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CORPORATIONS-VOLUNTARY DISSOLUTION - RIGHTS OF MINORITY STOCKHOLDERS

Bayard E. Heath S.Ed.
University of Michigan Law School

CORPORATIONS — VOLUNTARY DISSOLUTION — RIGHTS OF MINORITY STOCKHOLDERS—The directors of defendant, a New Jersey corporation, in an effort to effect corporate tax savings and simplification of operations, submitted

the following plan to its shareholders: Defendant was to sell all of its operating assets to *X*, a Pennsylvania corporation which had been formed by the directors and was to receive as consideration all of the capital stock of *X*. Then defendant was to be dissolved and *X*'s stock and any corporate surplus was to be distributed to the stockholders. The necessary two-thirds majority of the stockholders, as required by statute,[1] voted to sell the operating assets and to dissolve. Plaintiff, a minority stockholder, sued to enjoin the sale and dissolution and prayed a temporary injunction pending final hearing. *Held*, interlocutory injunction denied. *Light v. National Dyeing and Printing Company*, (N.J. 1947) 55 A. (2d) 233.

As a basis for his complaint plaintiff relied primarily on the New Jersey case of *Riker and Son v. United Drug Co.*[2] There, under a similar fact situation, the directors had adopted resolutions to sell all the corporate assets and to dissolve the corporation. The Court of Chancery refused to enjoin the corporation from submitting to the stockholders for approval the resolution pertaining to dissolution, holding that if the necessary statutory requirements are complied with, and there is no fraud, dissolution is proper.[3] Plaintiff appealed, and the Court of Errors and Appeals reversed that portion of the lower court's holding which denied the injunction.[4] The higher court held that in effect the dissolution was but one link in an illegal merger.[5] Probably the plan was not technically a merger,[6] and the decision can perhaps be explained on the theory that the court added to the statutory requirements of voluntary dissolution its own requirement of a valid business motive. Since it had not been alleged that any fraud was being perpetrated against the minority stockholders, this is the only rational basis for sustaining the holding. The statutory language permitting voluntary dissolution has remained essentially the same since the *Riker* case was decided.[7] Therefore, the present decision of the Chancery Court appears to follow the view of the lower court in the *Riker* case, in spite of the contrary view of the Court of Errors and Appeals, by not inquiring into the motives

[1] N.J. Rev. Stat. (1937) §§ 14:3-5, 14:13-1.

[2] 79 N.J. Eq. 580, 82 A. 930 (1912). In this case the plan was to sell all of the assets of the New Jersey corporation to a newly created Massachusetts corporation in return for all of its capital stock. Then the New Jersey corporation was to be dissolved. The reasons for this plan were to provide for additional capital and to eliminate subsidiaries.

[3] 78 N.J. Eq. 319, 79 A. 1044 (1911).

[4] Supra, note 2.

[5] At the time of this case the New Jersey statute permitted only the merger of New Jersey corporations. N.J. Laws (1896) § 104, p. 309. Today the sort of "illegal merger" condemned in the Riker case is now specifically authorized by statute. N.J. Rev. Stat. (1937) § 14:12-1.

[6] It was not contemplated that the New Jersey corporation would also pass its powers, rights, duties and obligations to the Massachusetts corporation. The court in the principal case specifically stated that the fact situation of the principal case did not involve a merger. Although it stated that the Riker case involved a merger, it is submitted that the court so stated, merely to deny the authority of the Riker case. See 15 FLETCHER, CYC. CORP., §§ 7044 and 7045 (1938) and cases cited therein.

[7] The statute in effect at the time of the Riker case was N.J. Laws (1896) c. 185, § 31, p. 287. The statute in effect today is N.J. Rev. Stat. (1937) § 14:13-1.

for dissolution unless fraud is alleged.[8] What the court would consider a fraud upon the minority stockholders is not clear. Apparently fraud will be found if threat of dissolution is being used for the purpose of forcing stockholders to sell their stock at the price of the stockholder seeking dissolution.[9] But dictum in one case supports the proposition that the statutory majority could dissolve the corporation in order to "freeze out" the minority and appropriate the business.[10] This dictum must be qualified, however, by the fact that the particular corporation's main business had been rendered unlawful by statute. In another case, even though the corporation involved was a going concern, the Seventh Circuit Court of Appeals, in applying West Virginia law, refused to enjoin a dissolution instituted for the purpose of "freezing out" the minority.[11] The court did attempt to relieve the minority, however, by permitting a damage action against the majority stockholders for breach of "trust." At least it is certain that in New Jersey, so long as there is no attempt to oust the minority from a going corporation, business motives which induce dissolution will not be held to constitute a fraud upon the minority. There is much to be said for this position. Continuation of a business enterprise is a matter of business judgment, and the statute has specified that two-thirds of the stockholders shall have a certain discretion. The court should not interfere with this discretion by assuming to determine whether the judgment of the majority is sound.[12]

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[8] It cannot be said that the business motive of ceasing to do business in New Jersey for the purpose of reducing taxes is any more commendable than one for the purpose of carrying on business in Massachusetts.

[9] Reade v. Broadway Theatre Co., 99 N.J. Eq. 282, 132 A. 477 (1926).

[10] Meyerhoff v. Bankers Securities, Inc., 105 N.J. Eq. 76, 147 A. 105 (1929).

[11] Lebold v. Inland Steel Co., (C.C.A. 7th, 1936) 82 F. (2d) 351, cert. den., 316 U.S. 675, 62 S.Ct. 1045 (1942), note 10 UNIV. CHI. L. REV. 77 (1942). Contra, Theis v. Spokane Falls Gas Light Co., 34 Wash. 23, 74 P. 1004 (1904).

[12] Beidenkopf v. Des Moines Life Ins. Co., 160 Iowa 629, 142 N.W. 434 (1913); Bowditch v. Jackson, 76 N.H. 351, 82 A. 1014 (1912); Dammann v. Hydraulic Clutch Co., 45 Cal. App. 511, 187 P. 1069 (1920), disapproval of motive not sufficient reason for court to interfere. In Beutelspacher v. Spokane Savings Bank, 164 Wash. 227, 2 P. (2d) 729 (1931), the court refused to determine whether the action was expedient or wise. For discussions of voluntary dissolutions see: Sprecher, "The Right of Minority Stockholders to Prevent the Dissolution of a Profitable Enterprise," 33 KY. L.J. 150 (1945); Fain, "Limitations of the Statutory Power of Majority Stockholders to Dissolve a Corporation," 25 HARV. L. REV. 677 (1912); 2 MINN. L. REV. 526 (1918).