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CORPORATIONS

Mark S. Riley & Harry J. Philips, Jr.**

INTRODUCTION

Once again, the decisions of Louisiana's appellate courts touched upon a broad range of topics covering the law of corporations. Rather than report on each of these decisions, the authors have selected the more significant cases involving shareholder's rights, the corporate "veil," some procedural aspects of litigation involving corporations, the notion of corporate existence, and acts of individual corporate officers.

SHAREHOLDERS' RIGHTS

The Louisiana Supreme Court has given minority shareholders what may amount to a primary position in determining the structure of a voluntary liquidation of a Louisiana corporation. It is common, especially for tax reasons, for shareholders to change the "form" of the way they do business. This change is usually accomplished by transferring the primary assets of the corporation to other corporations, to a partnership, or to some other entity to obtain various operating or tax advantages. Often a corporate liquidation is used for such a transfer of assets. In *Levy v. Billeaud,*[1] the Supreme Court severely limited the liquidation options of a corporation without the voluntary consent of all shareholders.

In *Levy*, the Comeaux Planting Company, a closely held corporation engaged in the business of growing and grinding sugar cane, was no longer able to operate profitably. Ninety-five percent of the shareholders of Comeaux Planting voted to transfer the property on which the sugar cane was grown to a partnership whose partners would be the existing shareholders who, presumably, would hold an interest in the partnership equal to their current interest in the corporation. This transfer would be accomplished by a voluntary liquidation in which the assets of the corporation would be transferred to the partnership in return for partnership interests to be given to the existing shareholders. The majority shareholders appointed a liquidator, who was not only a shareholder and a member of the board of directors of Comeaux Planting, but was

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1. 443 So. 2d 539 (La. 1983).

also a limited partner in the newly formed partnership and a shareholder and member of the board of directors of the corporate general partner of the newly formed partnership. The minority shareholders brought suit, claiming that the liquidator had breached his legal and fiduciary duties to them. The result of the liquidation plan, they alleged, would be that no corporate assets would be directly distributed to the minority shareholders, and that they would be forced to become limited partners in the new partnership.

Because of the control that the liquidator had in both Comeaux Planting and in the new partnership, the court found a conflict of interest; in essence, the court said, the liquidator was self-dealing. Because of this self-dealing, and noting that the liquidator is bound to exercise the care of a fiduciary in carrying out his responsibilities, the court held that a standard of "rigorous scrutiny" must be applied.[2] In reaching this conclusion, the court noted that the Louisiana Business Corporation Law is similar to that of other states. The laws of some other states require that the power of controlling shareholders to dissolve a corporation be subject to equitable limitations, and that the courts insure that minority shareholders are not unduly oppressed. The Louisiana Supreme Court cited no fewer than three cases from New York[3] and one from Delaware[4] in its opinion.

In applying the "rigorous scrutiny" standard, the court placed the burden of proof on the liquidator. The court concluded, without further elaboration on the facts, that the plaintiffs had established a prima facie case that the directors and liquidators had breached their fiduciary duty by adopting the plan of liquidation, and that the plan was unfair and unduly oppressed the minority shareholder interests. The Court stated:

> On its face, the liquidation plan is oppressive and unfair and appears to be designed to deprive the minority shareholders of their right to pro rata distribution of the corporation's assets upon its liquidation and to force them to reinvest their property interests in a partnership controlled by the liquidator, directors, and majority shareholders of the dissolved corporation.[5]

The court concluded that the plaintiffs could not have the entire dissolution set aside, but remanded for a determination of whether the minority shareholders should be placed in possession of an undivided interest in the corporation's assets, or whether the trial court should

2. 443 So. 2d at 543.

3. Eisenberg v. Central Zone Property Corp., 306 N.Y. 58, 115 N.E.2d 652 (1953); Kavanaugh v. Kavanaugh Knitting Co., 226 N.Y. 185, 123 N.E. 148 (1919); Ribakove v. Rich, 13 Misc. 2d 98, 173 N.Y.S.2d 306 (1958).

4. Shrage v. Bridgeport Oil Co., 31 Del. Ch. 305, 71 A.2d 882 (1950).

5. 443 So. 2d at 544.

exercise its discretion and award the plaintiffs the fair market value of their shares in the dissolved corporation.

In concluding that the minority shareholders had an absolute right to either a pro rata share of assets or to the cash value of their shares, the court seems to rely heavily on section 145(C) of the Business Corporation Law.[6] However, as Justice Blanche pointed out in dissent, that section makes the distribution of cash to the shareholders a requirement upon sale and conveyance of the assets only if the shareholders have not otherwise provided in the plan of liquidation. The facts in *Levy* indicate that the majority shareholders adopted the particular plan of liquidation because they intended to develop the property commercially, and it would be more advantageous from a tax standpoint to do so in partnership form. Since most articles of incorporation use broad language in stating the corporate purpose, allowing the corporation to engage in any lawful activity under the state's Business Corporation Law, the board of directors and majority shareholders could very well have chosen to retain the corporate assets in corporate form to develop the property. In that situation the minority shareholders would have had little or no voice. Furthermore, under section 121,[7] the corporation could have disposed of all its assets by sale, lease, exchange or other disposition on approval of two-thirds of the voting power present at a meeting of the shareholders. The minority shareholders would not have had dissenting rights since the majority shareholders represented 95% of the voting power. Thus the minority shareholders would have had little or no say in the voluntary sale, lease, exchange or other disposition of all the assets.

In this case, the Louisiana Supreme Court not only gave minority shareholders a stronger voice in determining the fate of corporate assets, but for all practical purposes put them in a controlling position. The court's determination that the liquidator had breached his fiduciary duty because of a conflict of interest seems incorrect when one considers that the liquidator was only carrying out the instructions of ninety-five percent of the shareholders. If the liquidator had been an outsider with no interest in either the corporation or in the newly-formed partnership, his actions in disposing of the corporate assets would have been the same because he would not have been able to exceed the boundaries of the liquidation plan adopted by the shareholders. Justice Blanche adequately summed up this thought:

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6. La. R.S. 12:145(C) (1969) ("Except as may otherwise be provided by the shareholders or incorporators authorizing the dissolution, the liquidator shall be vested with full authority: . . . (3) To sell and convey, either in whole or in part, at public or private sale, the property of the corporation, movable or immovable, on such terms and conditions as to the liquidator shall seem best, either for cash or for securities to be distributed to the shareholders.").

7. La. R.S. 12:121 (1969 & Supp. 1984).

> As owners of less than 5% of a closely held family corporation, plaintiffs are left with few remedies when they are dissatisfied with the management of the corporation. Unlike shareholders of a large corporation, they may not dispose of their stock on the open market, nor were they likely to find outside buyers for their shares of a family business. Nevertheless, inability to withdraw is a risk that a minority shareholder assumes when he participates in a closely held corporation.[8]

Several recent cases concerning shareholders' rights reaffirm some basic tenets of corporate law. In *Boisdore v. Bridgeman*,[9] the Louisiana Fifth Circuit Court of Appeal denied a shareholder the use of a statutory technicality to void certain actions taken by a corporation in which he had an interest. A shareholders' meeting was called, and a notice sent to the plaintiff *nine* days prior to the meeting; the Business Corporation Law requires that written notice of the time, place and purpose of such a meeting must be given to all shareholders entitled to vote at least *ten* days prior to the day fixed for the meeting.[10] The court did not allow the plaintiff to use this failure of notice to rescind corporate action taken at the meeting since, in fact, the plaintiff shareholder had attended the meeting and participated in the voting.

In another Louisiana fifth circuit case, *Hinchman v. Oubre*,[11] the court distinguished between the standing of a corporation and the standing of the corporation's sole shareholder to sue for damages incurred by the corporation. Marshall Hinchman was the sole shareholder of Hinchman Electrical Contract Maintenance Corporation (HECMAC). The defendants had obtained a judgment against HECMAC for failure to pay rent and had seized certain property to satisfy the judgment. Hinchman and HECMAC filed suit against the defendants, claiming abuse of process and conspiracy to defraud. An exception of no right and/or cause of action was sustained against Hinchman, and he appealed. The court concluded that a shareholder, although the sole and controlling shareholder, does not have a personal right of action for debts and obligations due "his" corporation. Only the corporation was the proper party to sue to recover any damages resulting from the defendants' improper actions. In his petition, Hinchman claimed loss of income, business contracts, and security and privacy of records. The court found that these damages would be damages suffered by the corporation, and that any losses Hinchman may have suffered as shareholder were simply indirect losses for which he had no standing to sue.

In *Duhon v. Slickline, Inc.*,[12] the Louisiana Third Circuit Court of

8. 443 So. 2d at 546.
9. 439 So. 2d 1266 (La. App. 5th Cir. 1983).
10. La. R.S. 12:73(D) (1969).
11. 445 So. 2d 1313 (La. App. 5th Cir. 1984).
12. 449 So. 2d 1147 (La. App. 3d Cir. 1984).

Appeal was faced with a request for a writ of mandamus to compel the corporation to transfer shares and issue stock certificates to the plaintiff, Gus Duhon. Duhon was the father of the three shareholders who had formed Slickline, Inc., an oilfield service corporation. In order to obtain the capital necessary to start the business, two of the shareholders approached their father and offered to make him a twenty-five percent owner of the corporation in return for a $40,000 capital contribution. The third son, who was also a one-third shareholder, was not a party to the agreement with Duhon, nor was he made a party to the suit. Duhon transferred $40,000 in cash to the corporation but, because of a dispute with the sons, never received his stock. The court said that a writ of mandamus was a proper vehicle to compel the corporation to transfer shares and to require the corporate officers to issue proper certificates of stock when there was no dispute as to the ownership of the stock. However, the court was not willing to grant such a writ in this case since there was a conflict between the relief sought by Duhon and the articles of incorporation. The articles of incorporation provided that a shareholder could not "sell, donate, pledge, or in any way transfer any stock of this corporation without first offering the same for sale, to all of the other shareholders owning stock."[13] Interestingly, the sons who had made the agreement with the father had not first offered the shares allegedly due Duhon to their brother, the other shareholder. The third son had a preemptive right of first refusal, which was not offered to him prior to the agreement with Duhon; therefore, the writ of mandamus was not appropriate. The court found that there was a failure of consideration in the transaction between Duhon and his two sons, and his sole remedy was a return of the $40,000.

Another disgruntled shareholder appeared in the Louisiana fourth circuit decision *Allen v. Royal "16," Inc.*[14] Allen was a one-third shareholder in Royal "16," Inc., which managed the Noble Arms Hotel in New Orleans. The plaintiff and other shareholders had bought the Noble Arms Hotel and had subsequently sold it to Royal "16," presumably in exchange for all the outstanding shares in Royal "16." Allen apparently did not get along well with the shareholders owning the other two-thirds interest in the corporation, as some eight months after the corporation was formed, Allen and his wife were removed from the board of directors, and he was ousted as president. Allen sued to rescind the sale of the hotel to the corporation, and in the alternative asked for an involuntary dissolution of the corporation.

The basis for Allen's request to rescind the sale to the corporation was that there was error as to the nature of the articles of incorporation of Royal "16." Allen alleged that he thought the articles of incorporation required unanimous consent of all shareholders in order to take any

13. 449 So. 2d at 1151.
14. 449 So. 2d 1365 (La. App. 4th Cir. 1984).

corporate action. The court disposed of this issue very handily by citing the legal precept that "one who signs a contract is presumed to know its terms and cannot avoid its provisions, absent fraud or error, simply because he fails to read or understand it."[15]

The court said that as a matter of policy it would be reluctant to institute an involuntary dissolution.[16] Allen based his request for dissolution on a myriad of allegations including fiscal mismanagement, improper record keeping, and other "gross and persistent ultra vires acts," including failure to call shareholders' meetings and failure to allow Allen to inspect the books and records of the company. The court found that the corporation was not in fact insolvent or that its objects had not failed or been entirely abandoned because, while the corporation was not yet profitable, its operation had improved. As to the allegation of gross and persistent *ultra vires* acts, the court reviewed the operation of the corporation and, although finding some slight degree of mismanagement, did not find that the majority shareholders and the board of directors were guilty of any *ultra vires* acts. The court cited *Gruenberg v. Goldmine Plantation, Inc.*, for the proposition that

> acts pertaining to the internal management, of the corporation, where they are not fraudulent or unfair to minority stockholders, will not be interfered with or remedied at the instance of minority stockholders, regardless of whether such acts are wise or expedient. . . . This is the unavoidable result of the fundamental principle that the majority can regulate and control the lawful exercise of the powers conferred upon a corporation by its charter. The wisdom of the action taken or threatened will not be considered . . . . Courts cannot compel corporate officers to act wisely but they can compel them to act honestly.[17]

The court concluded that receivership or dissolution is proper only where mismanagement is "'willful and its purpose is to ruin the corporation . . . where the facts disclose a scheme on the part of the . . . majority stockholder to wreck the corporation and dissipate its assets.'"[18]

PIERCING THE CORPORATE VEIL

Three decisions of the courts of appeal directly addressed the corporate veil issue. All were decided in February, 1984: two cases by the fourth circuit, and one by the fifth circuit.

15. 449 So. 2d at 1368.

16. Involuntary dissolution may be ordered by the court pursuant to La. R.S. 12:143 (1969 & Supp. 1984).

17. 449 So. 2d at 1370 (quoting Gruenberg v. Goldmine Plantation, Inc., 360 So. 2d 884, 886-87 (La. App. 4th Cir. 1978)).

18. *Allen*, 449 So. 2d at 1371 (quoting West v. Certified Credit Corp., 162 So. 2d 589, 595 (La. App. 2d Cir. 1964)).

In *LaDel, Inc. v. Fox*,[19] the plaintiff brought suit against the defendant, an officer of Greg Fox Productions, Inc., for money due on an open account. The trial court granted judgment against Fox individually and he appealed. While there was no dispute regarding the account itself or the amount owed, Fox contended on appeal that the purchases from the plaintiff were used for the benefit of the corporation, not for his personal benefit. Fox had organized Greg Fox Productions, Inc. in early 1979 and subsequently transacted business with LaDel, Inc. The invoices from LaDel to Fox were addressed to Greg Fox Productions, but made no mention of the corporation. The evidence adduced at trial revealed that the plaintiff had transacted business with Fox individually prior to 1979. There was no indication to plaintiff that Fox had incorporated the business or that the debts incurred after 1979 were corporate, rather than individual, debts. Plaintiff produced at trial invoices addressed to Greg Fox Productions, as well as bank accounts and checks which revealed no evidence of Fox's doing business in a corporate capacity.

In affirming the action of the trial court, the fifth circuit found it unnecessary to pierce the corporate veil since there was never any notice to plaintiff that it was doing business with a corporation. The court therefore determined that Fox had conducted business individually with the plaintiff.

In dissent, Judge Bowes did not find the "exceptional circumstances"[20] required to pierce the corporate veil. The dissent relied heavily on the lack of evidence that Fox ever saw the credit application for his post-1979 business transactions with plaintiff, which had been prepared by one of plaintiff's own employees. Judge Bowes also found that the failure to use the words "corporation" or "incorporated" did not result in a presumption of fraud sufficient to permit piercing of the corporate veil. Further, there was no showing that Fox had commingled any of the corporation's money with his own.

In *Farrell v. Farrell*,[21] the court faced the question of whether a corporation whose employee was transferred to a wholly owned subsidiary was still responsible for a garnishment resulting from a judgment for child support arrearages. The wholly owned subsidiary was found by the court to be a corporate entity separate and distinct from its parent corporation under the laws of Colorado, where both corporations were incorporated.

The court refused to adopt plaintiff's contention that defendant's transfer to the wholly owned subsidiary would not relieve the garnishee corporation from the duty to withhold funds from the debtor. The court

19. 445 So. 2d 1299 (La. App. 5th Cir. 1984).

20. See, e.g., Kingsman Enter. v. Bakerfield Elec. Co., 339 So. 2d 1280 (La. App. 1st Cir. 1976).

21. 446 So. 2d 790 (La. App. 4th Cir. 1984).

of appeal held that the trial court had failed to consider the separate identities of the parent corporation and the wholly owned subsidiary, noting the rule established in *Menard v. Associated Royal Crown Bottling Co.*[22] that allegations that one corporation is a subsidiary of another are not sufficient to pierce the corporate veil of the parent corporation absent a showing that the two corporations are not separate entities, or that there is some fraudulent motive or action involved. Accordingly, the court of appeal reversed the trial court's decision and relieved the parent corporation from further obligation to withhold funds for the judgment creditor.

In a different factual setting in *Landry v. St. Charles Inn*,[23] a tort victim attempted to pierce the corporate veil to recover from the owners of a parking lot adjacent to a motel in which she was a guest. The shareholders of the corporation which owned the parking lot also held most of the stock of the corporation which owned the motel. Plaintiff attempted to recover for damages resulting from an assault upon her in the motel's parking lot by an unknown assailant.

In reversing the jury's determination that the landowner corporation should be held "jointly liable"[24] with the hotel-owner corporation, the fourth circuit stated that the mere fact that several corporations, otherwise distinct in identity, share common stockholders and officers does not constitute the exceptional circumstances required by the jurisprudence to pierce a corporate veil. Examples of the kinds of evidence which would be required to pierce the veil include failure to keep separate accounting records, failure to observe corporate formalities, undercapitalization or insolvency, or control of the affairs of one corporation by another.[25] The court, finding no such evidence presented by the plaintiff, reversed the jury's determination that the landowner corporation was liable for the damages incurred by the plaintiff.

The "corporate veil" cases decided this year make no departure from the well established jurisprudence on this drastic remedy. These decisions are consistent with the prior holdings of Louisiana's appellate courts which demand almost conclusive evidence that the entities are not distinct before allowing a plaintiff to recover from a parent, subsidiary, or closely related corporation as a result of the actions of another corporation.

PROCEDURAL MATTERS

The appellate decisions of the past year include the usual smattering of cases dealing with questions of civil procedure and corporations, such

22. 249 So. 2d 363 (La. App. 4th Cir. 1971).
23. 446 So. 2d 1246 (La. App. 4th Cir. 1984).
24. 446 So. 2d at 1250.
25. 446 So. 2d at 1251.

as the Louisiana Long Arm Statute and venue for actions against a corporation.

In *Hervish v. Growables, Inc.*,[26] the defendant, a Florida corporation, had shipped a quantity of furniture to the Louisiana plaintiff via a truck carrier. The furniture was damaged in shipment and plaintiff later sued, attempting to obtain personal jurisdiction over the defendant corporation under the Louisiana long-arm statute.[27] The defendant excepted to the jurisdiction of the Louisiana district court, and both the trial court and the court of appeal maintained the exception.

Recognizing that while a corporation's availing itself of the privilege of conducting activities within Louisiana would ordinarily subject it to the jurisdiction of Louisiana courts, the fifth circuit found that there was no evidence in the record to substantiate a claim that Growables had transacted any business in Louisiana, or that it solicited any business from Louisiana residents either in person or by mail. Furthermore, there was no evidence that the corporation derived substantial revenue from sales to Louisiana residents. Accordingly, the court held that the single transaction which was the subject of the instant suit could not justify the conclusion that the defendant had acted in such a way as to subject itself to the jurisdiction of Louisiana's courts.

A contrary result was reached in *Galle v. Allstate Insurance Co.*,[28] a suit which involved personal injuries resulting from alleged defects in a camper truck. The plaintiff sued Keystone Coach Manufacturing Company of Florida, which excepted to the personal jurisdiction of the district court. The trial court maintained the exception, but the court of appeal overruled it, reversed and remanded. The fourth circuit based its decision primarily on the fact that in 1978 Keystone had sold three campers to one co-defendant, an automobile dealership located in Louisiana, for a total price in excess of $25,000. At least one of the campers was later sold to a Louisiana resident. The court also found that the funds derived from the sale of these three units were substantial, even though sales in Louisiana in 1978 formed only a small part of Keystone's total revenue that year. The court also found that Keystone had introduced products (*i.e.*, campers) into the "stream of commerce" with the intent that they be purchased by Louisiana consumers, and that Keystone had actually availed itself of the privilege of conducting business in Louisiana.

The question of proper venue for a suit against a corporation appeared in two reported decisions, one from the first circuit and one from the third. In *Williams v. Crown Zellerbach Corp.*,[29] the plaintiff

26. 449 So. 2d 684 (La. App. 5th Cir. 1984).
27. La. R.S. 13:3201 (1968 & Supp. 1984).
28. 451 So. 2d 72 (La. App. 4th Cir. 1984).
29. 443 So. 2d 607 (La. App. 1st Cir. 1983).

attempted to bring a tort action in St. Tammany Parish, where he was domiciled. Defendant Crown Zellerbach excepted to the venue, alleging that it was a foreign corporation with a principal place of business in Washington Parish. Plaintiff responded that he suffered the effects of exposure to toxic materials, to which he had been exposed in Washington Parish, at his home in St. Tammany Parish; therefore St. Tammany Parish was a proper venue under article 74 of the Louisiana Code of Civil Procedure since that was "where the damages were sustained." The court of appeal found that the record did not substantiate the plaintiff's claim that his injuries, if any, were sustained in St. Tammany Parish and sustained the defendant's exception of improper venue.

Simmons v. Hope Contractors, Inc.[30] involved multiple defendants in a suit filed by the plaintiff in Natchitoches Parish. Plaintiff Simmons sued both Hope Contractors, Inc., a domestic corporation with a principal office in Terrebonne Parish, and Odeco, Inc., a foreign corporation with a principal office in New Orleans. While Hope excepted to the venue, Odeco answered the suit, thereby waiving its rights to object to venue. The trial court denied Hope's exception of improper venue since the petition alleged that Hope and Odeco were solidary obligors and Odeco had waived its objection to venue by answering. The trial court was of the opinion that this action had the effect of "vesting" proper venue in Natchitoches Parish.

In reversing the trial court's decision, the third circuit held that before article 73 of the Code of Civil Procedure could "vest" venue, venue must be proper as to at least one of the solidary obligors. Since Natchitoches Parish was not a place of proper venue for either Hope or Odeco, the plaintiff could not rely upon article 73 to establish venue in Natchitoches Parish. The court commented that it would be improper to force Hope to abandon its exception of improper venue because another party, over whom it had no control, had waived its rights by filing an answer.

Service of process was an issue in two decisions. In *Billiot Brothers, Inc. v. Bercier*,[31] an action to annul a default judgment rendered against a corporation, the court of appeal determined that the corporation had not successfully overcome the presumption that the sheriff's return of citation, indicating personal service upon one of the registered agents of the corporation, was *prima facie* correct.

Another decision, *Louisiana Truck Parts, Inc. v. W & W Clarklift, Inc.*,[32] also involving an action to annul a judgment, involved service upon a corporation whose registered agents could not be located. The plaintiff, unable to locate the registered agents, effected service upon the secretary of state—who did not forward the citation to the cor-

30. 447 So. 2d 638 (La. App. 3d Cir. 1984).
31. 447 So. 2d 1090 (La. App. 1st Cir. 1983).
32. 444 So. 2d 733 (La. App. 5th Cir. 1984).

poration at its last known address. The issue presented was whether the use of the word "shall" in Code of Civil Procedure article 1262 imposed a duty on the secretary of state to file in the record evidence showing that he had forwarded the citation and petition to the corporation. In concluding that no such duty is imposed by the statute on the secretary of state, the court interpreted Code of Civil Procedure article 1262 to mean that service is complete when the secretary of state receives the documents and a proper return of service is made.

CORPORATE EXISTENCE AND ARTICLES OF INCORPORATION

When SBG Audubon Corporation initially filed its articles of incorporation with the secretary of state, it chose the name SBG Corporation.[33] The articles of incorporation were executed and filed in reliance on the secretary of state's assurance that the name "SBG Corporation" had not previously been used, but six calendar days after filing the articles the corporation learned that the name "SBG Corporation" was being used by another corporate entity. As a result, the articles of incorporation were amended to change the name to SBG Audubon Corporation. The amendment was filed with the secretary of state on December 1, 1982.

The date of corporate existence of SBG Audubon Corporation became crucial when the corporation submitted bids for furnishing a restaurant facility at Audubon Park in New Orleans. One of the unsuccessful bidders argued that SBG Audubon Corporation did not achieve corporate existence until the amendment to the articles of incorporation was filed, and therefore had no corporate existence on the date the bids for the restaurant facility were submitted.

Applying the "relation-back" provision of section 25 of the Business Corporation Law,[34] the court in *Plantation on the Green, Inc. v. Gamble*[35] found that since the original articles of incorporation had been executed in authentic form on November 24, 1982 and received by the secretary of state's office on November 29, 1982, and since there were four legal holidays between November 25 and November 29, 1982 (Thanksgiving Day, the Friday following Thanksgiving and the following Saturday and Sunday), the five day period provided by law did not begin to run until November 24, 1982, and therefore both the original articles and the amendment changing the name to SBG Audubon Corporation were filed within five legal days of the date the articles were executed. Thus, November 24, 1982 was the date on which SBG Audubon Corporation began its corporate existence, which was prior to its submission of bids.

33. Plantation on the Green, Inc. v. Gamble, 441 So. 2d 299, 301 (La. App. 4th Cir. 1983).

34. La. R.S. 12:25 (1969 & Supp. 1984).

35. 441 So. 2d at 301, 302.

ACTS OF CORPORATE OFFICERS

In *Meisel v. Natal Homes, Inc.*,[36] plaintiff homeowners sued the construction company and a corporate vice-president for damages resulting from alleged defective construction of the home they had purchased. The sole issue on appeal was the individual liability of the corporate officer.

As might be expected, the corporate defendant was alleged to be insolvent, and plaintiffs were attempting to recover from a solvent defendant, the corporate officer. The court held that insolvency alone does not provide a basis for casting a corporate officer personally liable, particularly where the plaintiffs had sufficient notice that the individual corporate officer was acting as an agent of the corporation. There was no time during the transactions with plaintiffs in which the individual officer acted other than as an agent of the corporation. His capacity as agent was expressly made known to plaintiffs. The court of appeal reversed the trial court's decision to hold the individual corporate officer solidarily liable with the corporation for plaintiff's damages.[37]

State Block, Inc. v. Poche[38] is a case involving a corporation's "alter ego." The facts in *State Block* involved a dispute over season tickets to LSU football games. The defendant was one of the original incorporators of State Block, Inc., and was also an employee of the corporation who performed public relations and business development functions for the corporation. After the corporation began business, Poche purchased season football tickets to LSU games in his own name, but the tickets were paid for by the corporation. Poche testified that he used the tickets to entertain the corporation's customers.

In 1981, Poche left the employ of the plaintiff corporation and sold his stock to another individual. The 1981 season football tickets were mailed to State Block. Poche made a demand upon the corporation for the tickets, but the corporation refused to deliver the tickets to Poche. Poche then made a request of LSU that all subsequent season tickets be mailed to Poche in care of his new employer, who was not a party to the suit.

The trial court ruled that the season tickets belonged to Poche and not to the corporation. The trial judge held that ownership of the tickets was fixed at the time of the initial purchase by Poche, and that payments for tickets for subsequent seasons by State Block, Inc. did not change ownership of the tickets.

The court of appeal, affirming the trial court's judgment, said that in a strict sense the concept of ownership does not apply to season football tickets. Rather, the court held that Poche had purchased a lease

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36. 447 So. 2d 511 (La. App. 4th Cir. 1984).
37. Id. at 512-13.
38. 444 So. 2d 680 (La. App. 5th Cir. 1984).

of the right to attend a season of LSU football games with an option to renew the lease at the end of each football season. Although State Block, Inc. had not authorized Poche to make the initial "lease" of the tickets, it had ratified Poche's actions by paying for the tickets from year to year.

Although the appellate court concluded that, as between Poche and State Block, the corporation owned the season tickets and all the rights which accrued to them, it could not grant relief to State Block since the 1983 football season, the time during which suit was brought, had already ended and LSU had not been made a party to the suit. Furthermore, since Poche had already arranged for subsequent renewals to be sent to him individually, the court could not grant any relief to State Block absent the presence of LSU as a party in the suit. So while the court of appeal disagreed with the trial court's reasoning, the result was found to be correct, and the decision was affirmed.