

Corporations - Directors - Relation to Stockholders Individually

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management of the corporation in an executive committee. *Tempel v. Dodge*, 89 Tex. 69, 32 S.W. 514 (1895).

However, in the instant case the court reasoned that it did not necessarily follow from the fact that the by-law was void that the defendant was entitled to retain such remuneration for his services. Courts in general hold that a director or fiduciary official is presumed to serve without compensation. Only in cases where there is a valid express agreement for the performance of the usual and ordinary duties of his office is he entitled to compensation. *Lowe v. Ring*, 123 Wis. 370, 101 N.W. 698 (1904); *Hinkley v. Sagemiller*, 191 Wis. 512, 210 N.W. 839 (1927). The cases requiring an express contract for usual services, are confined to those where the officer is also a director or occupies a position of "trust." Such a fiduciary officer may, however, recover on an implied contract for services outside his ordinary functions, provided it is clear that it was understood beforehand that such services were to be paid for. In a case where a bank president had been appointed without any salary having been specified, the Michigan court held that he could not recover on an implied contract for mere rendition of services, even though they were outside those imposed upon him as president. The absence of an implied agreement was clearly evident from the lack of knowledge on the part of the directors, as a board or as individuals, of the extraordinary services performed by the officer. *Notley v. First State Bank*, 154 Mich. 676, 118 N.W. 486 (1908). The Iowa court decided that a vice-president of a corporation who performed services for his company, which were not incumbent on him by reason of his office, and which were not required by his contract, but which were performed with the knowledge of the officers and stockholders, was entitled to recover for the value of his services. *Brown v. Creston Ice Co.*, 113 Iowa 615, 85 N.W. 750 (1901). But see *Edwards v. Fargo & S. Ry. Co.*, 4 Dak. 549, 33 N.W. 100 (1887) where the court held that the officer in suing for services need not distinguish between ordinary and extraordinary services when his duties were not within the ordinary functions of his particular office.

The court in the principal case reversed the judgment for the plaintiff and sent the case back for a new trial to give the defendant an opportunity to show whether any of his services might be classed as extraordinary, whether it might be implied that there was any understanding that he was to get compensation for these services, and what was the reasonable value thereof.

JOSEPH P. FLANNER.

CORPORATIONS—DIRECTORS—RELATION TO STOCKHOLDERS INDIVIDUALLY.—The defendant is a director, officer, and general manager of corporation *A*, a Wisconsin corporation, having a limited number of stockholders, and the stock of which has never been listed on any exchange. The plaintiff's father was an officer of the same corporation, and he owned a large block of stock therein. He died and left substantial amounts of stock to both the plaintiff and her brother. Neither the plaintiff nor her brother were ever actively interested in the corporate affairs and after her father died, the plaintiff moved from the state. Corporation *A* owned almost all of the stock of corporation *B*, and carried the same on its books at par value; although corporation *B* had built up a large surplus, such earnings were not shown on the books of corporation *A*. The defendant and co-directors received an offer from responsible business men who were willing to buy four-fifteenths of corporation *B* for four million dollars. In order to effect the deal, a plan of reorganization of corporation *B* was decided upon. Pursuant

to such plan a deposit agreement was drawn up in which a committee was designated to act for the stockholders of corporations *A* and *B*; the stockholders, in order to benefit, were to sign the agreement. The defendant was on the committee which was chosen. He made a deal to buy the plaintiff's stock in corporation *A* at a price far lower than its actual value. The plaintiff, through her brother, had previously attempted to evaluate her shares of stock by seeking information from the defendant. The defendant had told the brother that the earnings of corporation *B* were poor because of an extensive advertising campaign which it had carried on; the earnings were, in fact, large. The stock of the plaintiff was purchased by the defendant through an agent, the plaintiff being ignorant of the identity of the real purchaser. Although the purchase was made after the deposit agreement had been submitted to the stockholders, the plaintiff was never informed of its existence. The stock on the day of purchase was found to be worth a great deal more than the price actually paid by the defendant because of the circumstances indicated which enhanced its value. The plaintiff sues for the difference between the amount she received for her stock and that which it was actually worth. Judgment for the plaintiff. On appeal, *held*, judgment affirmed. The deposit agreement was a special circumstance which created a trust relationship between the defendant and the plaintiff, as an individual stockholder, and in buying the stock the defendant was under obligation to reveal to the plaintiff all the material facts which he knew affecting the value of the stock. *Nichol v. Sensenbrenner* (Wis. 1935), 263 N.W. 650.

The instant case involves the categorical question: does a director or officer of a closed corporation, the stock of which is not listed on any exchange, hold a fiduciary or trust relationship to the individual stockholder, so that he has a duty, when he purchases stock, to disclose all the material facts which he knows affecting the value of the stock? The general view seems to be that no such relationship exists. *Steinfeld v. Nielsen*, 15 Ariz. 424, 139 Pac. 879 (1913); *Hooker v. Midland Steel Co.*, 215 Ill. 444, 74 N.E. 445 (1908); *Board of Commissioners v. Reynolds*, 44 Ind. 509, 15 Am. Rep. 245 (1873); *Connolly v. Shannon*, 105 N.J. Eq. 155, 147 Atl. 234 (1929); *Shaw v. Cole Mfg. Co.*, 132 Tenn. 210, 177 S.W. 479 (1915). These cases arise in various ways. The stockholder may be seeking to rescind a contract with a director or officer for the sale of his stock, or he may be attempting to secure the return of his stock, or he may be seeking damages as in the principal case. Seemingly in conflict with the general rule as laid down by the majority of the state courts are the decisions which set forth the broad principle that the law makes it a duty of an officer or director of a corporation who is seeking to purchase shares from a stockholder to disclose to such stockholder facts which come to the director or officer by virtue of his relation to the corporation and are not known to the stockholder, or which may not be easily ascertained by him, and to disclose future plans of the corporation which may affect the worth of the stock. *Hotchkiss v. Fischer*, 136 Kan. 530, 16 P. (2d) 531 (1932); *Oliver v. Oliver*, 118 Ga. 362, 45 S.E. 232 (1903); *Stewart v. Harris*, 69 Kan. 498, 77 Pac. 277 (1904). The courts are not in as hopeless a conflict, however, as it appears. "Majority-rule" courts recognize certain fact situations which compel them to give relief, and thus they create an exception to the general rule. "Minority-rule" courts, on the other hand, recognize situations where relief should not be given and exceptions are created to the minority rule. And so it may be seen that fact situations and special circumstances in most cases are the bases for determining whether relief should be given to the stockholders regardless of which rule the court adopts. If the stockholder has an opportunity to secure facts which affect the value of the stock, and he does not do so, the director

or officer is under no duty to disclose any information which he has of those facts. *Waller v. Hodge*, 214 Ky. 705, 283 S.W. 1047 (1926); *Bollstrom v. Duplex Power Car Co.*, 208 Mich. 15, 175 N.W. 492 (1919). If a director has knowledge of a proposed sale of corporate assets which will enhance the value of the stock, and such knowledge is not generally available, he is under obligation to disclose the possibility for the sale to the seller. *Strong v. Repide*, 213 U.S. 419, 53 L.ed. 853, 29 Sup. Ct. 521 (1908); *Oliver v. Oliver*, *supra*; *Gammon v. Dain*, 238 Mich. 30, 212 N.W. 957 (1927). But *cf. Hooker v. Midland Steel Co.*, *supra*; *Bawden v. Taylor*, 254 Ill. 464, 98 N.E. 941 (1912). Of course, if the director or officer makes actual misrepresentations as to the status of the corporation or is guilty of actual fraud, he will be held liable to the stockholder. *Lightner v. Hill*, 258 Mich. 50, 242 N.W. 218 (1932); *Fisher v. Budlong*, 10 R.I. 525 (1873); *Black v. Simpson*, 94 S.C. 312, 77 S.E. 1023 (1913); *Saville v. Sweet*, 234 App. Div. 236, 254 N.Y.S. 768 (1932). If a director or officer is questioned by the stockholder and he falsely denies knowledge affecting the value of the stock, his concealment of pertinent facts makes him liable. *Schroeder v. Carroll*, 192 Wis. 460, 212 N.W. 299 (1927). Once a director or officer undertakes to make a disclosure of facts, whether such was his duty or not, he is obliged to make full disclosure of all facts, and his partial concealment of material facts affecting the value of the stock will subject him to liability. *Poole v. Camden*, 79 W. Va. 310, 92 S.E. 454 (1916); see *Waller v. Hodge*, *supra*, 283 S.W. 1047, 1050. Where a director purchases the stock with the view of getting control of the corporation so as to enable him to sell a majority of the stock to one wishing to purchase some of the corporation property and thus the director makes a personal profit, he is liable to the stockholders who sold to him. *Commonwealth Title Ins. & Trust Co. v. Seltzer*, 227 Pa. 410, 76 Atl. 77 (1910).

The Wisconsin court adopts neither the majority nor the minority rule, but it has recognized special circumstances under which relief will be given to the stockholder who is seeking damages or the return of the stock from the director or who is seeking a rescission of the contract to sell. A trust agreement was the basis for declaring that a fiduciary relationship existed between the stockholder and director in *Bray v. Jones*, 190 Wis. 578, 209 N.W. 675 (1926). False financial statements furnished by the director to the stockholder were sufficient to give the stockholder relief in *McMynn v. Peterson*, 186 Wis. 442, 201 N.W. 272 (1925). In the instant case the deposit agreement was made the basis for the declaration of a fiduciary relationship.

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MORTGAGES—MORATORIUM LEGISLATION—PROTECTION TO MORTGAGEE.—Judgment of foreclosure was entered against the debtor-mortgagor and the real estate encumbered by the mortgage was ordered to be sold. The mortgagor was occupying the premises and conducting thereon a public garage. There were also tenants on the premises occupying a part of the building. After the expiration of the usual statutory period before sale, the creditor served notice of application to fix the time and place of the sale, contending that the mortgagor had not paid the taxes and interest accrued since foreclosure. Thereafter the mortgagor filed a petition under Section 278.106 [WIS. STAT. (1933)] to secure an additional year in which to redeem before sale. It appeared that the mortgagor had been collecting rents from the tenants but that he had paid no accrued taxes or interest. It appeared, too, that gross income from his business, including rent, was just