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CORPORATIONS-DISSOLUTION-POWER OF CHANCELLOR TO DECREE DISSOLUTION WHEN DEADLOCK EXISTS

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CORPORATIONS—DISSOLUTION—POWER OF CHANCELLOR TO DECREE DISSOLUTION WHEN DEADLOCK EXISTS—Plaintiffs sought dissolution of defendant corporation pursuant to a statute allowing a petition for dissolution to be made to the chancellor by the holders of one-half of the voting stock upon a deadlock in management and voting shares.[1] The evidence showed that there was no chance of compromise by the warring factions, that the corporate function could not be carried out, and that the plaintiffs' interests might be jeopardized. The chancellor held that unless a harmonious solution was effectively formulated within fifteen days after the filing of an opinion, a judgment containing appropriate provisions for a dissolution would be entered. On appeal, *held,* affirmed. The chancellor had the power to dissolve the corporation because sufficient equitable grounds besides deadlock were shown. *RKO Theatres, Inc. v. Trenton-New Brunswick Theatres Co.,* (N.J. 1950) 74 A. (2d) 914.

[1] N.J. Rev. Stat. (1937) §14:13-1.1.

The power to dissolve a corporation upon application of stockholders is one which equity courts have been reluctant to exercise. Many cases state that the power does not exist in the absence of statute because a corporate existence can be ended only by action of the state which created it.[2] However, the modern trend is to recognize and assert the authority, although the remedy is considered extreme.[3] This attitude is reflected in the cases dealing with the deadlocked corporation. In the absence of a statute regarding the power, one court has demanded that the same requirements for dissolution be met as in the case of a petition by a minority stockholder.[4] Others recognize the problem of the deadlocked corporation as a distinct one.[5] Something more than just deadlock seems to be required before dissolution will be ordered, but what additional facts are needed is not quite clear. Cases in which dissolution has been granted include circumstances of inability to carry out the corporate function,[6] violence between the warring parties,[7] and unauthorized control of the property and business by one faction.[8] In the principal case it is submitted that the fact that there is a legislative grant of power to dissolve does not change the situation to any great extent. The court compares its authority to that exerted against insolvent corporations for the protection of minority stockholders and for the protection of the state when there is a default in the payment of the franchise tax.[9] This analysis seems to indicate an inherent power to deal with the situation even in the absence of legislative authorization. The reasons for granting dissolution in the principal case are the interest of the sovereign to prevent paralysis of the corporate function and the protection of the shareholders' interests, which suggests that the power is limited to cases such as this.[10] A similar view of the chancellor's power is reflected in recent cases dealing with statutes allowing dissolution for other reasons. Thus the West Virginia court[11] requires additional equitable

[2] Lincoln Park Chapt. R.A.M. v. Swatek, 204 Ill. 228, 68 N.E. 429 (1903); State ex rel. Donnell v. Foster, 225 Mo. 171, 125 S.W. (1910); cases cited in 16 FLETCHER, CYC. CORP., perm. ed., §8077 (1942).

[3] Bowen v. Bowen-Romer Flour Mills Corp., 114 Kan. 95, 217 P. 301 (1923). See annotation, 43 A.L.R. 242 (1926).

[4] Flemming v. Heffner & Flemming, 263 Mich. 561, 248 N.W. 900 (1933).

[5] "If [the] plaintiffs do not constitute a majority of the stockholders, neither are they a minority," Bowen v. Bowen-Romer Flour Mills Corp., supra note 3, at 303; Hawkins v. Foasberg, 178 Minn. 457, 227 N.W. 655 (1929).

[6] Saltz v. Saltz Bros., Inc., (D.C. Cir. 1936) 84 F. (2d) 246; State ex rel. Conlan v. Oudin Mfg. Co., 48 Wash. 196, 93 P. 219 (1908).

[7] Nashville Packet Co. v. Neville, 144 Tenn. 698, 235 S.W. 64 (1921).

[8] Boothe v. Summit Coal Mining Co., 55 Wash. 167, 104 P. 207 (1909); Bowen v. Bowen-Romer Flour Mills Corp., supra note 3.

[9] Query if the power exerted against those in default in the payment of the franchise tax is of the same nature as the power to dissolve a corporation? In Ionic Lodge No. 72, F.A. & A.M. v. Ionic Lodge Free Ancient & Accepted Masons No. 72 Co., 232 N.C. 252, 59 S.E. (2d) 829 (1950) it was held that a corporation in default on the franchise tax could only be suspended, not dissolved.

[10] A parallel result was reached by a New York court in interpreting its statute. Matter of Cantelmo, 275 App. Div. 231, 88 N.Y.S. (2d) 604 (1949).

[11] Hall v. McLuckey, (W.Va. 1950) 60 S.E. (2d) 280.

grounds when applying a statute[12] allowing dissolution when there is danger of loss of corporate funds or property. The Alabama court expresses the same general philosophy in applying a statute[13] authorizing the appointment of a receiver of a corporation which is insolvent or threatened with insolvency. In a recent case that court points to additional facts which make the appointment equitable, such as enmity between two groups of stockholders of a closely held corporation, where the management is for the benefit of one.[14] Thus, equity courts generally seem to require more than express statutory grounds for dissolution to be granted.

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[12] W.Va. Code Ann. (1949) §3093.

[13] Ala. Code (1940) tit. 10, §106.

[14] Adams Const. Co. v. Adams, 254 Ala. 71, 46 S. (2d) 830 (1950). Alabama courts recognize the right to deal with the problem of the principal case. Fisher v. Bankers' Fire & Marine Ins. Co., 229 Ala. 173, 155 S. 538 (1934); Cowin v. Salmon, 248 Ala. 580, 28 S. (2d) 633 (1946).