Interoffice Memorandum of Law
American Law Reports: Third Edition

TO: Mr. Dudley Knox; Advanced Legal Research and Writing LGLA-2331-53500
FROM: Mr. Chris Rainbolt
DATE: March 19, 2015
IN RE: *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).
Ferdinand S. Tinio, Annotation, *What Amounts To "Oppressive" Conduct Under Statute Authorizing Dissolution of Corporation at Suit of Minority Stockholders*, 56 A.L.R. 3rd 358 (1974).
Wade R. Habeeb, Annotation, *Contractual Provisions as Affecting Right to Judicial Partition*, 37 A.L.R. 3rd 962 (1971).

Assignment: To research the two main issues from *Argo v. Shagrithaya* in the American Law Reports topical reporter.

I. Minority Shareholder Oppression

A. Headnote #5 - Corporations and Business Organizations 1526(5)

"Depending on the facts of the case, conduct found by the jury in an action for minority shareholder oppression could be oppressive under either or both definitions of oppression, which occurs when majority shareholder conduct substantially defeats minority's expectations that were both reasonable under the circumstances and central to minority shareholder's decision to join venture and when conduct is burdensome, harsh, or wrongful. V.T.C.A., Business Organizations Code § 11.404." *Argo v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).

B. What Amounts to "Oppressive" Conduct Under Statute Authorizing Dissolution of Corporation at Suit of Minority Stockholders?

§ 2. Background and Summary

"As a general rule, a minority stockholder or group of stockholders of a going and solvent corporation cannot maintain a suit to have it dissolved or to have its assets distributed.[1] There is support for the view, however, that a court of equity has inherent jurisdiction at the instance of stockholders to wind up the affairs of a solvent corporation on the ground of gross mismanagement or fraud, where a clear case of right is shown for which there is no other adequate relief.[2] Numerous states have enacted statutes permitting dissolution at the suit of minority stockholders on various grounds, many of which statutory grounds apparently incorporate those causes which have been recognized by courts of equity in common-law suits for liquidation.[3]

One statutory ground for dissolution is "oppression," which has been defined as a visible departure from the standards of fair dealing and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely, and also as a lack of probity and fair dealing in the affairs of a company to the prejudice of some of its

[1] See Am. Jur. 2d, Corporations § 1601
[2] See Am. Jur. 2d, Corporations § 1604
[3] See, generally, Comment: oppression as a statutory ground for corporate dissolution, 1965 Duke LJ 128.

members.[4] It has been observed that as interpreted by some decisions, this ground has some latitude beyond the common-law situations and may include acts which thwart the expectations of a shareholder that the corporation will be run honestly and ratably for the benefit of all shareholders, and that the shareholder will be allowed to participate in management.[5] In fact, oppression as a statutory ground for dissolution is not generally limited by a requirement that, for example, in the case of deadlock as a statutory cause for liquidation, there must also be a showing of irreparable damage.[6] It has even been pointed out, with respect to one statute, that there are no legislative criteria for the actual judicial determination of the desirability of dissolution, and the final decision is within the sound discretion of the courts.[7] One suggestion is that under a similar statute, the courts are not absolutely required to order dissolution upon a showing of oppression, but may exercise their discretion in fashioning a remedy appropriate under the circumstances.[8] The court in one case recognized various alternative remedies, depending upon the facts of the case and the nature of the problem involved.[9] Thus, where a minority stockholder has other remedies to restore him to his proportionate interest in the corporation,[10] or the acts which he complained about have ceased long before he sought the aid of the courts,[11] dissolution was refused as being too drastic or untenable. For the same reason, dissolution has been refused for acts of the majority which were claimed by the minority to be oppressive, but which were held to be merely the exercise of business judgment.[12] And in one case the court pointed out that whether certain acts are oppressive would have to be determined in the context of the corporation's overall financial picture.[13]" (56 A.L.R. 3rd 358).

[4] See *White v Perkins* (1972) 213 Va 129, 189 SE2d 315, where the court adopted the foregoing definition from certain decisions rendered under an equivalent provision in the English Company Act.
[5] See 1965 Duke LJ 128.
[6] See 1965 Duke LJ 128.
[7] See 28 Md L Rev 360 (1968).
[8] See Note: Corporations—dissolution—denial of right to participate in management of close corporation entitles shareholder to liquidation, 74 Harv L Rev 1461 (1961).
[9] See *Baker v Commercial Body Builders, Inc.* (1973, Or) 507 P2d 387, 56 ALR3d 341.
[10] § 3[b], infra.
[11] § 3[c], infra.
[12] See, especially, § 6, infra.
[13] Thus, noting that under a statute authorizing dissolution of a corporation on the ground of oppressive conduct on the part of the directors or of those in control of the corporation, actions which might be oppressive under one set of circumstances would not be oppressive under others, the court said that the characterization of the conduct complained of would have to be made in the light of corporation's general financial condition, and held in *Gray v Hall* (1973) 10 Ill App 3d 1030, 295 NE2d 506, that the plaintiff minority stockholder who alleged various oppressive acts which the court did not specify was entitled to a complete accounting from the defendants, one of whom was a former stockholder and officer who had sold his shares to the other defendant officer. By way of example, the court said that the payment of large salaries to corporate officers might be justified if the company has large retained earnings, but that this conduct might be oppressive if the corporation is unable to pay dividends to minority stockholders due to large salaries drawn by officers who are majority stockholders. The court said that it would also be oppressive to withhold dividends where the corporation retains large amounts of earnings for no apparent reason except to freeze out minority stockholders. According to the court, whether the nonpayment of dividends is oppressive would thus have to be determined in the light of the corporation's general financial condition.

II. Sufficiency of Evidence of Existence of Implied Contract

A. Headnote #43 – Corporations and Business Organizations 1530, 1578

"There was legally insufficient evidence of a legally enforceable agreement that majority shareholder and minority shareholder would receive same annual compensation while they remained active in corporation to support jury's verdict in favor of minority shareholder in minority shareholder's action for breach of implied contract; that shareholders had received same annual compensation in the past did not demonstrate agreement to continue same compensation scheme in the future, there was no indication that shareholders had any meeting of the minds over any other terms of minority shareholder's employment, such as his specific job obligations or duration of employment, and agreement to 'remain active' was not sufficiently clear and definite." *Argo v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).

B. Contractual Provisions as Affecting Right to Judicial Partition

§ 7[b] Implied agreements—When implied

"In several cases, the courts have recognized that a cotenant's mere contemplation against partition is not enough to raise an enforceable implied agreement.

In *Hayne v Gould* (1893, CC Cal) 54 F 951, it was held that the mere contemplation of the parties against division of property which they held as tenants in common was not sufficient ground upon which to deny to one of the tenants in common a partition of the property.

In *Connette v Wright* (1921) 149 La 478, 89 So 626, it was held that an idea or contemplation by the parties that there should be no partition of oil and gas leases so long as oil was produced from the property covered by the leases, where there was no specific agreement not to partition for any definite period of time, did not prohibit partition.

In *Sweeney v Bay State Oil & Gas Co.* (1943) 192 Okla 28, 133 P2d 538, it was held that the fact that parties to a contract under which one party conveyed a half interest in oil and gas leases to the other party, may not, at the time of entering into the contract, have contemplated partition of the leases, was not a sufficient reason for implying an agreement that there should be no partition in the future.

Where the purpose of the contract entered into between the cotenants would be defeated by partition, an agreement not to partition may be implied. The following cases so hold or recognize:

Tex

Elrod v Foster (1931, Tex Civ App) 37 SW2d 339, error ref

Moss & Urschel v Clark (1935, Tex Civ App) 82 SW2d 1090, error ref (recognizing rule)

Warner v Winn (1945, Tex Civ App) 191 SW2d 747, error ref n r e (recognizing rule)

Lane v Hughes (1950, Tex Civ App) 228 SW2d 986 (recognizing rule)

Odstrcil v McGlaun (1950, Tex Civ App) 230 SW2d 353

Allison v Smith (1955, Tex Civ App) 278 SW2d 940, error ref n r e

Lichtenstein v Lichtenstein Bldg. Corp. (1969, Tex Civ App) 442 SW2d 764 (recognizing rule)" (37 A.L.R. 3rd 962).