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CORPORATIONS-BLUE SKY LAWS-LIABILITY OF OFFICERS AND DIRECTORS OF CORPORATION FOR VIOLATION

L. W. Larson, Jr.
University of Michigan Law School

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CORPORATIONS—BLUE SKY LAWS—LIABILITY OF OFFICERS AND DIRECTORS OF CORPORATION FOR VIOLATION—Plaintiff sued a corporation and its president to recover money paid for purchase of stock sold in violation of the “blue sky” laws of Michigan. The president, through correspondence, had induced plaintiff to complete the purchase. Plaintiff had judgment below against both defendants. The president alone appealed, contending among other things that he was not an “agent” within the meaning of the statute. *Held*, affirmed. The word “agent” in the Michigan statute¹ includes officers and directors of the corporation whether they are authorized “agents” or are holding themselves out as “agents” of the corporation. *Cleland v. Smart*, 321 Mich. 46, 32 N.W. (2d) 42 (1948).

The underlying purpose of “blue sky” legislation is to protect the public from investing in fraudulent securities,² and a liberal rather than a technical construction should therefore be preferred.³ That an officer or director is found liable for fraudulent sale of securities of his corporation is no innovation; there is ample authority on which to predicate his liability for common law tort.⁴ It is also settled law that tort liability of the corporation does not preclude liability of its officers or directors for the same act.⁵ The state “blue sky” laws differ as to holding officers and directors liable for sales of stock in violation of statutory regulations, and the

¹ Mich. Stat. Ann. (1937) § 19.760 states that the person making a sale or contract for sale which is voidable under the statute, and every “agent” of such seller who has participated or aided in any way in making such sale, shall be jointly and severally liable to the purchaser for the full amount paid for the securities. Mich. Stat. Ann. (1937) § 19.742 (h) provides that the terms “solicitor,” “agent” and “salesman” include every natural person, other than the dealer, broker or issuer, employed or authorized to sell, trade or purchase securities within the state, or who takes subscriptions for sales.

² 144 A.L.R. 1356 (1943); 87 A.L.R. 42 at 43 (1933).

³ 1 FLETCHER, *CYC. CORP.*, perm. ed., § 5158 (1932); *People v. Montague*, 280 Mich. 610, 274 N.W. 347 (1937). But see *Guaranty Mortgage Co. v. Wilcox*, 62 Utah 184, 218 P. 133 (1923), where it is observed that a too liberal interpretation of the act might defeat its purpose by interfering with legitimate transactions.

⁴ 99 A.L.R. 852 (1935).

⁵ 13 AM. JUR., *Corporations*, § 1086 (1938).

courts through interpretation of such provisions create further differences. Many statutes provide that they shall be personally liable to the purchaser.⁶ Other acts provide that an officer or director who violates the statutory requirements in selling securities is subject to criminal prosecution.⁷ Officers and directors have been held personally liable for violations of statutes regulating the sale of securities, even though the statute does not expressly make them liable. Thus it has been held that the word "agent,"⁸ and sometimes the word "solicitor,"⁹ includes officers and directors of a corporation. In a previous case, the Michigan court, under a prior statute similar to that construed in the principal case as far as the problem involved is concerned, found liability based on the broad purpose of the legislation without seeking any express classification within the statute.¹⁰ Thus it would seem unnecessary for the decision in the instant case to be based on interpretation of the word "agency," unless the court sought to establish thereby a firmer statutory basis for liability. However, by basing liability on "agency" the court exposes itself to the confusing question of application of the law of agency to relations of corporations and their officers or directors.¹¹

L. W. Larson, Jr.

⁶ Ill. Stat. Ann. (1936) ch. 121½, § 132; Fla. Stat. Ann. (1943) § 517.21; Utah Code (1943) 82-1-25.

⁷ Cal. Gen. Laws (1944) Act 3814, § 18. Courts are divided as to whether civil liability results from violation of the penal statute. See 144 A.L.R. 1356 at 1358 (1943); PROSSER, *TORTS* 265 (1941).

⁸ *Perkins v. Dole*, 240 Ill. App. 20 (1926). The Illinois statute has since been amended to provide expressly for liability of officers and directors. See note 6, *supra*.

⁹ See *McManus v. Fulton*, 85 Mont. 170, 278 P.126 (1929), where it is stated that "solicitor" within the Illinois act is anyone selling or offering to sell securities.

¹⁰ *Chambers v. Beckwith*, 247 Mich. 255, 225 N.W. 605 (1929).

¹¹ 61 HARV. L. REV. 867 (1948).