Boston College Law Review

Volume 1 | Issue 2 Article 31

4-1-1960

Corporations—Constitutional Law—State's Reserved Power to Amend Corporate Charters.—Coyne v. Park & Tilford Distillers Corporation

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his failure to continue performance, and has permitted him to recover damages for the breach. The decision is reasonable in the light of the modern trend away from the rigidity of the common law principles restricting duress to threats of physical violence or actionable wrongs. Economic duress can prevent performance of a contract as readily as can physical duress, and if the latter constitutes grounds for treating the contract as breached, there seems to be no valid reason why the former should not be treated in the same manner. The legality of plaintiff's right to sell to whomever he may choose can not be questioned; yet, it can be understood why the court considered as wrongful his threat to sell to an undesirable purchaser solely for the purpose of ruining defendant's business. The case was decided on grounds of fundamental fairness, a concept found far more frequently at equity than at law, but since the ultimate object of the business compulsion doctrine seems to be the promotion of fair dealing in business contracts, and since the handling of this case by the New Jersey court is in accord with this objective, the decision is a sound one.

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Corporations—Constitutional Law—State's Reserved Power to Amend Corporate Charters.—*Coyne v. Park & Tilford Distillers Corporation.*[1] —Plaintiffs, minority stockholders owning approximately 4 per cent of the stock of a subsidiary seek to enjoin its merger pursuant to Delaware General Corporation Law, Ch. 8, § 253, with its parent which owned the balance of its stock. Plaintiffs contend that the provisions of the merger statute empowering the parent to pay minority dissident shareholders the value of their stock in cash, thereby eliminating their vested interest in the merged corporation, is unconstitutional. From a decision granting defendant's motion for summary judgment, the Supreme Court of Delaware on appeal affirmed. Held: The statute requiring a statement from the parent to the shareholders of the subsidiary being merged of "the terms and conditions of the merger, including the securities, cash, or other consideration to be issued, paid or delivered by the parent corporation upon surrender of each share of the merged corporation not owned by the parent corporation,"[2] empowers the parent to pay dissenting minority shareholders of the subsidiary the value of their stock in cash. The statute as so construed is not unconstitutional despite being enacted after the plaintiffs acquired their stock in the subsidiary, even though at that time the statute permitted only conversion of shares of the subsidiary into like shares of the parent corporation on a merger.

Coyne represents a further chipping away of the doctrine of *Keller v. Wilson*,[3] and the rights of minority interests. In the *Keller* case an amendment to the corporate charter, pursuant to statutory authorization, elimi-

[1] 154 A.2d 893 (Del. Ch. 1959).
[2] Del. Rev. Code 1935, § 253.
[3] 21 Del. Ch. 391, 190 Atl. 115 (1936).

nating accrued and unpaid dividends on cumulative preferred stock by converting the preferred into common without payment of the accumulated dividends was held unconstitutional as a deprivation of the preferred stockholders' vested rights to arrearages. The amended statute was condemned as violative of the general principle of statutory construction that legislation ought to be prospective rather than retroactive in effect. Subsequently the cases of *Federal United Corporation v. Havender*,[4] and *Shanik v. White Sewing Machine Corporation*[5] were decided. In *Havender*, what the parent could not do directly by amendment of the corporate charter, namely eliminate the cumulative preferred, it was able to do indirectly by merger with a totally owned paper subsidiary. As a result the cumulative preferred shareholders were forced, either to submit to a reclassification which eliminated the cumulative preferred or, where dissatisfied, to exercise appraisal rights by which they would be entitled to the fair value of their original holdings. In *Shanik*, the cumulative preferred was eliminated by the use of an optional type plan, whereby the cumulative preferred shareholders were given an option either to participate in a class of prior preferred which had divided priority or retain their old cumulative preferred with little possibility of ever receiving dividends. The plan was upheld on the ground that the only preference to which the cumulative preferred shareholders were entitled was to receive dividends prior to the common. The *Havender* and *Shanik* inroads, clearly affirmed by *Coyne*, are used to nullify plaintiffs' argument, by showing that at the time plaintiffs acquired their stock in the subsidiary, the conversion of their shares into other types of corporate securities such as notes, bonds, or callable preferred stock was permissible. By issuing other types of securities, callable within certain periods, the corporation could have subserved the very same end, namely termination of a shareholder's interest.

New York, has never accepted *Keller*, and on the contrary flatly rejected it in *McNulty v. W. & J. Sloane*,[6] a case involving a reclassification of shares under permissive legislation, the purpose and effect of which was to eliminate cumulative preferred dividends. The court summarily dismissed the plaintiffs' constitutional argument on the retroactive aspect of the statute. "The very essence of the reserved power of the legislature is to enable it to change preferential rights of the different classes of stock in a corporation."[7] "The act was intended to apply . . . to cumulative dividends which accrued, . . . prior to the effective date of the amendment."[8] *Anderson v. International Mineral and Chemicals Corp.*,[9] a logical outgrowth of *McNulty*, and an indorsement of *Havender*, emphasizes further New York's disregard for *Keller*. *Keller* and its vested right concept that stockholders'

[4] 24 Del. Ch. 318, 11 A.2d 331 (1940).
[5] 25 Del. Ch. 371, 19 A.2d 831 (1941).
[6] 184 Misc. 835, 54 N.Y.S.2d 253 (Sup. Ct. 1945).
[7] Id. at 843, 54 N.Y.S.2d at 261.
[8] Id. at 845, 54 N.Y.S.2d at 262.
[9] 295 N.Y. 343, 67 N.E.2d 573 (1946).

interests are untouchable by subsequent legislation, has succumbed by attrition from within Delaware, and disrepute from without as in New York.

The *Coyne* decision is of importance in the corporate world, as significant of the growing receptiveness of courts towards the simplification of holding and operating company relationships. Despite the fact that it will undoubtedly be accepted by most jurisdictions,[10] it fails to appreciate the tenuous position of minority shareholders. These minority shareholders do not seek to enjoin the merger simply because they disfavor merger; on the contrary, merger to them is immaterial. They seek only to remain within the corporate structure. Cash, even where the consideration is indisputably fair, is of no comfort to these shareholders who, having perhaps suffered through the lean years, now seek to reap the benefits of plentiful years to come.

Coyne, furthermore, is distinguishable from the *McNulty* situation in that the plaintiffs' interest in *Coyne* does not serve a legitimate corporate purpose. In *McNulty,* cancellation of the cumulative preferred stock does so since the corporation seeks to initiate a stable dividend policy with respect to the common stock thereby increasing its marketability.

Another factor to be considered with respect to the *Coyne* decision is the tax consequence to the shareholders. Shareholders, forced to terminate their interest, may be subject to substantial capital gain taxes. To subject these shareholders to substantial taxes, in the absence of a legitimate corporate purpose, is patently unfair. Although one obviously assumes the risk of having his shareholder's interest terminated in furtherance of a legitimate purpose, he does not assume such risk in its absence.

LEON ARONSON

Customs Duties—Deductions—Tarriff Act—Statutory Construction.— ***International Packers, Limited v. United States.***[1]—Plaintiff, an importer of canned meat, brought this action in the United States Customs Court from a reappraisement of the value of imported corned beef under the Tariff Act.[2] This merchandise had been valued at the United States sales price less certain deductions[3] allowable under the statute in order to arrive at the United States value for the purpose of applying § 1402(e) of the Tariff Act.[4]

[10] Beloff v. Consolidated Edison Company of New York, 300 N.Y. 11, 87 N.E.2d 561 (1949).

[1] 171 F. Supp. 834 (Cust. Ct. 1959).

[2] 46 Stat. 708, amended, 19 U.S.C. § 1402(a, d-f) (1958).

[3] The deductions that were allowed included certain allowances for ocean freight, insurance, general expenses, profits, loading permits, stamp on bill of lading, Argentine statistical charges, exchange, and placing on board charge.

[4] § 402 of the Tariff Act of 1930, as amended by § 1402(e), in effect during February 1956, at the time of the exportation of this merchandise, provided: "The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale for domestic consumption packed ready for delivery, in the principal market of the United States to all purchasers,