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Corporations

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LIMITATION OF LIABILITY

French v. Special Services, Incorporated[12] and *Bodnar v. Special Services, Incorporated* are companion cases in which the court wrote a single opinion. Both are actions for damages in negligence suits against the proprietor of a race track brought by persons who engaged in stock car races for prizes. Plaintiffs in both cases admit that, prior to their entry in the races in which their injuries occurred, they signed an agreement with the proprietor whereby the plaintiffs assumed all risks of accident or damage to their persons or property and released the proprietor from any claims for damages, whether caused by negligence or otherwise. The consideration expressed in the release agreements was ". . . being allowed to compete in auto racing events. . . ."[13] Neither plaintiff alleged that the defendant's action constituted willful or wanton misconduct. The court found the privilege of competing in stock car races for prizes to be of value, and held, therefore, that the release agreement did not fail for want of consideration. The court also held that the participants in a stock car race and the proprietor thereof are free to contract so as to release the proprietor from responsibility for damages or injuries to the participants caused by the proprietor's negligence, excepting when such damages or injuries are caused by the latter's willful or wanton misconduct.

ROBERT C. BENSING

CORPORATIONS

DISREGARD OF CORPORATE ENTITY

Cutting across all of the corporate entity cases is a general principle, sometimes articulated but more often not, that the shareholder who chooses to create a corporation may not evade the corporate entity to suit his convenience. This principle is especially clear in the tax cases, state and federal. Thus, the Internal Revenue Service has consistently argued, with considerable success in the courts, that a taxpayer who chooses to do business in corporate form must accept all the tax disadvantages, and cannot deny the separate existence of the corporation he has created.[1]

A recent Ohio case illustrates this principle. The court of appeals upheld a use tax on equipment rentals between a corporation and its wholly owned subsidiary, saying: "Appellant can not take the benefits arising from two corporations and at the same time escape the hazards."[2]

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12. 107 Ohio App. 435, 159 N.E.2d 785 (1958).

13. *Id.* at 436, 159 N.E.2d at 786.

CONTESTS FOR CORPORATE CONTROL

There were two cases construing the recently enacted provision of the corporation code[3] which provides for the shareholder's right to inspect the books of the corporation. One case simply reiterated the long-standing rule that the right of inspection can be enforced only by a mandatory injunction, and not by mandamus.[4] The other case is one of first impression, and is of greater importance to the shareholder or his attorney. The last amendment to the statute[5] restricted the shareholder's right of examination by adding the condition that the shareholder must make a written demand, "stating the specific purpose thereof." In *Grossman v. Cleveland Cartage Company*[6] the stated purpose of inspection was essentially to conduct a "fishing expedition." Specifically, the shareholder wished "to secure information as to the details of the company's business . . . and to investigate whether there are any improprieties in the management and operation of the company."[7] The court held that the purpose stated in the demand was sufficiently specific to comply with the statute and that the burden of justifying refusal to open the books was on the corporation.

Standard International Corporation v. McDonald Printing Company[8] is an extremely interesting example of a contest for the control of a closely held corporation. Almost all of the shares in the corporation were held by five individuals, who were also the directors. Two of the shareholders (the majority group) owned 51% of the voting shares, but had only two representatives on the five-man board of directors. The other three shareholders (the minority group) owned just under 49% of the shares, but had three men on the board. The majority group contracted to sell its shares, which carried the voting control, to an outsider. The minority group, opposed to the transfer of control to an outside interest, decided to increase the number of shares outstanding so that the buyer from the majority shareholders would not receive the voting control. Accordingly, the board of directors voted (3 to 2) to issue an additional block of shares, and to sell them to a member of the minority group for $37.50 per share, thus converting the old minority group into a voting majority. The action was attacked by the old majority group.

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1. Higgins v. Smith, 308 U.S. 473 (1940); Levitt, *Disregarding the Corporate Entity in Tax Cases*, 22 TAXES 457 (1944); Note, 1 TAX L. REV. 3 (1945); Note, 30 VA. L. REV. 398 (1944).
2. Union Bldg. & Constr. Corp. v. Bowers, 158 N.E.2d 386, 390 (Ohio Ct. App. 1958). See also discussion in *Taxation* section, p. 433 *infra*.
3. OHIO REV. CODE § 1701.37(C) (Supp. 1959).
4. State *ex rel.* Schafer v. Citizens Nat'l Bank, 168 Ohio St. 535, 156 N.E.2d 747 (1959)
5. OHIO REV. CODE § 1701.37(C) (Supp. 1959).
6. 157 N.E.2d 154 (Ohio C.P. 1959).
7. *Id.* at 155.
8. 159 N.E.2d 822 (Ohio C.P. 1959).