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CORPORATIONS--MERGER--STATUTORY MEANING OF "SAME OR SIMILAR PURPOSES"

Ray A. McIntyre
University of Michigan Law School

CORPORATIONS—MERGER—STATUTORY MEANING OF "SAME OR SIMILAR PURPOSES"—A merger agreement was drawn up and approved by the necessary statutory majority of shareholders for the merging of a corporation engaged in making and selling razor blades into one which was making and selling pens and pencils; but the minority stockholders of the razor blade company sought a preliminary injunction against the merger on the grounds that it was prohibited by the statute which confines the authority to merge to those corporations which are organized ". . . for the purpose of carrying on any kind of business of the same or similar nature . . . ." [1] The certificates of incorporation of both companies provide that one of the purposes is "to manufacture, purchase or otherwise acquire . . . deal in and deal with, goods, wares and merchandise and real and personal property of every description . . . ." *Held*, the merger is prohibited, for the principal objects of the two companies are dissimilar and the common language in the certificates is too general and illusory to remedy it. *Imperial*

[1] N.J. Rev. Stat. (1937) 14:12–1.

Trust Co. v. Magazine Repeating Razor Co., (New Jersey Chancery 1946) 46 A. (2d) 449.

In applying this type of statute it is not the business in fact carried on, but that for which the corporations were organized which is controlling, and to determine whether such business is of the same or similar nature the court must resort to the certificates of incorporation.[2] The court in the principal case was of the opinion that the common purpose expressed was too broad to be taken into consideration as an independent object, but rather was dependent on the primary object of the company.[3] Such reasoning would seem to come perilously close to the court deciding the primary objects by looking at the particular business in fact carried on by the corporation at the time. The prinicipal objects of a corporation are expressed in the charter and there is no rule, absent a statute, that there can be only one; in fact it is good business nowadays for a corporation to have a number of independent lawful purposes in its charter to meet unanticipated exigencies.[4] These powers should not be so broad and illusory as to be incapable of circumscription, such as a statement that the object of the company is to carry on any business which it may deem profitable.[5] But would it not seem that the manufacturing, buying, and disposing of goods and merchandise is not this broad and that it would be capable of limitation? In fact, two decisions cited with approval in the principal case used such general language—in one the corporation amended its charter so as to comply with the statutory requirements of similarity with another corporation; [6] in the other case the merger was prohibited because one corporation had such broad general powers while the other was limited to a few specific powers.[7] A pencil company and a razor blade company are like novelty companies which deal in many types of articles as the demand arises for them. To say that because specific purposes, such as the making of sharp edged articles, were expressed along with general purposes the latter are limited by the former, would make the general purpose ineffective.[8]

[2] American Malt Corporation v. Board of Public Utility Commissioners, 86 N.J.L. 668 at 670, 92 A. 362 (1914); Colgate v. United States Leather Co., 75 N.J. Eq. 229 at 236, 72 A. 126 (1909); 15 FLETCHER, CYCLOPEDIA OF CORPORATIONS, perm. ed., §7058 (1938).

[3] Principal case at 451 and 452.

[4] N.J. Rev. Stat. (1937) 14:2-3, subd. d, "The certificate of incorporation shall set forth the object or objects for which the corporation is formed." Thus the statute would allow more than one corporate object.

[5] Ellerman v. Chicago Junction Railways & Union Stockyards Co., 49 N.J. Eq. 217 at 239, 23 A. 287 (1891) (holding that a statement to do any and all acts tending to increase the value of the stock is of no effect); State v. Central Ohio Mutual Relief Association, 29 Ohio St. 399 (1876).

[6] Clarke v. Gold Dust Corporation, (C.C.A. 3d, 1939) 106 F. (2d) 598 at 600 (the merging corporation's certificate was amended to give it the "right to manufacture and sell any kind of merchandise or personal property . . . .").

[7] Colgate v. United States Leather Co., 75 N.J. Eq. 229 at 236-239, 72 A. 126 (1909) (the objects of the United States Leather Co. were to manufacture and sell leather, lumber, and belting, while the objects of the Central Leather Co. were, in addition to those for the United States Leather Co., to engage in any other manufacturing, trading or selling business, etc.).

[8] Principal case at 452.

This, it would seem, would be reading an unintended meaning into the legislative language. There are decisions to the effect that a corporation engaged in one line of business under specific charter purposes may use the general wording of corporate objects to engage in a new and unrelated type of business without amending its charter. A sugar company, due to the seasonableness of the cane industry, engaged in making matches and woodenware; [9] a sheet music company entered into the investment business;[10] and a carriage and coach company used its general power to build "other vehicles" to make and sell automobiles.[11] However, the effect of the decision in the principal case is not so far reaching for most of the states which originally had this type of statute have repealed or altered it because of its uselessness in modern times.[12] The specter of monopoly no longer looms with such prominence, for reasonable business combinations not in restraint of trade are valid, and fostering such combinations is one of the purposes of the merger statutes.

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[9] Parkinson Sugar Co. v. Bank of Fort Scott, 60 Kan. 474, 57 P. 126 (1899).

[10] Albers v. Villa Moret, Inc., 46 Cal. App. (2d) 54, 115 P. (2d) 238 (1941).

[11] Duer v. Chicago Coach & Carriage Co., 194 Ill. App. 314 (1915) (not reported in full).

[12] See 45 YALE L. J. 105 at 110 (1935).