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CORPORATIONS-RECEIVERSHIP OR DISSOLUTION OF SOLVENT CORPORATION AT SUIT OF MINORITY STOCKHOLDER-DISSENSION AS A GROUND FOR RELIEF

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CORPORATIONS—RECEIVERSHIP OR DISSOLUTION OF SOLVENT CORPORATION AT SUIT OF MINORITY STOCKHOLDER—DISSENSION AS A GROUND FOR RELIEF—*A* and *B* owned 50 per cent of the stock in each of two solvent corporations, and *Y* and *Z* owned the remaining 50 per cent. *Y* was president and director of each company, *Z* was secretary and director, and *B* was vice-president and director. *A*'s testator had been treasurer and director until his death. *A* and *B* brought suit against *Y* and *Z* and the corporations, seeking an equity receivership and liquidation and distribution of corporate assets. The complaint alleged that the two factions had been in dispute for five years, that *Y* had assumed exclusive control of corporate management and declined to discuss business policy with *A* and *B*, and that *Y* had refused to allow *A* representation on the boards of directors. The trial judge dismissed the bills of complaint on defendants' motion. *Held*, the complaints were properly dismissed. Equity has no power to administer a corporation or distribute its assets merely because

of dissension among stockholders. *Dorf v. Hill Bus Co.*, (N.J. Err. & App. 1947) 54 A. (2d) 761.

Despite a considerable body of authority to the effect that equity has no inherent power to appoint a receiver or wind up or dissolve a solvent corporation at the instance of a minority stockholder,[1] the contrary view has been taken in most of the more recent cases.[2] Some of the recent cases have decreed dissolution,[3] and others have gone no further than to appoint a receiver to wind up the corporate affairs,[4] but in general the difference is in the form of relief and not in the grounds for relief.[5] If the court recognizes such a power to interfere in corporate affairs, the principal problem concerns the propriety of its exercise.[6] The cases seem to point to receivership or dissolution in either of two principal types of situations: (1) where the corporate purpose has failed or is in imminent danger of failure,[7] or (2) where the management or controlling majority has been guilty of acts tantamount to fraud.[8] Where the case does

[1] See the cases collected in 43 A.L.R. 242 (1926); 61 A.L.R. 1212 (1929); and 91 A.L.R. 665 (1934). Hornstein, "A Remedy for Corporate Abuse—Judicial Power to Wind up a Corporation at the Suit of a Minority Stockholder," 40 COL. L. REV. 220 (1940), lists California, Colorado, Illinois, Maryland, Massachusetts, Nebraska, Ohio, South Dakota and Utah as adhering to this view. See, e.g., People v. Shurtleff, 353 Ill. 248, 187 N.E. 271 (1933). California may be a doubtful member of this group in the light of Misita v. Distiller's Corp., 54 Cal. App. (2d) 244, 128 P. (2d) 888 (1942); and Koshaba v. Koshaba, 56 Cal. App. (2d) 302, 132 P. (2d) 854 (1942). The recent case of Richter v. Richter, (Ga. 1947) 43 S.E. (2d) 635, appears to deny inherent power to dissolve a corporation, but the court's remarks to that effect may be merely dicta inasmuch as the case presented did not call for such drastic relief.

[2] For example, Lichens Co. v. Standard Commercial Tobacco Co., (Del. Ch. 1944) 40 A. (2d) 447; Bailey v. Proctor, (C.C.A. 1st, 1947) 160 F. (2d) 78. Hornstein, "A Remedy for Corporate Abuse," 40 COL. L. REV. 220 (1940) cites fifty-two cases as supporting this view. 41 MICH. L. REV. 714 (1943), lists statutes of Arizona, California, District of Columbia, Illinois, Louisiana, Massachusetts, Minnesota, North Carolina, Pennsylvania, Rhode Island, Washington and West Virginia as leading to the same result.

[3] Cowin v. Salmon, 248 Ala. 580, 28 S. (2d) 633 (1946); Riley v. Callahan Mining Co., 28 Idaho 525, 155 P. 665 (1916). Cf. 16 FLETCHER, CYC. CORP., perm. ed., § 7671 (1942).

[4] Tower Hill-Connellsville Coke Co. v. Piedmont Coal Co., (C.C.A. 4th, 1933) 64 F. (2d) 817; Bowen v. Bowen-Romer Flour Mills Corp., 114 Kan. 95, 217 P. 301 (1923).

[5] 45 AM. JUR., Receivers, § 63.

[6] "But these are harsh measures which should not be resorted to except in extreme cases." Arcola Sugar Mills Co. v. Burnham, (C.C.A. 5th, 1933) 67 F. (2d) 981 at 982 (denying dissolution or receivership where accounting was an adequate remedy).

[7] Hall v. City Park Brewing Co., 294 Pa. 127, 143 A. 582 (1928) (corporate purpose made unlawful by Volstead Act); Noble v. Gadsden Land & Improvement Co., 133 Ala. 250, 31 S. 856 (1901) (corporation abandoned by its stockholders); 1 MORAWETZ, PRIVATE CORPORATIONS, 2d ed., § 284 (1886); 1 TARDY'S SMITH ON RECEIVERS, 2d ed., §§ 301-2 (1920).

[8] Goodwin v. von Cotzhausen, 171 Wis. 351, 177 N.W. 618 (1920) (fraud); Klugh v. Coronaca Milling Co., 66 S.C. 100, 44 S.E. 566 (1902) ("gross" mis-

not present one of these factors, such drastic relief is almost invariably denied,[9] either because the court does not feel warranted in substituting its judgment for that of the majority on any less compelling ground [10] or because a less stringent remedy may be adequate.[11] Dissension among corporate officers, directors, or stockholders is often held to afford a basis for receivership or dissolution,[12] but it is believed that such relief will not be granted unless the dissension is accompanied by fraud upon the stockholder's rights,[13] or unless the dissension has practically paralyzed the functions of the corporation or threatened to destroy the corporate purpose.[14] No case has been found where factional dissension alone has been held to warrant dissolution or receivership other than pendente lite,[15] and it seems clear that dissension is merely an element, albeit an important one, contributing to the over-all case for relief.[16] The principal case is illustrative.[17] Although there was dissension between two equal stockholder factions, there was no showing of fraud, and it appeared that the corporation was prospering and was effectively operating under a lawfully constituted board of directors. On the facts alleged, dismissal of the petition was entirely proper.

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management); 16 FLETCHER, CYC. CORP., perm. ed., §§ 7714, 7727 (1942); BALLANTINE, CORPORATION, rev. ed., § 304 (1946). Cf. Hayes v. Jasper Land Co., 147 Ala. 340, 41 S. 909 (1906), denying receivership where directors and officers were solvent.

[9] Thus, it is repeatedly held that receivership or dissolution is not an available remedy to a minority stockholder whose only complaint is that the management has exercised poor business judgment [Shonnard v. Elevator Supplies Co., Inc., 111 N.J. Eq. 94, 161 A. 684 (1932)], or that he is dissatisfied with management methods [Lewis v. Commonwealth Securities, Inc., (D.C. Del. 1943) 51 F. Supp. 33].

[10] Edison v. Edison United Phonograph Co., 52 N.J. Eq. 620, 29 A. 195 (1894).

[11] Geiman-Herthel Furniture Co. v. Geiman, 160 Kan. 346, 161 P. (2d) 504 (1945).

[12] See the cases collected in 43 A.L.R. 242 (1926); 61 A.L.R. 1212 (1929); and 91 A.L.R. 665 (1934).

[13] As in Green v. National Advertising & Amusement Co., 137 Minn. 65, 162 N.W. 1056 (1917); Boothe v. Summit Coal Mining Co., 55 Wash. 167, 104 P. 207 (1909).

[14] As in Flemming v. Heffner & Flemming, 263 Mich. 561, 248 N.W. 900 (1933); Saltz v. Saltz Bros., 65 App. D.C. 393, 84 F. (2d) 246 (1936); Cowin v. Salmon, 248 Ala. 580, 28 S. (2d) 633 (1946); Bowen v. Bowen-Romer Flour Mills Corp., 114 Kan. 95, 217 P. 301 (1923).

[15] McDougall v. Huntingdon & Broad Top R. & C. Co., 294 Pa. 108, 143 A. 574 (1928).

[16] 41 MICH. L. REV. 714 (1943).

[17] McGuire v. Kaysen-McGuire Co., 184 Minn. 553, 239 N.W. 616 (1931); Stott Realty Co. v. Orloff, 262 Mich. 375, 247 N.W. 698 (1933); and Hlawati v. Maeder-Hlawati Co., 289 Pa. 233, 137 A. 235 (1927), are among the other cases holding that dissension alone, without a showing of fraud or corporate paralysis, affords no basis for receivership or dissolution.