South Carolina Law Review

Volume 15
Issue 1 *Survey of South Carolina Law: April 1961--March 1962*

Article 5

1963

Business Associations

Marshall T. Mays

BUSINESS ASSOCIATIONS

MARSHALL T. MAYS* AND LAW QUARTERLY STAFF

Corporations

The most significant development in the field of Corporation Law is the enactment by the General Assembly's 1962 session of the South Carolina Business Corporation Law of 1962. This comprehensive new statute will, on its January 1, 1964 effective date, supplant all of the provisions of Title 12 of the 1952 Code relating to business corporations, although those sections dealing with eleemosynary corporations and special types of corporate enterprise will continue in force. The new corporation statute thus joins the South Carolina version of the Uniform Securities Act (passed by the 1961 session of the General Assembly) in effecting a complete modernization of the basic statutes governing the activities of corporations, and thus will materially assist in the development and expansion of business enterprise in this State.

Because of the wide publicity which the new Corporation Act has received, it will not be the subject of comment in this Survey issue. However, in the Spring of 1963, the Law Quarterly will release a symposium issue containing a full discussion of the new law and its various provisions, by various members of the Bar, together with student contributions on recent corporate law problems.

During the Survey period, the Supreme Court of South Carolina had occasion to apply to a petition for a workman's compensation award the settled principle that, within a family of affiliated and subsidiary corporations, the separate corporate entity will be obserevd unless there are compelling reasons to require the court to "pierce the corporate veil" and to impose liability without regard to the formal distinctness of corporations. In *Brown v. Moorhead Oil Co.*, an individual (not a party to the action) owned and operated four separate corporations engaged in various phases of the business of selling and distributing petroleum products, tire recapping, and "similar business activities."[1] One corporation

*Mays and Mays, Greenwood, S. C.

1. 239 S. C. 604, 124 S. E. 2d 47 (1962).

("Crown") handled the tire recapping phase of the business. Another corporation ("Moorhead") sold and distributed products at wholesale and retail, and operated a number of service stations. The remaining two corporations were not involved in the case. The compensation claimant was employed by Crown, which was not subject to the Workman's Compensation Act because it had fewer than the minimum number of employees and had not elected to come under the Act. The claimant asserted that he was an employee of Moorhead, which was subject to the Act, on the theory that since there was common stock control and close integration, all of the corporations were owned and operated as a single enterprise. The Commission so held, but the Supreme Court reversed the trial court which had upheld the Commission's ruling.

The Court examined the evidence with a view to determining whether Moorhead was "a separate and distinct corporate unit" from Crown and ruled that:

> There is insufficient evidence to justify a conclusion that either corporation was the instrumentality of the other. And the mere fact that the entire stock in the two corporations was owned by the same person does not operate to create an identity of corporate interest between the companies, or create the relationship of principal and agent, or representative, or alter ego between the two.

The Court indicated that the ultimate test is whether it is "in the furtherance of justice" to disregard corporate entity, and concluded, on the evidence, that it was not appropriate to do so since the facts indicated that the various corporations were kept formally separate and distinct, that the relation was one of affiliation growing out of common stock ownership rather than a parent-subsidiary connection, and, perhaps most significant, that there was no indication that the multiple corporations were established to evade the requirement of the Workman's Compensation Act. Stated somewhat differently, the mere fact that an employee would be covered by the Act if the separate corporate entity were disregarded is not, by itself, enough to justify the court in overriding the division of various phases, even of a single business, among several corporations. For clearly there are legitimate reasons for forming multiple corporations, not the least of

which is that the federal income tax impact is appreciably lessened.

Partnerships

Two cases during the Survey period dealt with problems arising out of the dissolution of partnerships. Thus, in *Klatt v. Walling*,[2] the Court had earlier ordered the dissolution of a partnership which it had found existed between the plaintiff and defendant in the present action, and had appointed a receiver to take charge of the partnership affairs. In the order appealed from, the trial judge directed the sale of certain undisputed partnership assets, excepting from the order a tract of land as to which there was an unresolved question of its status as a partnership asset. However, the sale of the undisputed partnership assets was appropriate since the continued maintenance of some of them (several large dogs) was costly, and the other assets (the farm machinery and equipment) were of no further use to the former partners. Thus, in the interests of conserving the partnership assets, the trial judge was held to have correctly exercised his discretion, the Supreme Court observing that "the handling of a partnership dissolution" is "discretionary with the Court and the facts in each particular case should govern."

Few v. Few[3] alleged breach of a contract between two brothers engaged in cattle raising. The substance of the contract was that each would pay one-half of the expenses of the cattle raising operations which were carried out on a tract of land previously purchased by the brothers and held by them as tenants in common. Defenses were asserted, together with counterclaims by the defendant as to the cost of improvements, repairs to the land and buildings, purchase of needed farm equipment, and the like. The Supreme Court reversed the trial court's judgment sustaining demurrers, to the defenses and conterclaims on various grounds.

The Court treated counterclaims as essentially a demand for an accounting among partners "even though a partnership is not alleged in words." And in such an accounting, it is unnecessary to make a demand and show a refusal of the demand. This ruling rests upon the fiduciary relationship among partners which entitles any partner to an accounting "whenever the circumstances render it just and reasonable."

2. 239 S. C. 17, 121 S. E. 2d 233 (1961).
3. 239 S. C. 321, 122 S. E. 2d 829 (1961).

Moreover, the accounting applies not just to articles which may have been converted, sold or otherwise disposed of, but also determines "the status of the various articles and assets belonging to the parties to this action as tenants in common or as partners" and within their possession.

Several dicta usefully summarize fundamental concepts of partnership law. Thus, the Court declares that partnership property (at least personalty) is owned "not by the parties individually but by the partnership" and that each partner has "an equal right to the possession and control of the joint property," so that no one has an exclusive right to possess any particular item of property or "any proportional part of any article of partnership property." Hence, possessory actions such as replevin cannot be maintained. The Court, however, mistakenly differentiates real and personal property owned by a partnership, by asserting that:

> . . . unlike the rule in the case of real property, each partner has an equal right to the possession and control of the joint property.

But Section 25(2)(a)[4] of the Uniform Partnership Act specifically provides that, as to "specific partnership property" (which includes real property under Sections 8 and 10),[5] "a partner . . . has an equal right with his partners to possess specific partnership property for partnership purposes."

Finally, the Court accurately notes that the same rules apply to partnerships and joint ventures, and therefore it is unnecessary to determine whether the cattle raising operations feel into one or the other classification.

4. CODE OF LAWS OF SOUTH CAROLINA § 52-52 (2) (a) (1952).
5. CODE OF LAWS OF SOUTH CAROLINA § 52-13, 52-22 (1952).