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# CORPORATIONS-APPLICATION OF STATUTES REQUIRING THAT CORPORATE BUSINESS BE MANAGED BY BOARD OF DIRECTORS

Bernard L. Trott
*University of Michigan Law School*

CORPORATIONS—APPLICATION OF STATUTES REQUIRING THAT CORPORATE BUSINESS BE MANAGED BY BOARD OF DIRECTORS—In 1942, *X* corporation and its stockholders entered into an agreement whereby it was stipulated that the management of all theatres leased or operated by the *X* corporation, or any subsidiary thereof, would be placed in the hands of *Y* corporation, a large stockholder. This power of management was to include supervising and

directing the buying and booking of all attractions, designating and changing the entertainment policy, hiring and discharging employees, and carrying out "such policies or projects as the Board of Directors of the Tenant or its subsidiaries may approve." [1] This agreement was to be effective for a period of nineteen years and was a renewal of a like contract which had been in force for the preceding twenty years. Plaintiff stockholder instituted this action to enjoin defendant *Y* corporation from continuing the management of *X* corporation's theatres under this contract. The lower court dismissed the case as no actual injury could be shown nor was any fraud alleged. *Held*, reversed. The agreement violated the New York statute, which provides: "The business of a corporation shall be managed by its board of directors." [2] *Long Park, Inc. v. Trenton-New Brunswick Theatres Co.*, (N.Y. 1948) 77 N.E. (2d) 633.

The holding of the court in the principal case is in accord with the well established law on the subject, if the court was correct in deciding that the contract deprived the board of directors of all its managerial powers.[3] The trial court concluded, however, that inasmuch as *Y* corporation, as manager, was to carry out such policies and projects as might be approved by the directors of *X* corporation, the contract did leave the board with supervisory authority and therefore substantially complied with the statute. Substantial compliance being a relative term it is impossible to declare categorically that either conclusion is the correct one. Suffice it to say that the trial court's conclusion seems reasonable since admittedly all managerial authority need not be exercised by the directors of a corporation.[4] Some authority may be, and usually has to be, delegated to other groups or individuals.[5] Assuming that there is substantial compliance with the statute, then this more significant question arises. Should a working, and apparently desirable, business agreement be held unenforceable because of a slight infringement of the statutory provision that the board of directors shall manage? [6] Here was a business arrangement which was deemed

[1] Principal case at 634. The word "Tenant" in the contract refers to *X* corporation.

[2] 22 N.Y. Consol. Laws (McKinney, 1943) § 27.

[3] BALLANTINE, CORPORATIONS, § 43 (1946); Manson v. Curtis, 223 N.Y. 313, 119 N.E. 559 (1918); see Anglo-American Land Co., Ltd. v. Lombard, (C.C.A. 8th, 1904) 132 F. 721 at 736, where the court ruled that the mere grant of corporate power implies that the corporation is to exercise its power only through its own officers and agents and not through another corporation. No express statutory prohibition is required.

[4] 2 THOMPSON, CORPORATIONS, 3d ed., § 1300 (1927); 22 N.Y. Consol. Laws (McKinney, 1943) § 14, provides that each corporation has the power "to appoint such officers and agents as its business shall require."

[5] 2 THOMPSON, CORPORATIONS, 3d ed., § 1303 (1927). See Jones v. Williams, 139 Mo. 1 at 25, 40 S.W. 353 (1897), where the court said, "directors have the power, without statutory authority, to delegate to officers, agents or executive committees the power to transact, not only ordinary and routine business, but business requiring the highest degree of judgment and discretion."

[6] See Schneider v. Greater M. & S. Circuit Inc., 144 Misc. 534 at 540, 259 N.Y. S. 319 (1932), where in a similar situation an outsider took over management of all of a corporation's theatres, ostensibly under a lease. In dismissing the case the court said, ". . . also weighing against plaintiff's right to relief is the significant fact

desirable by the corporation and all stockholders when drawn. Undoubtedly there was some value in having these managerial functions placed in the hands of a given group for a given period of time. Its obvious purpose and effect would be to provide stability and continuity of entertainment policy and theatre management. The practicality of the arrangement is apparent from the fact that it had operated successfully since 1922. While the agreement can be considered a technical statutory violation contrary to public policy or legislative intent, the New York Court of Appeals has justifiably pointed out, in *Clark v. Dodge*,[7] that public policy and legislative intent are rather meaningless phrases in this connection. Possible or actual injury to stockholders or creditors, fraud or mismanagement are terms with much more substance. It would seem apparent that where all the parties interested in the business have voluntarily entered into an agreement, as in the principal case, it should not be set aside as unenforceable at the instance of a minority shareholder who later becomes dissatisfied,[8] unless fraud or mismanagement is alleged or unless the agreement involves more than a technical statutory violation.[9]

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that for nearly three years the agreement has been in the process of performance." Clark v. Dodge, 269 N.Y. 410, 199 N.E. 641 (1936).

[7] 269 N.Y. 410 at 415, 199 N.E. 641 (1936). The court further stated, at 415: "If the enforcement of a particular contract damages nobody—not even in any perceptible degree, the public—one sees no reason for holding it illegal, even though it impinges slightly upon the broad provisions of Section 27."

[8] Pigeon River Ry. Co. v. Champion Fibre Co., (C.C.A. 4th, 1922) 280 F. 557 at 563, cert. den., 260 U.S. 724, 43 S.Ct. 14 (1922); Hocking Valley Railway Co. v. Toledo Terminal Railroad Co., 99 Ohio 35 at 45, 122 N.E. 35 (1918); Lorillard v. Clyde., 86 N.Y. 384 at 389 (1881).

[9] Sherman and Ellis, Inc. v. Indiana Mutual Casualty Co., (C.C.A. 7th, 1930) 41 F. (2d) 588, cert. den., 282 U.S. 893, 51 S.Ct. 107 (1930); Jones v. Williams, 139 Mo. 1, 40 S.W. 353 (1897).