COURT OF APPEALS OF THE STATE OF NEW YORK

Matter of Silverman (Hoe & Co.)

305 N.Y. 13 (N.Y. 1953) · Decided January 15, 1953

SUMMARY

The New York Court of Appeals considered whether dissenting stockholders in a corporate merger appraisal proceeding waived their right to appeal by surrendering their shares and accepting payment at the appraised value. The court held that acceptance of payment did not bar an appeal challenging the amount of the valuation and reversed the dismissal of the appeal.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Dye, J.; Loughran, C.J.; Lewis, J.; Desmond, J.; Fuld, J.; Froessel, J.; Conway, J.
JURISDICTION	New York
DECIDED	January 15, 1953
DISPOSITION	reversed
PROCEDURAL POSTURE	Dissenting stockholders brought a statutory appraisal proceeding after approval of a merger and recapitalization plan. After Special Term confirmed an appraisal of $7.50 per share, some stockholders accepted payment and appealed the valuation. The Appellate Division dismissed those appeals on the ground that acceptance of payment waived the right to appeal.
STANDARD OF REVIEW	De novo review of the legal question whether acceptance of statutory appraisal payment waived the stockholders' right to appeal the valuation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Samuel Silverman et al. v. R. Hoe & Co., Inc.

TOPICS

corporate law · mergers and acquisitions · appellate procedure · statutory interpretation · commercial litigation

PRACTICE AREAS

corporate law · appellate procedure · commercial litigation

QUESTIONS PRESENTED

1. Whether a dissenting stockholder in a statutory appraisal proceeding waives the right to appeal a disputed stock valuation by surrendering the shares and accepting payment at the appraised rate.
2. Whether section 21 of the Stock Corporation Law permits a dissenting stockholder to accept payment for the shares while continuing to challenge the amount of the appraisal award on appeal.

HOLDINGS

1. A dissenting stockholder does not waive the right to appeal a controverted appraisal valuation merely by surrendering the stock and accepting payment at the appraised rate, when the appeal challenges only the amount of the award.
2. The appeals of the petitioners who accepted payment should be reinstated.

KEY QUOTATIONS

> *"Nowhere does the statute indicate that his right to establish such value, including the right to appeal from a controverted valuation, is cut off by the surrender and acceptance of payment at the controverted appraised value."* (18-19)

> *"Ceasing to have any interest in the corporation upon surrender of the stock, as provided in the statute, contemplates a right to notice, to attend meetings and to vote, and is not in any sense inconsistent with the right to receive payment "for the value thereof"."* (19)

FACTUAL BACKGROUND

The petitioners held shares in R. Hoe & Co. and dissented from a merger with a subsidiary and a related recapitalization. After the plan was approved, they commenced an appraisal proceeding under section 21 of the Stock Corporation Law. Appraisers valued the common stock at $7.50 per share, and Special Term confirmed that valuation. Some petitioners surrendered their certificates and accepted payment at the appraised rate while their appeal challenging the valuation was pending.

PROCEDURAL HISTORY

Appraisers valued the dissenting stock at $7.50 per share. Special Term confirmed the appraisal, denied the stockholders' request for a $23.30 valuation, and limited interest. The Appellate Division dismissed the appeals of stockholders who had surrendered their shares and accepted payment. The Court of Appeals reversed and reinstated those appeals.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order was reversed with costs, and the appeals to the Appellate Division were reinstated.

CASES CITED

- Alexander v. Alexander, 104 N.Y. 643
- Matter of City of New York (Court House), 216 N.Y. 489, 491-492
- Matter of New York & H. R. R. Co., 98 N.Y. 12
- Matter of Board of Water Comrs. of Vil. of White Plains (Westchester Co. Water Works Co.), 195 N.Y. 502, 506
- Tanenbaum v. Consolidated Edison Co., 273 A.D. 755, motion for leave to appeal denied, 297 N.Y. 1041
- Amella v. Consolidated Edison Co., 273 A.D. 755, motion for leave to appeal denied, 297 N.Y. 1031
- Goepel v. Kurtz Action Co., 216 N.Y. 343
- Mellen v. Mellen, 137 N.Y. 606