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Corporations - Transfer of Assets-Protest by Minority Stockholders

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NOTE

CORPORATIONS—TRANSFER OF ASSETS—PROTESTS BY MINORITY STOCKHOLDERS.—The common law rule required the unanimous consent of the shareholders to authorize a transfer of the assets of a corporation.[1] A proposed conveyance would be enjoined as an impairment of the shareholders contract, which was held to entitle him to a continuance of the enterprise until the appointed time for dissolution.[2] Only one exception was permitted to this strict rule. That was when the corporation was experiencing financial difficulties.[3]

The problem stripped to its skeleton lies in the satisfying of a minority stockholder. Theoretically there can be no solution short of a complete injunction against the majority action. This proposition has its basis in the contractual relation existing between the stockholder and the corporation.[4] On the other hand if due regard is given to the minority's right for a continuance of the corporation, the will of the majority is disregarded and operation of the enterprise continued over their protest. Conciliation is essential.[5] Statutes have been enacted in state after state, which have taken from the individual stockholder the right theretofore existing to defeat the sale to or welding of the assets of his corporation with those of another enterprise.[6] Section 16 of the Stock Corporation Law of New York provides, in effect, that sale, conveyance, lease, or transfer of a corporation's property can be effected by a two-thirds vote of the stock. Section 17 provides that the one-third not assenting to such action of the majority may apply to the court for an appraisal of the value of their stock and compel payment thereof. It is provided in Section 343 of the Civil Code of California: "No corporation may sell, transfer, exchange or otherwise dispose of all nor sub-

[1] Neither the directors nor a majority of the stockholders have power to sell or otherwise transfer all the property of a going prosperous corporation as against the dissent of a single stockholder. Abbott v. Rubber Co., 33 Barb. 578 (N.Y. 1861); People v. Ballard, 134 N.Y. 269, 32 N.E. 54 (1892); American Seating Company v. Ballard, 290 Fed. 896 (C.C.A. 6th, 1923); Des Moines Life and Annuity Co. v. Midland Insurance Co., 6 F. (2d) 228 (D.C. Minn. 1925).

[2] COOK, CORPORATIONS (8th ed. 1923) 3670.

[3] Wilson v. Proprietors of Central Bridge, 9 R.I. 590 (1870).

[4] Kean v. Johnson, 9 N.J. Eq. 401 (1835).

[5] There are circumstances arising which not only in the eyes of the majority, but also in the judicial discretion of the courts demand judicial aid for the good of the corporation. Under this, the liberal doctrine, the courts have found an escape from the harshness of the strict rule. A vote by the majority stockholders to windup the affairs of the corporation is justified where such corporation is in financial trouble and no longer accomplishes it's purpose. Treadwill v. Manufacturing Co., 7 Gray 393 (Mass. 1856). In the case of Forrester v. Boston and Montana Consolidated Copper Mining Co., 21 Mont. 544, 55 Pac. 229 (1898), the court granted an injunction restraining the majority's selling out the successful Montana corporation to a New York corporation of the same name such being done for the convenience of directors in the east. In Werle v. Northwestern Flint and Sandpaper Co., 125 Wis. 534, 104 N.W. 743 (1905), the Wisconsin Supreme Court, in answer to a minority stockholder's action to set aside a sale of the entire corporate property of the corporation, held the sale valid as it was made in good faith for the best interests of the stockholders. The company was on the verge of bankruptcy. See also Hill v. St. Louis Coke and Iron Corporation, 9 F. Supp. 69 (D.C. Del. 1935).

[6] Chicago Corporation v. Munds, 172 Atl. 452 (Del. 1934).

stantially all of its property and assets except under authority of a resolution of its board of directors approved by the vote or written consent of the stockholders entitled to exercise a majority of the voting power on such proposal before or after the adoption of the resolution by the directors." Section 180.11(2) of the Wisconsin Statutes permits the holders of a majority of the shares of stock outstanding to sell, convey or lease, or to authorize to be sold, conveyed or leased all of the corporate assets whenever that shall be necessary for the best interests of the enterprise. Similar statutes are in force in practically all other states, differing somewhat as to the necessary vote required. The principal question today involves not only the power to sell but the power of the majority to force upon the minority stock in a new corporation as a substitute for the original corporate stock.

In tracing the adjustments of the courts in aid of the minority stockholder sound reasoning is apparent. In earlier times corporations were little more than enlarged partnerships with monopolistic privileges.[7] Limited liability and large scale enterprises are more modern developments. Courts have found it difficult to mold decisions about trusts and holding companies into common law categories. It is generally accurate to say that courts today will not substitute their judgment for that of the directors of a corporation as to what is good business policy or as to what is beneficial to the corporation in the absence of evidence of fraud upon minority stockholders.[8] Practically coordinate with the idea of broad general power in the majority is the new problem of forcing shares in another corporation upon the minority as incidental in carrying out the plan of the majority.[9] Many of the statutes passed in the last decade merely sought definitely to give the majority the power to sell providing for the payment to dissenting stockholders. The legislature in Minnesota enacted a statute in 1925 authorizing corporations to sell or exchange their property.[9a] This statute among other matters literally provided that, "Every corporation heretofore or hereafter organized under the laws of this state may at any meeting of its board of directors, sell, lease, or exchange all of its property, rights, privileges and franchises upon such terms and conditions as its board of directors deem expedient, and for the best interest of the corporation when and as authorized by the affirmative vote of the holders of two-thirds of the shares of stock of the company issued and outstanding having voting power given at a stockholders' meeting duly called for

[7] See Patterson v. Shattuck Arizona Copper Co., 186 Minn. 611, 244 N.W. 281 (1932).

[8] Putnam v. Juvenile Shoe Corporation, 307 Mo. 74, 269 N.W. 593, 40 A.L.R. 1416 (1925); statutory remedy held exclusive remedy for minority stockholders complaining of sale of corporation property unless there was fraud, Wick v. Youngstown Sheet and Tube Co., 41 Ohio App. 253, 188 N.E. 515 (1932).

[9] A few isolated cases are on record previous to the last decade, such as Lauman v. Penn. R. R., 30 Pa. 42, 72 Am. Dec. 685 (1858), and Farmer's Loan and Trust Co. v. Toledo & S. W. H. Co., 54 Fed. 759 (C.C.A. 6th, 1893). It was held in both cases a dissenting shareholder cannot be forced to take the stock of the purchasing corporation. See also Elyton Land Co. v. Dowdell, 113 Ala. 177, 20 So. 981, 59 Am. St. Rep. 105 (1896); Doe Run Lead Co. v. Maynard, 283 Mo. 646, 223 S.W. 600 (1920); William Ricker and Son Co. v. United Drug Co., 79 N.J. Eq. 580, 82 Atl. 930 (1912).

[9a] Minn. Laws (1925) c. 320.

that purpose, or when authorized by the written consent of the holders of two-thirds of the shares of stock of the company issued and outstanding having voting power. Provided, however, that the certificate of incorporation may require the vote or written consent of a larger portion of the stockholders." In 1927 the legislature made provision for the consolidation of corporations and the payment to non-assenting stockholders for their stock.[10] The 1925 statute is not applicable to a mere transfer of assets in consideration of stock in the new corporation.[11] The 1927 statute merely provides for appraisal of non-assenting shares when the corporate property is voted for sale. In the wake of these statutory provisions, Minnesota has had two important cases raising the matter of a majority's right to force shares upon non-assenting stockholders in the transfer of the corporate property. In *Patterson* v. *Shattuck Arizona Copper Company*,[12] where holdings of dissenting stockholders objecting to consolidation of two Minnesota corporations into one Delaware corporation were small in comparison with that of the majority, the court gave the minority the option to take stock or the value thereof. In *Hill* v. *Page and Hill Company*[13] the same court went a step further in holding under the circumstances[14] that a majority of the stockholders of the Minnesota corporation were justified in authorizing the transfer of all its assets for stock in a Delaware corporation organized by them against the protest of a minority stockholder. The Minnesota corporation was justified in accepting stock in the Delaware corporation in payment for the property. In this power of the majority to force shares upon the dissenting stockholders Minnesota seems to stand practically alone. The courts of other states and the federal courts in the few cases adjudicated do not seem to have gone that far.[15]

In conclusion it may be said that in a majority of the states today it is provided that a shareholder cannot object to the transfer of the corporate assets; he buys his share or shares subject to the power of sale, transfer, merger and consolidation in the majority. As compensation for this broad power in the majority the minority who voice their consent as per statute have the privilege of securing cash for their stock. As to whether the majority can force the minority to accept shares instead of money, the Minnesota court seems to stand alone. The Wisconsin court has not had occasion to adjudicate these questions, with reference to transfer of stock, but the local statutes do give the power of sale to the majority. As to any indications of what rule Wisconsin might adopt, such is highly speculative. From the viewpoint of a minority stockholder it would seem to be a thrusting of unwanted liabilities and burdens upon him. THOMAS J. BERGEN.

[10] Minn. Laws (1927) c. 385.
[11] Patterson v. Shattuck Ariz. Copper Co., 186 Minn. 611, 244 N.W. 281 (1932).
[12] 186 Minn. 611, 244 N.W. 281 (1932).
[13] (Minn. 1936) 268 N.W. 705.
[14] The circumstances were in short—a depression scarred corporation operating on a losing basis and facing the time limit of its charter.
[15] Mason v. Pewabie Mining Co., 133 U.S. 50, 10 Sup. Ct. 224, 33 L.ed. 524 (1889); Koehler v. St. Mary's Brew. Co., 228 Pa. 648, 97 Atl. 1016 (1910); Ringler v. Atlas Portland Cement Company, 301 Pa. 176, 151 Atl. 815 (1930). The case of Voigt v. Rewick, 260 Mich. 113, 244 N.W. 446 (1912), seems to hold with the Minnesota court.