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CORPORATIONS

*Milton M. Harrison**

Since 1968, with the passage of Louisiana Act 105 which amended Chapters 1, 2 and 3 of Title 12 of the Louisiana Revised Statutes, there has been doubt concerning the status of the so-called de facto-corporation and estoppel-to-deny-corporate-existence rules. Section 25B of the act¹ provides that "[t]he certification of incorporation shall be conclusive evidence of the fact that the corporation has been duly incorporated" It should be noted, however, that the Louisiana legislation does not go further, as does the Model Business Corporation Act, to provide that "[a]ll persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof."² The comments following section 26 of the Louisiana statute indicate that the statute was drafted to permit the full application of the de facto-corporation and estoppel-to-deny doctrines, but the courts have not heretofore applied either doctrine under the new statute.

In *North American Contracting Corporation v. Gibson*,³ two prospective incorporators entered into a contract to furnish carpentry labor on a construction job. The contract was entered into in the name of the corporation over a month before incorporation. The individuals who signed for the not yet formed corporation were held liable for a breach of the contract as agents for a nonexistent principal⁴ and the corporation was held liable because it had received partial payments prior to the breach and was "estopped to deny its corporate existence at the time the contract was entered into."⁵

The case is of interest because it is the first time a court has indicated that the estoppel-to-deny-corporate-existence doctrine is to be applied in accordance with the comment of the draftsmen.⁶

Two partners incorporated their drug business. Three hundred shares of stock were issued to one partner, defendant in *Dardeau v. Fontenot*.⁷

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1. LA. R.S. 12:25 (1950).

2. A.B.A. - A.L.I. MODEL BUS. CORP. ACT § 139 (1960).

3. 327 So. 2d 444 (La. App. 3d Cir. 1976).

4. LA. CIV. CODE arts. 3010, 3012 and 3013.

5. 327 So. 2d at 451.

6. A forthcoming comment will treat the de facto and estoppel-to-deny doctrines in greater detail.

7. 326 So. 2d 521 (La. App. 3d Cir. 1976).

Defendant endorsed one-half of the share certificates to his partner, plaintiff's deceased husband. All share certificates were delivered to the attorney who represented the parties in the formation of the corporation. In answer to the suit by the widow and children of the deceased shareholder who asserted their ownership of one-half of the shares, the defendant argued that the endorsement by him to the deceased did not effect transfer of ownership because the share certificates were not delivered to the deceased. The court held that delivery of the certificate is not essential if ownership is established otherwise as it was in this case. Although the Uniform Stock Transfer Act⁸ requires delivery, the court held that the statute is not intended to provide the exclusive means for evidence of ownership of stock. The decision here is consistent with a prior holding that the certificate is only evidence of ownership of stock as between the parties and that stock ownership may pass even if delivery has not occurred.⁹

The court of appeal distinguished its earlier decision in *Griffith v. Hasha*.¹⁰ In *Griffith* the court found no ownership of stock by claimant because he had not advanced the funds which were a condition to his acquiring ownership of stock. Therefore, it was not the lack of delivery of certificates which was controlling but the non-performance of a condition required to give rise to his right to stock in the corporation.

The courts were confronted with two cases involving the disregard of corporateness, piercing the corporate veil, or treating a corporation as the alter ego of the shareholders. In *Evergreen Plantation, Inc. v. Zunamon*,¹¹ a vendor of timber sued to invalidate the sale because of lesion beyond moiety. The vendee had been a corporation, since dissolved, whose assets had been transferred to a partnership formed by the owners of 41% of the stock of the former corporation. The present owner of the contract to cut the timber in question is the defendant, who admittedly is the nominee of the partnership which acquired the assets of the corporation. In denying that the partnership was the alter ego of the dissolved corporation, the court noted that the partners had been minority shareholders of the predecessor corporations, that the price paid by the partnership for the assets of the corporation was fair, and that the partners had not instigated or participated in the dissolution of the corporation for the purpose of transferring the timber into the hands of a third party purchaser to defeat the action for lesion.¹²

8. LA. R.S. 12:624 (1958).

9. *Finn v. Ponsaa*, 308 So. 2d 352 (La. App. 4th Cir. 1975).

10. 315 So. 2d 778 (La. App. 3d Cir. 1975).

11. 319 So. 2d 543 (La. App. 2d Cir. 1975).

12. *Id.* at 548. The court found that the evidence did not support the right to rescission for lesion beyond moiety.

In *Ogaard v. Wiley*,¹³ the court found a milling corporation to be the alter ego of a farming corporation and held the latter liable for damages resulting from the negligence of an employee of the milling corporation, on the basis of *respondeat superior*. The factual bases for the court's finding were that the milling corporation had only \$1000 of capital; it was not expected to make a profit; the two corporations had the same post office box; the same individuals controlled and managed both corporations; and money borrowed by one corporation was used by the other. The evidence in this case justifies the finding and does not do violence to the general rule that corporateness will not be disregarded except in extreme cases.

Closely related to the alter ego doctrine in the two cases discussed above is the disregard of the partnership entity in *Drenning v. Kuebel, Inc.*¹⁴ The owner of one-fourth of the stock of a corporation sought to set aside a sale of the corporation's primary asset by the liquidator. The liquidator, a cousin of the owners of 75% of the stock, sold the assets of the corporation to a partnership composed of the 75% owners of the corporation, at substantially below its market value. In annulling and setting aside the sale as to the plaintiff's interest, the court did not consider the partnership, an entity separate from the partners, as a third-party purchaser and protected by the rule of *McDuffie v. Walker*.¹⁵ The court held the liquidator to the fiduciary obligation and the burden of proving good faith and fair value, as set forth in *Noe v. Roussel*.¹⁶

The Courtyard Curio Shoppe, Inc. operated its business under the trade name of Courtyard Curio Shoppe.¹⁷ The corporation was owned by husband and wife. Plaintiff sold goods to the shop through the wife, who did not indicate that she was acting for a corporation. The owners were held personally liable under the well established rule that an agent acting on behalf of a corporation has the burden of proving that he disclosed his status as agent and the identity of the principal. Thus, the wife as the agent should be held personally liable. But as Judge Redmann points out in a dissent, there is no basis for holding the husband personally liable because he was not the agent who bought from the plaintiff.

13. 325 So. 2d 643 (La. App. 3d Cir. 1975).

14. 327 So. 2d 571 (La. App. 4th Cir. 1976).

15. 125 La. 152, 51 So. 100 (1909).

16. 310 So. 2d 806 (La. 1975).

17. *Lagniappe of New Orleans, Ltd. v. Denmark*, 330 So. 2d 626 (La. App. 4th Cir. 1976).