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CORPORATIONS-FOREIGN CORPORATIONS-JURISDICTION IN DERIVATIVE SUITS

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CORPORATIONS—FOREIGN CORPORATIONS—JURISDICTION IN DERIVATIVE SUITS—As an aftermath of the much publicized circus fire in Hartford, Connecticut, on July 6, 1944, owners of 37 per cent of the stock of the circus cor-

poration brought a derivative action against the officers and directors alleging failure to observe proper precautions and asking that the corporation be indemnified for losses sustained and for an accounting for certain corporation funds spent for the benefit of one of the defendant directors. The suit was instituted in New York where the corporation was licensed to do business although the circus was incorporated in Delaware, wintered in Florida, and the cause of action arose in Connecticut. Defendants moved to dismiss on the ground, inter alia, that New York ought not to assume jurisdiction because of the doctrine of forum non conveniens. *Held*, motion denied; derivative stockholders' actions can be properly brought in a state other than that of the corporation's domicile.¹ The court recognized the general rule, grounded on considerations of public policy, convenience and expediency that courts decline jurisdiction of a suit to interfere with or control the internal affairs of a foreign corporation,² but decided that the instant suit did not involve such attempted interference or control. *North v. Ringling*, (N.Y. 1946) 63 N.Y.S. (2d) 135.

Without doubt, a corporation is subject to a derivative suit in the state of incorporation whether instituted by a resident or a non-resident,³ but when the action is brought in any other state, the picture is less clear. Where the court has jurisdiction over the parties and subject-matter, jurisdictional objections, to prevail, must relate to inability to make a decree effective⁴ or to considerations of policy and discretion.⁵ Most courts say they will not interfere in purely internal

¹ *Miller v. Quincy*, 179 N.Y. 294, 72 N.E. 116 (1904); *Goldstein v. Lightner*, 266 App. Div. 357, 42 N.Y.S. (2d) 338 (1943); *Pratt v. Robert S. Odell & Co.*, 49 Cal. App. (2d) 550, 122 P. (2d) 684 (1942). See also *Ernst v. Rutherford B. S. Gas Co.*, 38 App. Div. 388 at 391, 392, 56 N.Y.S. 403 (1899), where the court said, "The right of the plaintiffs as stockholders to compel a restoration by the officers to the corporation is co-extensive with the right of the corporation itself. Surely the corporation would not be confined to the courts of the State which created it, but could pursue its officers in whatever jurisdiction it might find them; otherwise it would be remediless if those officers remained without the State."

² See 17 FLETCHER, *CYC. CORP.*, perm. ed., §§ 8425-8429 (1933), and *Langfelder v. Universal Laboratories*, 293 N.Y. 200, 56 N.E. (2d) 550 (1944), for discussion of the rule. See also *Koster v. (American) Lumbermens Mutual Casualty Co.*, (D.C. N.Y. 1945) 64 F. Supp. 595, affirmed, (C.C.A. 2d, 1946) 153 F. (2d) 888; *Hirshhorn v. Mine Safety Appliance Co.*, (D.C. Pa. 1944) 54 F. Supp. 588, in which the court takes jurisdiction under an exception to the general rule of cases where directors are guilty of a breach of trust; and *Weiss v. Routh*, (C.C.A. 2d, 1945) 149 F. (2d) 193, in which the court stated that if considerations of convenience, efficiency, or justice point to courts of the domicile as appropriate tribunals, a court in a foreign state should not hear the case although it has the power to do so.

³ *Kent v. Universal Film Mfg. Co.*, 200 App. Div. 539, 193 N.Y.S. 838 (1922).

⁴ *Sternfeld v. Toxaway Tanning Co.*, 290 N.Y. 294, 49 N.E. (2d) 145 (1943) (jurisdiction of an action seeking a declaration that a preferred stock issue of a North Carolina corporation was illegal declined on the ground that its judgment could not be enforced and plaintiff could not be granted complete relief without cancellation of a recapitalization proceeding under North Carolina law).

⁵ 17 FLETCHER, *CYC. CORP.*, perm. ed., § 8427 (1933); *Bickert v. Kelly-Springfield Tire Co.*, 243 App. Div. 72, 276 N.Y.S. 372 (1934) (court declined jurisdiction of action to nullify consolidation of two foreign corporations because it involved internal affairs of a corporation regulated by the law of another jurisdiction).

affairs of a foreign corporation, but a large area of discretion enters the picture in the court's concept of a purely internal matter. The Maryland court stated the rule to be: "... when the act complained of affects the complainant solely in his capacity as a member of the corporation . . . and is the act of the corporation . . . then such act is the management of internal affairs of the corporation, and, in the case of a foreign corporation, our courts will not take jurisdiction. Where, however, the act of the foreign corporation complained of affects the complainant's individual rights only, then our courts will take jurisdiction whenever the cause of action arises here."⁶ This test, followed by some courts and criticized by others,⁷ applied to the principal case would have led the court to decline jurisdiction because the cause of action arose in a foreign state and complainants were affected only in their capacity as members of the corporation. Applying the general rule of non-interference with internal affairs of foreign corporations, courts, in recent cases, have declined jurisdiction of stockholders' actions to compel redemption of stock or declaration of a dividend by a foreign corporation,⁸ to cancel a contract entered into between a director and a foreign corporation and for an accounting,⁹ to obtain a declaration that a preferred stock issue by a foreign corporation was illegal,¹⁰ to enjoin a foreign corporation from acting on a resolution of the board to retire its preferred stock¹¹ and to obtain relief from effects of merger of two foreign corporations.¹² The general rule is very strictly applied where the controversy involves interpretation of a statute of the state creating the foreign corporation,¹³ or where a prior suit for the same relief is pending in the state of incorporation.¹⁴ On the other hand, emergency or urgent need may induce the court to take jurisdiction¹⁵ and while fraud on the part of officers or directors is not of itself decisive,¹⁶ it seems to be a factor to be weighed by the court.¹⁷ The New York court recently heard an action to restrain trustees of a New Jersey corporation from acting under an expired trust arrangement¹⁸ and reversed a decision declining jurisdiction of a derivative suit alleging waste of corporate assets by directors of a foreign corporation.¹⁹ The

⁶ North State Copper & Gold Min. Co. v. Field, 64 Md. 151, 20 A. 1039 (1885).

⁷ FLETCHER, CYC. CORP., perm. ed., § 8429 (1933).

⁸ Cohn v. Mishkoff Costello Co., 256 N.Y. 102, 175 N.E. 529 (1931); Stressburger v. Singer Mfg. Co., 263 App. Div. 518, 33 N.Y.S. (2d) 424 (1942); Goldstein v. Lightner, 266 App. Div. 357, 42 N.Y.S. (2d) 338 (1943).

⁹ Hopkins v. Great Western Fuse Co., 343 Pa. 438, 22 A. 717 (1941).

¹⁰ Sternfeld v. Toxaway Tanning Co., 290 N.Y. 294, 49 N.E. (2d) 145 (1943).

¹¹ Stieglitz v. Electrol, Inc., (N.Y. S. Ct. 1945) 60 N.Y.S. (2d) 490.

¹² Langfelder v. Universal Laboratories, 293 N.Y. 200, 56 N.E. (2d) 550 (1944).

¹³ Meade v. Pacific Gamble Robinson Co., 21 Wash. (2d) 866, 153 P. (2d) 686 (1944); Kelley v. American Sugar Refining Co., 311 Mass. 617, 42 N.E. (2d) 592 (1942); 17 FLETCHER, CYC. CORP., perm. ed., § 8425 (1933).

¹⁴ Healey v. R. J. Reynolds Tobacco Co., (D.C. N.C. 1942) 48 F. Supp. 207.

¹⁵ 7 FLETCHER, CYC. CORP., perm. ed., § 8427 (1933).

¹⁶ Sternfeld v. Toxaway Tanning Co., 290 N.Y. 294, 49 N.E. (2d) 145 (1943).

¹⁷ Stieglitz v. Electrol, Inc., (N.Y. S. Ct. 1945) 60 N.Y.S. (2d) 490.

¹⁸ In re Atlantic City Ambassador Hotel Corp., (N.Y. S. Ct. 1946) 62 N.Y.S. (2d) 62.

¹⁹ Goldstein v. Lightner, 266 App. Div. 357, 42 N.Y.S. (2d) 338 (1943).

principal case indicates a view on the part of the same court that an action based on alleged mismanagement and neglect of duty by directors of a foreign corporation is not one which interferes solely with internal affairs of a foreign corporation.

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