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Corporations: Minority stockholders may not in equity compel dissolution of going and solvent corporation for mismanagement.—First National Bank of Waterloo v. Fireproof Storage Building Co., 202 N.W. 14 (Iowa) involved the question of stockholders' rights against a corporation and against those in whose hands the management has been placed. The facts essential to this discussion are as follows: The Fireproof Storage Building Co. was organized in 1907. The organizers, Fowler, Sr., and Manhard, each took equal parts of a total of 200 shares of common stock and constituted the board of directors. The articles of incorporation empowered the corporation to buy, sell and lease real estate and erect buildings thereon. Manhard died in 1913 but prior to his death he collaterated a part or the whole of his stock, the bank becoming the owner of sixty-five shares. The remaining thirty-five shares originally owned by Manhard, ultimately came into the possession of the Fowler Co. This latter company was controlled by Fowler and he was also its president. From 1913 to 1916 there were no meetings of stockholders or directors nor any election of officers.

In 1916, the stockholders after waiving notice of a stockholders' meeting, elected Fowler, Jr., as director, he having been assigned one share of stock by the Fowler Co. There was a directors' meeting in 1919 and another in 1921, but the stockholders did not meet again until 1922. In 1919 the corporation sold a part of its property consisting of a garage, and in 1921 another part, consisting of a storage house and ground. At the time of the suit the corporation still owned a dwelling house. In the sale of 1921, certain easements were reserved to the grantor and Fowler, Jr. Fowler, Sr., received $1,500 for his efforts in making these sales and during the same period received another $1,000 for services performed in making an exchange of bonds for stock with parties who held preferred stock of the corporation. As a director, Fowler, Sr., from 1916 to 1920, received a salary of from $75.00 to $100 per year. During this time he was in sole charge, management and control of the business and while so acting he loaned to himself and the Fowler Co. large sums of money on unsecured notes.

On the basis of such facts an action in equity was brought by the bank as a minority stockholder for an accounting by the director and president of the corporation, the appointment of a receiver, and the dissolution of the corporation. Such relief was demanded because: (1) The corporation had failed to function and had abandoned the purposes outlined in its articles of incorporation and for which it was organized; (2) Fowler, Sr., had been guilty of mismanagement in paying to himself the sums mentioned, in reserving valuable easements to himself and lending to himself and a company which he controlled large amounts of money on unsecured notes.

The lower court granted the relief asked. The upper court affirmed the order, modifying it to the extent of refusing to dissolve the corporation. To sustain its first contention as given above, the bank relied on Section 1628 of the code of 1897 (since repealed), which provided that a corporation should cease to exist by non-user of its franchise for two years at any one time, but the omission to elect...
officers or hold meetings at any time prescribed in its articles of incorporation or by-laws should not work a forfeiture if such election was held within two years. The upper court however held that there clearly had been no failure of the corporation to function or a non-user of its franchise and pointed out that the corporation still owned property and was active and solvent, and cited numerous Iowa cases to show that courts had never construed Sec. 1628 while it was in effect as self-executing.¹

Discussing Sec. 1640 of the code of 1897 (Sec. 8402 Code 1924) which provides that “Courts of equity shall have power on good cause shown to dissolve or close up the affairs of a corporation and to appoint a receiver therefore who shall be a resident of the state of Iowa. An action therefore may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights possessed by them.” The court pointed out that by this section no new rights were conferred on stockholders. To determine by what right a minority stockholder could compel the appointment of a receiver for and the dissolution of a corporation, the court quoted from French v. Gifford,² as follows: “The doctrine best sustained by authority and most in consonance with reason and justice seems to be that courts of equity aside from statutory provision do not exercise a jurisdiction over a corporation as over a partnership to dissolve it and distribute its assets; but that it will afford a stockholder relief from the malfeasance of those entrusted with the management of the corporate business.” After citing many Iowa cases³ holding the same view, the court, in conclusion, said, “The rights involved are those of a minority stockholder who by becoming such impliedly agreed to the control of the majority. If such rights may be protected by the court by a remedy short of a sentence of “corporate death” there is, we think, no warrant under the authorities for the use of the drastic remedy” . . . . . but, “even in the absence of insolvency and without a dissolution of the corporation, circumstances may arise which will justify the appointment of a temporary receiver.” The order of the lower court for the appointment of a receiver was therefore affirmed, the affirmance being based on the ground that if the proof bore out the allegations of the complaint, equity would grant relief to the extent that Fowler must make an accounting of the corporate funds and that a receiver be appointed for such time as necessity required.

While the case on the whole follows out fairly well established rules of law, it nevertheless affords an excellent opportunity to review the relationship existing between a corporation, its stockholders and

¹ Comm. Nat. Bank etc. v. Gitinsky, 142 Iowa 178, 120 N.W. 476; Cownie v. Dodd et. al., 167 Iowa 627, 149 N.W. 904.
² French v. Gifford, 30 Iowa 148.
NOTES AND COMMENT

directors from the standpoint of the relief our courts will grant to a minority stockholder. The views of Wisconsin courts as reflected in the decisions in several leading cases follow:

The courts are very loath to interfere in the internal management of a corporation. One who buys stock impliedly assents to control by the majority and to the management of the corporate business as exercised by a board of directors. If, however, the majority abuse their power and attempt to perform acts unlawful or prompted by fraud and bad faith, so as to result in the spoilation of the minority and ruin to the corporation, relief may be had.\(^4\) Mere disagreement on questions of policy or in matters of judgment, in the absence of a showing of illegality or fraud, gives rise to no cause of action.\(^5\) Especially is this true in the case of a solvent corporation.

One who seeks to bring an action in behalf of the corporation has no right in himself as a stockholder to do so. He must first make a demand upon the officers of the corporation for relief within the corporate body.\(^6\) The exception to this rule is when it is apparent in the very nature of the circumstances that such a demand would be useless.\(^7\) A stockholder has the right to bring an action in his own name if the wrong suffered by him affects him as an individual, separate and distinct from other stockholders. As for instance where the directors in issuing new stock to shareholders, refuse to issue to a particular stockholder, his proportionate share of the same.\(^8\) If other stockholders are suffering the same individual wrong he may bring the action in their behalf as well. Should the stockholder desire to have the corporation dissolved, he must first obtain permission of the court to have such

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\(^4\) Fleisher v. Pelton Steel Co., 183 Wis. 451, 198 N.W. 444. Goodwin v. Von Cotzhause, 171 Wis. 355, 177 N.W. 217: "It is inherent in the nature of a corporation that the affairs are to be managed and directed as willed by the majority of the stockholders and their decision within the scope of legitimate discretion cannot be interfered with even though in the opinion of the minority the policies adopted by the majority are not for the best interests of the corporation. The minority must accept such decisions and acquiesce therein and cannot complain thereof unless such policies were prompted by bad faith and fraud, resulting in the spoilation of the minority stockholders and ruin to the corporation."

\(^5\) Gilchrist v. Highfield et. al., 140 Wis. 476, 123 N.W. 102. Here, the minority sought to have a purchase by the corporation of its own shares declared invalid and that a dividend be declared instead. The act complained of was legitimate and there was no fraud or bad faith shown. No relief was granted.

\(^6\) Strong v. McCagg, 55 Wis. 624, 13 N.W. 895; Hinckley v. Pfister, 83. Wis. 64, 53 N.W. 21; Donnelly v. Sampson, 135 Wis. 368, 115 N.W. 1089.

\(^7\) Eschweiler v. Stowell, 78 Wis. 316, 47 N.W. 361: "A stockholder while he ordinarily has no right to sue for damage to himself by a wrong to corporate right may do so when it is apparent that a demand upon the managing body would be nugatory and vain, as when alleged wrong was done by the directors and they had a majority of the stock."

\(^8\) Dousman v. Wis. & Lake Superior Mining etc. Co., 40 Wis. 418; Morey Bros. v. Fish Bros. Wagon Co. et. al., 108 Wis. 520, 84 N.W. 862.
action instituted. If it is shown that the majority are acting fraudu-
lently and in bad faith so as to benefit themselves rather than the cor-
poration, even though the corporation be solvent, the minority can
apply to a court of equity to restrain their acts, to make an accounting,
and to have a temporary receiver appointed. If, however, there is no
showing that the corporation is irresponsible or insolvent and the charges
of misconduct are denied the court will refuse to appoint a receiver
pendente lite.

Whether a stockholder may maintain an action for a wrong suffered
by the corporation previous to the time he came into possession of his
stock has never been decided in this state. At least he has no right of
action recognizable in a court of equity where he has by his own pre-
vious act assented to the wrong complained of or where he has obtained
a personal benefit therefrom.

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Divorce: Decree obtained by collusion not subject to attack by
either party.—Collusion has been defined by the authorities generally as being “an agreement between husband and wife to procure a
judgment dissolving the marriage status, which judgment, if the facts
were known, the court could not grant.” A recent case in which the
court was called upon to decide whether either party could have a decree
obtained through fraud and collusion set aside, is Newcomer v. New-
comer, 201 N. W. 579 (Iowa). The wife had procured the divorce and
the decree was adhered to by both parties. The husband paid alimony as
directed by the court and subsequently remarried. The wife filed a
petition with the trial court for an increase in alimony but before this
petition was heard, she brought another action to set the decree aside
because it was procured by fraud and duress. She alleged that neither
party had been a resident of the county where the decree was obtained
and that therefore the court had no jurisdiction. The Supreme Court
decided that the plaintiff, before she was entitled to procure that decree,
was compelled to establish that she or her husband was a resident of
Toma County at the time of the commencement of the suit, that her
allegations in the divorce action were false and that after procuring a
decree by such false statements, she had no standing in a court of equity
to set that decree aside. She cannot accept its benefits and then avoid
it after being a party to the fraud by which it was obtained. The court

6 Strong v. McCagg, 55 Wis. 624, 13 N.W. 895: “There is no statute in this
state authorizing one of several stockholders to maintain a bill in equity in his
own name or in the name of the state without leave being first granted therefore
by the Supreme Court, to dissolve a corporation and convert its property into
money and then divide the same among a portion of the stockholders and in the
absence of statutory authority such a suit cannot be maintained.”
7 Hinckley v. Pfister, 83 Wis. 64, 53 N.W. 21; Katz v. DeWolf, 151 Wis. 337,
138 N.W. 1013.
8 6 MARQUETTE LAW REVIEW 170.