

10-1-1957

## Corporations—Alienation of Corporate Stock—Reasonableness of Restraint

Edwin Yeager

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Business Organizations Law Commons](#)

---

### Recommended Citation

Edwin Yeager, *Corporations—Alienation of Corporate Stock—Reasonableness of Restraint*, 7 Buff. L. Rev. 103 (1957).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol7/iss1/40>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

mously held that a secretary-treasurer of a closely held corporation could sue strangers to the corporation for conversion of corporate property. The issue arose on a motion to vacate and set aside the service of summons.<sup>16</sup> Admitting that ordinarily a secretary-treasurer has no implied power to encroach upon the president's authority, the Court considered that the evidence in the instant case indicated that the secretary-treasurer had been actually managing the business of the corporation, and the president had withdrawn from active participation. It followed therefore, reasoned the Court, that the secretary-treasurer had sufficient authority to prevent the defendant strangers to the corporation from challenging his power to protect the interests of the corporation.

In view of the factual setting of the case, the situation that the movant was a stranger to the corporation, and because it has been previously held that lesser corporate officers may, by virtue of exercising the management functions, bind the corporation,<sup>17</sup> it would not seem that the case represents an unreasonable inroad upon the power of either the board of directors or the president to commence litigation on behalf of the corporation.

#### Alienation Of Corporate Stock—Reasonableness Of Restraint

It has been generally held in this state that a reasonable restraint on the alienation of corporate stock, giving the corporation a right of first option to purchase, is valid.<sup>18</sup> The problem, of course, is to determine what is a "reasonable" restriction.

In *Allen v. Biltmore Tissue Corp.*,<sup>19</sup> the corporation reserved a 90 day option to repurchase its stock, at the price originally paid for it, upon the death of any shareholder. Plaintiff, executor of a deceased shareholder's estate, refused to surrender the stock in question and demanded that the corporation be compelled to deliver stock certificates to him. The Appellate Division<sup>20</sup> reversed the trial court and held the restrictive option invalid on the ground that it operated as a prohibition on transfer of the stock. The Court of Appeals reversed, holding such restriction is reasonable and valid.

It was pointed out that such options are usually treated as being contractual in nature, and thus upheld if reasonable.<sup>21</sup> The Court stated that reasonableness

16. —Misc.—, 142 N.Y.S.2d 668 (Sup. Ct. 1955).

19. See *Barkin Const. Co. v. Goodman*, 221 N.Y. 156, 116 N.E. 770 (1917); *Hastings v. Brooklyn Life Ins. Co.*, 138 N.Y. 473, 34 N.E. 289 (1893).

18. See, *eg.*, *Penthouse Properties v. 1158 Fifth Ave.*, 256 App. Div. 685, 11 N.Y.S.2d 417 (1st Dep't 1938); *Cowles v. Cowles Realty Co.*, 201 App. Div. 460, 194 N.Y. Supp. 546 (1st Dep't 1922).

19. 2 N.Y.2d 534, 161 N.Y.S.2d 418 (1957).

20. 1 A.D.2d 599, 153 N.Y.S.2d 779 (2nd Dep't 1956).

21. *Hassel v. Pohle*, 214 App. Div. 654, 212 N.Y. Supp. 561 (2nd Dep't 1925).

in this context was not dependent on notions "of intrinsic fairness of price," and that to render an option invalid it was necessary to show more than a mere disparity between the current value and the option price.

Plaintiff also contended that the requirements of section 176 of the Personal Property Law<sup>22</sup> had not been complied with in that the restriction had not been printed on the stock certificate. Here the Court held that a notation on the stock certificate that it was held subject to restrictions contained in certain enumerated by-laws satisfied the statutory requirement.

The decision in this case indicates that the Court is unwilling to make a careful study of the ultimate fairness of a price arrived at by the use of a formula specified in this type of option. Rather, the scope of inquiry will be limited to testing the reasonableness of the formula itself, and weighing heavily in favor of an ultimate determination of validity is the fact that the parties involved, in a sense, voluntarily agreed to its use.

## CREDITOR'S RIGHTS

### Unavailability Of New York Lien Law To Out Of State Realty

Section 36-b of the New York Lien Law provides that funds received from an owner by a subcontractor for the improvement of real property are to be held in trust, to be applied first to the payment of materialmen and laborers who contributed to the improvement. In *Allied Thermal Corporation v. James Talcott Inc.*,<sup>1</sup> materialmen attempted to use the trust provision of 36-b to compel factor to subcontractor to account for funds allegedly diverted by the subcontractor. The only issue before the Court was whether plaintiff-materialmen could use section 36-b, when the situs of the improved realty was out of state.

The Court held (5-2), without citing authority, that plaintiffs could not avail themselves of the protective trust provisions of the statute. The majority determined that section 36-b must not be construed independently, but as an integral part of the whole statutory scheme of the Lien Law, which by its very nature is circumscribed by the state's boundaries. The majority regarded the absence of any expressed reference to "New York" anywhere in the Lien Law as

---

22. N.Y. PERS. PROP. LAW §176 provides:

There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated on the certificate.

1. 3 N.Y.2d 302, 165 N.Y.S.2d 91 (1957).