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CORPORATIONS

*Milton M. Harrison**

The Court of Appeal for the Fourth Circuit in *Leson Chevrolet, Inc. v. Trapp*[1] affirmed the grant of preliminary and permanent injunctive relief against the defendant from "acting or attempting to act as president and chief executive officer of the corporation" as well as from "appearing at the corporation's premises. . . ."[2] Defendant, shareholder and former president of the corporation, was removed by the board of directors, which could be done by majority vote without cause.[3] The injunction therefore was proper to prevent defendant from acting in his executive capacity.

Defendant was not removed as a director, and enjoining him from appearing at the corporation's premises may well prevent him from exercising his statutory obligation as a director.[4] The court recognized this problem but, based on the evidence that key employees would resign if defendant's presence at the business continued, the court upheld the injunction as the only alternative means of continuing the business. The court recognized that ordinarily injunction might not be proper because an alternative would be available by the majority of shareholders: removing defendant as a director.[5] Such a solution was not available in this case because under the articles of incorporation, three directors must be shareholders and there were only three shareholders of the corporation. Under the peculiar facts of this case, perhaps the injunctive relief is proper but such relief certainly should not be granted if any alternative solution is available to the shareholders.

The facts of *Leson* illustrate how important it is in drafting articles of incorporation that requirements such as are here present be weighed very carefully. If protection against outside directors is not essential, do not provide for it.

In *Hingle v. Plaquemines Oil Sales Corp.*[6] the court faced an interpretation of section 84 of the corporation laws.[7] This section pro-

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1. 391 So. 2d 1371 (La. App. 4th Cir. 1980).
2. *Id.* at 1372.
3. LA. R.S. 12:82(E) (Supp. 1968).
4. LA. R.S. 12:91 (Supp. 1968) (directors' fiduciary duty).
5. LA. R.S. 12:81(C)(4) (Supp. 1968).
6. 399 So. 2d 646 (La. App. 4th Cir. 1981).
7. LA. R.S. 12:84 (Supp. 1968).

vides that a contract between a corporation and one or more of its directors or officers is not void or voidable solely for this reason if the facts were made known to the board of directors, *or* if the facts were made known to the shareholders and the contract was approved in good faith by the shareholders, *or* if the contract is fair to the corporation. In *Noe v. Roussel*[8] the Louisiana Supreme Court held that the contract must always be fair to the corporation, virtually rendering ineffective paragraphs A(1) and A(2) of section 84. The fourth circuit in *Hingle* relied entirely on paragraph A(3) in upholding large salary increases given to the president by the board of directors upon a factual finding that the amount of the salary paid the president was fair.

The case of *Streb v. Abramson-Caro Clinic*[9] illustrates that the formation of a professional corporation entails much more than the securing of tax advantages. In *Streb*, three doctors formed a professional medical corporation. Subsequently, two of the shareholders terminated plaintiff's employment with the corporation and removed him from the board of directors. These actions were taken legally by a majority of the shareholders.[10] Asserting that the action would result in his loss of his accrued pension benefits and his pro rata share in accounts receivable, plaintiff sought an involuntary dissolution of the corporation. The causes for dissolution are set forth in sections 143 and 913 of the corporation laws.[11] None of these causes existed in this case, as the court properly found. However, the court of appeal remanded the case so that the pleadings could be amended to entitle the plaintiff to some relief.

The nature of the relief to which the plaintiff may be entitled is doubtful. Section 906 provides that no "compulsory offer of shares for purchase by or sale to the corporation" shall take place unless the provision is stated on the share certificate. Thus, forced purchase of the shares by the corporation cannot be ordered and no market exists for such shares. Possibly, the plaintiff may be able to seek the appointment of a receiver under section 151 which provides for receivership when a majority of the shareholders are violating the rights of the minority and endangering their interests.

It is doubtful if the Louisiana courts will, or should, follow the example of Massachusetts in *Wilkes v. Springside Nursing Home,*

8. 310 So. 2d 806 (1975), *noted in* Note, *Corporations, Fiduciaries and Conflicts of Interests*, 36 LA. L. REV. 320 (1975).
9. 401 So. 2d 410 (La. App. 1st Cir. 1981).
10. LA. R.S. 12:908 (Supp. 1968).
11. LA. R.S. 12:143, 12:913 (Supp. 1968).

Inc.[12] *Wilkes* holds that in a closely held corporation, the majority shareholders owe a duty of utmost good faith in their dealings with minority shareholders and that discharging a shareholder as employee without just cause is a breach of that duty. To require professional persons to remain in the practices of their profession with associates against their will would not be desirable as a public policy. Thus, the only solution seems to be in carefully structuring a shareholders' agreement under section 909[13] to provide for an equitable solution to this type of situation. The law hardly can perform this task satisfactorily.

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12. 370 Mass. 842, 353 N.E.2d 657 (Mass. 1976), *noted in* Note, *Close Corporations: Strict Good Faith Fiduciary Duty Applied to Controlling Stockholders*, 38 LA. L. REV. 214 (1977).
13. LA. R.S. 12:909 (Supp. 1968).