodward*, 4 Wheat. (17 U.S.) 518 (1819).

¹³ 1 CORBIN, *CONTRACTS* §1 (1950); 3 CORBIN, *CONTRACTS* §538 (1950); *Moulton v. Lobdell-Emery Mfg. Co.*, 322 Mich. 307, 33 N.W. (2d) 804 (1948).