Buffalo Law Review

Volume 11 | Number 1 Article 43

10-1-1961

Corporations—Election Not in Accord with Corporate By-Laws Held Void

Buffalo Law Review Board

a court of equity might have taken easy note of the questionable conduct of the corporation in regard to the contested agreement, since the corporation in effect admitted that it believed the agreement valid until, after having obtained one postponement of the arbitration proceeding, its attorney advised it that the agreement was invalid. Criticism of the "alter ego" doctrine has often been directed against its loose application where the courts have not been careful to find both elements of the doctrine present in a particular set of circumstances.[39] However, it appears in the present case that at least a slight showing of the injustice requirement can be discerned. Moreover, the respondent corporation could still raise any other defense it might have to the collective bargaining agreement, such as the union's alleged release of the agreement, in the arbitration proceeding itself. Thus, the corporation merely lost its defense based upon the fiction of its separate existence, where in actuality the corporation and its predecessor were the same parties who originally contracted with the union, and where these men by their questionable conduct made the preservation of that fiction at least a slight injustice.

In arriving at its decision, the Court passed over the arguments made concerning whether the corporation had, by its participation in the arbitration proceedings to the extent of appearing before the arbitrator and obtaining an adjournment, waived its right to object to the validity of the collective bargaining agreement under Sections 1458 and 1462 of the Civil Practice Act. The union analogized the corporation's appearance before the arbitrator to that of a general appearance in a civil suit by which the defendant loses his right to object to the court's jurisdiction. Although the Court expressed no opinion on the question of participation, the better guess as to the eventual decision of this question appears to be that the corporation had not participated to the extent required for waiver, as participation is explained in the leading case of *National Cash Register Co. v. Wilson.*[40]

D. P. S.

ELECTION NOT IN ACCORD WITH CORPORATE BY-LAWS HELD VOID

Petitioner brought an Article 78 proceeding[41] to have declared invalid both an amendment to the by-laws of respondent corporation increasing the number of its directors and the subsequent election of the new directors, as allegedly authorized by the amended by-law. The Court of Appeals, in *Sousa v. N.Y. State Knights of Columbus,*[42] reversed both the Special Term,[43] and the Appellate Division which had dismissed the petition.[44] In doing so, however, the Court declared the amendment itself valid, but held the election of directors

39. Supra note 31 at 144.
40. 8 N.Y.2d 377, 208 N.Y.S.2d 951 (1960).
41. N.Y. Civ. Prac. Act art. 78.
42. 10 N.Y.2d 68, 217 N.Y.S.2d 58 (1961).
43. 26 Misc. 2d 474, 203 N.Y.S.2d 3 (Sup. Ct. 1960).
44. 12 A.D.2d 956, 211 N.Y.S.2d 204 (2d Dep't 1961).

pursuant to the amended by-laws invalid because a quorum of the electing members was not present.

The original charter granted to the Knights of Columbus in 1926 specifically authorized the corporation to adopt "by-laws . . . for the accomplishment . . ." of the purposes of its incorporation; and legislation in 1957 amending the original charter not only authorized an increase in the board of directors, but also left the "method" of their "selection" and "qualifications" to be fixed by the by-laws of the corporation. In addition, the by-laws had always authorized amendment thereof by a simple "majority vote of the directors." The Court discussed the purpose of the amendment adopted and concluded that it was consonant with the aims of the Knights of Columbus. Moreover, the Court decided that the amendment was adopted in accord with the by-laws adopted pursuant to the charter permitting amendment by a majority vote.

Reviewing the provisions of the by-laws concerning the election of the new members, the Court held that a *quorum* of members eligible to vote as such was not present at the meeting when the directors were to be elected for a full term. Summarizing the import of the by-law provisions, the four newly created directorship positions were to be filled temporarily by four third degree members chosen by the board. These interim directors were to hold office until the annual meeting. At that time the "*then (eleven) members*" of the corporation were to elect four men to fill permanently the newly created directorship positions; and six of the "*the (eleven) members*" of the corporation would constitute a quorum at that meeting. (Emphasis added.)

At the election, the four interim directors who had never been elected members and only *five* of the "then" eleven members of the corporation were present. Since a quorum was not present the election held was void. In reaching its conclusion the Court reasoned that since the membership provisions of the by-laws were clearly expressed, no court could amend them anymore than rewrite any other contract.

Bd.

STATUTORY REVISIONS INCORPORATED BY REFERENCE IN CHARTER

In *Fruhling v. Amalgamated Housing Corp.*,[45] plaintiff sought a declaratory judgment that he, a tenant-stockholder of a private limited dividend housing co-operative corporation organized under the State Housing Law,[46] could not be subjected to a surcharge upon his rent or evicted because his income exceeded the statutory maximum. Plaintiff argued that legislation subjecting such private companies to the restrictions of the Public Housing Law, in particular those sections providing for a given ratio of income to rent as a condition of continued occupancy and surcharges,[47] amounted to an unconstitutional impairment of a contractual obligation and to a taking of property without due

45. 9 N.Y.2d 541, 215 N.Y.S.2d 493 (1961).
46. N.Y. State Housing Law, now N.Y. Public Housing Law § 182(3).
47. N.Y. Public Housing Law § 182 (3)(a)(4).