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CORPORATIONS

Milton M. Harrison*

In *Ladas v. Savage*,¹ plaintiff gave funds to the president of the brokerage firm, a corporation, with instructions to purchase specified stock. The stock was not purchased. In a suit against the corporate officer individually, the defense was offered that the defendant was acting as officer of the corporation and that the corporation was the responsible party. The Fourth Circuit Court of Appeal very properly held that the liability or non-liability of the corporation was irrelevant. One guilty of fraud does not escape liability therefor because his principal may also be liable, if the act of the agent was authorized by the principal. Without citing it, the court applied section 95 of the Business Corporation Law² which provides that any provision for specific liability therein does not affect an officer's liability for fraud against any person.

The Business Corporation Law prohibits the payment of dividends or other distribution of assets unless the corporation meets the standards for such distribution imposed by section 63 of the Corporation Law. Violation of the standards by making an unauthorized distribution of assets results in liability of consenting officers and directors, under section 92, as well as liability of shareholders receiving the unauthorized distribution under section 93. In *Franklin Press Inc. v. National Diversified Corp.*,³ unsecured creditors of the now defunct defendant corporation sought recovery from the directors of the corporation, as well as from a shareholder who had received from the corporation, under a *dation en paiement*, a return of property which he had previously sold to the corporation. The defendant shareholders held a vendor's privilege and mortgage on the property. While recognizing the liability imposed by the statute, the court held that satisfaction of a secured debt owed to a shareholder is not a prohibited distribution of assets to a shareholder.

In a suit to enjoin the use of a corporate name, the Third Circuit Court of Appeal held that "Pestaway, Inc." was not deceptively similar to "Couhig's Pestaway Company, Inc."⁴ The court's decision reiterates the view that section 23 of the Business Corporation Law⁵

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1. 284 So. 2d 852 (La. App. 4th Cir. 1973).

2. LA. R.S. 12:95 (Supp. 1968).

3. 286 So. 2d 469 (La. App. 1st. Cir. 1973).

4. *Couhig's Pestaway Co. v. Pestaway, Inc.*, 278 So. 2d 519 (La. App. 3d Cir. 1973).

5. LA. R.S. 12:23 (Supp. 1968).

imposes the same test as is used in determining whether a person has acquired a proprietary right to a trade mark or trade name. The court narrows the question to: "Considering the corporate names, as well as all of the circumstances surrounding the operation of the corporations themselves . . . is there, in fact, any real likelihood of the public being confused or deceived by the alleged similarity of names?"⁶ In denying the injunction, the court applies the same standards which have been announced many times. The opinion by Judge Hood is noteworthy because of his excellent summary of prior cases on the subject.

6. 278 So. 2d at 521.