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Corporations—Valuation of Stock of Minority Stockholders

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capacities, *i.e.* as a stockholder to protect personal rights, and as a director to perform his fiduciary duty to the corporation, that a single party has even been allowed to maintain both actions simultaneously.[28] This analogy is inapplicable for another reason as it relates to the instant case. A stockholder who sells his stock, has by his own volition given up his connection with the corporation and the suit. However, the director in this case had his relationship with the corporation terminated by the actions of the defendants and contrary to his own wishes. A further distinction between the two representative suits is that a director is required to bring a suit such as this in fulfillment of his statutory and common law duties as a "trustee" while stockholders are under no such duties.[29]

The Court analogized representation by a director to that of a *guardian ad litem*,[30] and indicated that he could be replaced when his "ward" became capable of representing itself.[31] The corporation "ward," was not capable of protecting itself in the instant case because the very persons against whom the suit was brought were those in control of the corporation.

The purpose of these sections[32] is to enable a director to vindicate wrongs against the corporation by those in control of it. In order to effectuate this policy it is best that a director, although no longer in office, be allowed to direct the litigation unless and until there is a party better qualified to do so.

VALUATION OF STOCK OF MINORITY STOCKHOLDERS

Soll Roehner was a minority stockholder of respondent corporation, which was organized in 1954.[33] In 1955, the corporation constructed a multiple dwelling, the management and operation of which was the sole business activity of respondent. In the latter part of 1957, petitioner agreed, along with the other principal stockholders, to a sale of this one real estate asset, pursuant to a plan of dissolution. The sale was actually consummated on May 1, 1958, but without the knowledge of petitioner, as no meeting of stockholders was held. After the sale, respondent corporation decided against dissolution and attempted to keep the corporation a going concern. Thereafter, petitioner commenced this proceeding to have the value of his stock determined in accordance with Section 21 of the Stock Corporation Law,[34] claiming a violation of Sections 20 and 45 of the same law.[35] The Supreme Court,

28. Loewenstein v. Diamond Soda Water Mfg. Co., 94 App. Div. 383, 88 N.Y. Supp. 313 (1st Dep't 1904).

29. Williams v. Robinson, 9 Misc. 2d 774, 169 N.Y.S.2d 811, *aff'd* 5 A.D.2d 823, 170 N.Y.S.2d 991 (1st Dep't 1958).

30. While one may agree with the analogy drawn by the Court on this point, the authority which it relies on does not appear applicable in that all of the cases so cited were concerned with stockholders derivative suits which the Court itself distinguished from those involving a suit brought by a director.

31. Ream v. Ream, 281 N.Y. 395, 24 N.E.2d 96 (1939).

32. N.Y. GEN. CORP. LAW §§ 60, 61.

33. Roehner v. Gracie Manor Inc., 6 N.Y.2d 280, 189 N.Y.S.2d 644 (1959).

34. Section 21 N.Y. STOCK CORP. LAW provides for the conditions and provisions by which stockholder may have his stock appraised and paid for by the corporation.

35. Section 20 N.Y. STOCK CORP. LAW requires the consent of two-thirds of the stock-

Special Term granted petitioner's application, but the Appellate Division reversed the order and dismissed the petition, as did the Court of Appeals by a unanimous vote.

Although the Court held that the sale was not within the regular course of business, they denied petitioner's suit on the ground that Section 20 did not apply to circumstances such as those in the present case.

The purpose of Section 20 as announced in *In re Timmis,* was to protect the minority stockholders from requiring them to abandon, change, or limit their business, if the majority should have the power to direct such a sale.[36] However, where a minority stockholder agreed to the sale of the assets pursuant to a plan of dissoultion, he is no longer a party that was intended to be protected by Section 20. Thus, the Court held that once a stockholder has agreed to a sale of substantially all the assets of a corporation, he no longer has rights under Section 20, but his remedy lies elsewhere.

It seems clear that had petitioner been faced with a resoultion of sale alone, his vote would have been negative to such an idea, and his rights established under Section 20. Because of the adition of the further provision of dissolution combined with the sale, his affirmative vote deleted his rights under Section 20. *Queare* whether the remedies now available to petitioner, if any, are sufficient to offset the loss of his remedy at hand, and, if not, did the legislature really intend that his minority interest should be impaired at the hands of the majority stockholders pursuant to a resolution that was proposed primarily to get the minority vote, thus vitiating the effect of Section 20.[37] Would this not be contrary to the purpose of Section 20 as already established in the *Timmis* case?[38]

CREDITOR'S RIGHTS

FEDERAL V. STATE DETERMINATION OF PROPERTY RIGHTS SUBJECT TO FEDERAL LIENS

In *In re Washington Square Slum Clearance*[1] there occurred in sequence: (1) an attorney's retainer contract was signed by the client providing that the client agreed "to pay and do hereby assign" twenty per cent of any award to be made for the attorney's services in representing the client in a

holders at a regularly called stockholders meeting where there is a sale of substantially all the assets of a corporation, not made in the regular course of business.

Section 45 N.Y. STOCK CORP. LAW requires that whenever, under this law, stockholders are required to take any action at a regularly called meeting, written notice of the meeting must be sent to each stockholder entitled to vote at such a meeting, informing him of the time and place of the meeting, and its purpose.

36. In re Timmis, 200 N.Y. 177, 93 N.E. 522 (1910).

37. It should be noted that there was no allegation of fraud in the present case. The writer offers the above explanation to show how the Court's interpretation here offers an opportunity, in future cases, to the majority to defraud the minority stockholders.

38. *Supra* note 36.

1. 5 N.Y.2d 300, 184 N.Y.S.2d 585 (1959).