Boston College Law Review

Volume 2 | Issue 1 Article 27

10-1-1960

Corporations—Dissolution—Shareholder Deadlock.—Jackson v. Nicolai-Neppach Co.

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injunction decides the issue between the parties because the limited life of the design renders further litigation economically unfeasible.[24]

Despite any inconsistency with prior case law and regulations, the result reached seems to be in accord with the economic philosophy behind the copyright law: "Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered."[25]

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Corporations—Dissolution—Shareholder Deadlock.—*Jackson v. Nicolai-Neppach Co.*[1]—Plaintiff, fifty per cent owner of defendant corporation's outstanding stock, occupied one seat on the three-man board of directors, the other two directors being the owners of the balance of the shares. To secure equal representation on the board, plaintiff sought to amend the by-laws to increase the number of directors to four. A shareholder deadlock developed over the proposed amendment and as a result of the impassé the plaintiff brings an action to dissolve the corporation.[2] The Supreme Court of Oregon affirmed the dismissal of the suit. HELD: The plaintiff must establish that a dissolution will be beneficial to the shareholders.

Because continuity of existence is one of the fundamental differences between corporations and other associations, courts have refused to assume jurisdiction of petitions for dissolution where such remedy has not been provided by statute.[3] While there are jurisdictions which believe that a court of equity has inherent power to liquidate and wind up the affairs of a corporation,[4] even in such jurisdictions an allegation of a shareholder

[24] H. M. Kolbe Co. v. Armgus Textile Co., supra note 12, at 557 (dissenting opinion).

[25] Mazer v. Stein, 347 U.S. 201, 219 (1954).

[1] 348 P.2d 9 (Oregon 1959).

[2] No contention was made by plaintiff that the corporation had not thrived under its present management, nor was it urged that she had been denied a voice in management or that her interests had been injured in any way. Plaintiff's evidence was directed at showing an inability to elect any new directors at four successive annual meetings. Suit was brought under Ore. Rev. Stat. § 57.595(1)(a)(c) (1957): "(1) The circuit courts shall have full power to liquidate the assets and business of a corporation; (a) In an action by a shareholder when it is established: . . . . (c) that the shareholders are locked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; . . ."

[3] Alabama Coal & Coke Co. v. Shackelford, 137 Ala. 224, 34 So. 833 (1903); Wall & Beaver Street Corp. v. Munson Line, Inc., 58 F. Supp. 101 (D. Md. 1943); Lush'us Brand Distributors, Inc. v. Fort Dearborn Lithograph Co., 330 Ill. App. 216, 70 N.E.2d 737 (1946); Wallace v. Pierce-Wallace Pub. Co., 101 Iowa 313, 70 N.W. 216 (1897); Wills v. Nehalem Coal Co., 52 Ore. 70, 96 P. 528 (1908).

See also Ballantine, Corporations § 304 (1946); 16 Fletcher, Cyc. Corp., §§ 8077, 8080 (perm. ed. 1942).

[4] Bowen v. Bowen-Romer Flour Mills Corp., 114 Kan. 95, 217 P. 301 (1923); Flemming v. Heffner & Flemming, 263 Mich. 561, 248 N.W. 900 (1933); Guaranty Laundry Co. v. Pulliam, 200 Okl. 185, 191 P.2d 975 (1948).

deadlock alone is generally held insufficient to support the suit.[5] As a result of these decisions and the impact they have had on modern corporation law, many states have enacted legislation specifically granting to equity courts jurisdiction to dissolve a corporation with deadlocked shareholders. A number of the involuntary dissolution statutes[6] (e.g., the Oregon statute involved in this case) are patterned after the dissolution provisions of the Model Business Corporation Act.[7]

This decision is only the second in the United States involving an interpretation of the shareholder deadlock provision of the Model Act, the first being the Wisconsin case of *Strong v. Fromm Laboratories*.[8] In both cases the courts held that the statutory provisions were not mandatory, but merely conferred authority on the equity court to hear the case upon the satisfaction of certain jurisdictional requirements, a decree of final dissolution being a matter of judicial discretion. The cases disagree on whether actual benefit to the shareholders is a proper subject for consideration. In the *Strong* case the Wisconsin court takes the position that whether the corporate liquidation would be beneficial or detrimental to the stockholders "is not a material factor to be considered. . . ."[9] whereas *Jackson* states it "is a factor which may properly be considered."[10] Two main reasons support the Wisconsin interpretation. In the first place, if the legislature intended benefit to shareholders to be an important consideration for dissolution, it would have so worded the statute;[11] and secondly, the fact that "irreparable injury" under both statutes is a condition precedent to relief with regard to directorate deadlock, while no such language is used in the shareholder deadlock provision, indicates a legislative intent to exclude such consideration from the latter provision. With regard to these two points, the following must be considered in evaluating the propriety of the Oregon interpretation. Since the Oregon statute is entitled "Jurisdiction of court of equity to liquidate assets and business of corporations,"[12] any mention of benefit to shareholders in the statute would of necessity become a prerequisite to the courts obtaining jurisdiction. Thus, while benefit to shareholders is not a condition precedent to jurisdiction, it may still properly be considered by the court in arriving at the final decree. Any interpretation which requires

[5] Reid Drug Co. v. Salyer, 268 Ky. 522, 105 S.W.2d 625 (1937); Dorf v. Hill Bus Co., 140 N.J. Eq. 444, 54 A.2d 761 (1947); Hammond v. Hammond, 216 S.W.2d 630 (Tex. Civ. App. 1948).

[6] Supra note 2. See also, Ill. Ann. Stat. ch. 32, § 157.86 (Smith-Hurd 1954); N.D. Rev. Code § 10-2116 (Supp. 1957); Wis. Stat. § 180.769 (Supp. 1957).

[7] Model Business Corporation Act § 90 (1953 Revision).

[8] 273 Wis. 159, 77 N.W.2d 389 (1956).

[9] Id. at 172, 77 N.W.2d at 395.

[10] 348 P.2d 19.

[11] Minn. Stat. § 301.49(4) (1957) requires a showing that the corporate "business cannot longer be conducted with advantage to its shareholders." N.Y. Gen. Corp. Law § 117 states, "If upon the application for the final order, it shall appear that . . . a dissolution will be beneficial to the stockholders or members . . . the court must make a final order dissolving the corporation . . . ."

[12] 348 P.2d at 15.

the court to order a dissolution upon the establishment of the jurisdictional minimums, without such consideration, appears to negative the aspect of discretion so strongly indorsed by both decisions. Secondly, the omission of the term "irreparable injury" with regard to shareholder deadlock cannot be read to mean that benefit to shareholders is not to be considered, since the two terms are not synonymous.

The Oregon decision seems to be the more satisfactory interpretation while at the same time offering a method of resolving the dispute.[13] In the language of the court, "The common law rule was thought to be an insufficient safeguard of the rights of the half owner of a corporation who happened to be out of power . . . any statutory rule which provided for liquidation as a matter of law would insufficiently safeguard the rights of the half owner who happened to be in power."[14] Finally, keeping in mind the basic aversion of courts to the granting of a corporate dissolution absent a permissive statute, and the effect of such dissolution on a going business,[15] an interpretation which calls for more than the bare statutory minimum to confer equity jurisdiction supplies the judicial and practical approach so often lacking in a strict interpretation of a legislative enactment.[16]

AARON K. BIKOFSKY

Currency—Negotiable Instruments Law—Recovery of Funds from Transferee of Thief.—*Crawford v. Altex Construction Service Inc.*[1]— Plaintiff brought an action under Art. 2139 of the Louisiana Civil Code[2] to recover that portion of a sum of money stolen from him and turned over by the thief to the defendant in payment of a debt.[3] The First City Court of New Orleans dismissed for want of a cause of action. The Court of Appeals reversed. HELD: An owner has a right to recover stolen money even from a good faith holder by virtue of Art. 2139, which article has not been superseded either by the Negotiable Instruments Law[4] or the Federal power over currency.[5]

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[13] ". . . denial of relief at the present time may well lead to a fairer buy-sell agreement than the remedy of enforced liquidation . . ." 348 P.2d at 22.

[14] 348 P.2d at 16.

[15] "It is well settled that at common law and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist . . ." Oklahoma Gas Co. v. Oklahoma, 273 U.S. 257 (1927).

[16] For an excellent discussion of this subject see Carlos L. Israels, The Sacred Cow of Corporate Existence—Problems of Deadlock and Dissolution, 19 U. Chi. L. Rev. 778-93 (1952).

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[1] 120 So. 2d 845 (La. 1960).

[2] La. Rev. Civ. Code, Chap. 5, Art. 2139

"If money, or other stolen property be given in payment, the payment is not good, and the owner may recover the amount paid."

[3] The amount involved was part of $20,000 stolen from a cedar chest in plaintiff's home by a woman with whom he had been living.

[4] La. Rev. Stat. § 7 (1904).

[5] U.S. Const. Art. I § 8, cl. 5.