Louisiana Law Review

Volume 41 | Number 2
Developments in the Law, 1979-1980: A Symposium
Winter 1981

Private Law: Corporations

Milton M. Harrison

CORPORATIONS

*Milton M. Harrison**

In three suits, courts of appeal reiterated the well-established principle that a corporation and its shareholder, or shareholders, are separate legal entities. The first circuit in *Mahfouz v. Ogden*[1] held that the sole shareholder of a corporation may not sue in his own name for damages suffered by the corporation and sustained the granting of defendant's motion for a directed verdict.

In *Bricks Unlimited, Inc. v. Lemoine Homes, Inc.*,[2] the trial court rendered judgment against the corporation and against the president of the corporation. At one time the individual defendant had made purchases from the plaintiff and had filed with plaintiff a credit application on behalf of himself and not the corporation. However, the transactions involved in this litigation involved sales of bricks to the corporation and not to the individual who was the president. Inasmuch as the president acted only in his corporate capacity, the sales were made to the corporation, there was adequate disclosure to the seller with reference to the identity of the buyer, and the president did not assume any liability for the debts of the corporation; the fourth circuit correctly reversed the judgment of the trial court against the president of the corporation.

In *Courtney Corporation v. Demarest*,[3] plaintiff corporation owned immovable property located at 444 Broadway, New Orleans. The former owner of 100% of the shares of the plaintiff corporation sold all the shares to another. The former owner of the shares, in another lawsuit, sought to rescind the sale. Pending trial of the other lawsuit, the former owner recorded in the land records a notice of the pendency of that action, describing it as one "to rescind the sale of 444 Broadway." Plaintiff corporation filed suit to erase the notice of lis pendens. The fourth circuit properly held that the immovable was owned by plaintiff corporation and that the title would be unaffected by the sale of the shares of stock or by a rescission of the sale. Property owned by a corporation is not owned by the owner of 100% of the shares, and notice of lis pendens is inap-

---

*Professor of Law, Louisiana State University.

1. 380 So. 2d 646 (La. App. 1st Cir. 1979).
2. 380 So. 2d 714 (La. App. 4th Cir. 1980).
3. 379 So. 2d 812 (La. App. 4th Cir. 1980).

propriate as against one not a party to nor affected by the pending action.[4]

Plaintiff in *Defelice v. Garon*[5] owned one-half of the shares in Pascal-Manale, Inc. As a part of the arrangements for financing the purchase of the remaining one-half of the shares in the corporation, defendants guaranteed a loan which plaintiff secured and also furnished other security. In return, plaintiff as sole shareholder executed a contract denominated as a voting trust agreement, naming defendants as trustees. The agreement provided that defendants would manage the corporation for ten years, would hold the shares in trust for ten years, and would have the unqualified right to vote the shares as shareholders. The contract did not qualify as a voting trust under the Business Corporation Law[6] because a voting trust can be established only by two or more shareholders. The fourth circuit held that the contract, when viewed from the overall circumstances, was a security device. The same court had held previously that section 75D of the Business Corporation Law permits a pledgee to vote shares held in pledge only when the shares are transferred into his name on the books of the corporation.[7] The court distinguished the instant case from *Babst* because here plaintiff expressly authorized defendants to vote the shares, whereas no such authorization was given to the pledgee in *Babst*. The court reasoned that if defendants were authorized to vote the shares, this impliedly authorized them to transfer the shares on the books of the corporation.

The *Defelice* decision is a reasonable and practical one, and the interpretation of the statute by the court is consistent with the statutory protections. The court failed to denominate the "security device" as a pledge, but applied the statutory provisions relating to pledge. Under different facts, the court would be free to treat other "security devices" differently.

---

4. In dictum, the court said that the only appropriate remedy in such a case would be use of the injunctive process. *Id.* at 813.

5. 380 So. 2d 676 (La. App. 4th Cir.), *cert. granted*, 383 So. 2d 21 (La. 1980).

6. LA. R.S. 12:78 (Supp. 1968).

7. Emile Babst Co. v. Commercial Enterprises, Inc., 274 So. 2d 742 (La. App. 4th Cir.), *cert. denied*, 277 So. 2d 673 (La. 1973), *noted* 68 A.L.R.3d 674 (1976).