SUPREME COURT OF DELAWARE

Shintom Co., Ltd. v. Audiovox Corp.

888 A.2d 225 (Del. 2005) · No. No. 214, 2005 · Decided October 31, 2005

SUMMARY

The Delaware Supreme Court affirmed dismissal of Shintom Co., Ltd.'s claim seeking recovery of more than $2.5 million paid for Audiovox preferred stock. The court held that Delaware law does not require preferred stock to confer dividend rights, provided the stock has another bona fide preference, such as a liquidation preference, and concluded that Audiovox's preferred stock was valid.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Holland, Justice; Berger, Justice; Jacobs, Justice
JURISDICTION	Delaware
DECIDED	October 31, 2005
DOCKET	No. 214, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment of the Delaware Court of Chancery dismissing the complaint as a matter of law.
STANDARD OF REVIEW	The Court reviewed the Court of Chancery's dismissal as a matter of law and considered the statutory interpretation issue de novo.
PRECEDENTIAL VALUE	Published Delaware Supreme Court opinion; precedential.
PARTIES	Shintom Co., Ltd. v. Audiovox Corporation

TOPICS

corporate law · statutory interpretation · plain meaning rule · in pari materia · appellate procedure

PRACTICE AREAS

corporate law · statutory interpretation · appellate procedure

QUESTIONS PRESENTED

1. Whether 8 Del. C. § 151(c) requires every class of preferred stock to confer a right to receive dividends under at least some circumstances.
2. Whether Audiovox's preferred stock was void because its certificate of incorporation denied dividend rights without limitation or qualification.
3. Whether a liquidation preference alone is sufficient to constitute a lawful preference for Delaware preferred stock.

HOLDINGS

1. Section 151(c) does not require all preferred stock to confer a right to receive dividends. It permits a corporation to issue preferred stock with dividend rights determined by the certificate of incorporation or applicable board resolution, including stock with no dividend rights.
2. Audiovox's preferred stock was valid and not void because the certificate of incorporation expressly denied dividend rights and otherwise provided a lawful liquidation preference.
3. A liquidation preference, without a dividend preference, is sufficient to create valid preferred stock under Delaware law.

KEY QUOTATIONS

> *"We have concluded that the Delaware statutory scheme imposes no such requirement, and that it is legally possible for an otherwise bona fide preferred stock of a Delaware corporation to have no right to receive dividends under any circumstance."* (226-227)

> *"Delaware law does not require that preferred shareholders have dividend rights. Therefore, Delaware corporations, such as Audiovox, may lawfully issue preferred shares without any dividend rights."* (230)

> *"Accordingly, we hold that preferred stock was lawfully issued to Shintom in compliance with the Delaware General Corporation Law and is valid."* (230)

FACTUAL BACKGROUND

In 1981, Shintom purchased 50,000 shares of Audiovox New York preferred stock for $2.5 million. The stock initially carried a noncumulative annual dividend, but Audiovox New York merged into Audiovox Delaware in 1986, and the shares were converted into non-dividend preferred stock. The converted shares had a liquidation preference over common stock. Shintom later sought rescission or recovery on the theory that preferred stock without dividend rights was void.

PROCEDURAL HISTORY

Shintom sued Audiovox in the Court of Chancery, seeking recovery of more than $2.5 million paid for Audiovox preferred stock. Shintom alleged that the stock was void under 8 Del. C. § 151(c) because it carried no dividend rights. The Court of Chancery rejected that statutory interpretation and dismissed the complaint. The Supreme Court of Delaware affirmed.

DISPOSITION

affirmed

CASES CITED

- Lehrman v. Cohen, 222 A.2d 800, 806-07 (Del. 1966)
- STAAR Surgical Co. v. Waggoner, 588 A.2d 1130, 1134-35 (Del. 1991)
- Elliott Assocs., L.P. v. Avatex Corp., 715 A.2d 843, 852-53 (Del. 1998)
- Wood v. Coastal States Gas Corp., 401 A.2d 932, 937 (Del. 1979)
- Gaskill v. Gladys Belle Oil Co., 146 A. 337, 339 (Del. Ch. 1929)
- Triplex Shoe Co. v. Rice & Hutchins, Inc., 152 A. 342, 366 (Del. 1930)
- Lloyd v. Pa. Electric Vehicle Co., 75 N.J. Eq. 263, 72 A. 16 (Err. & App. 1909)
- Priest v. State, 879 A.2d 575, 584 (Del. 2005)
- Walt v. State, 727 A.2d 836, 840 (Del. 1999)
- Rothschild Int'l v. Liggett Group, Inc., 474 A.2d 133, 136 (Del. 1984)
- Telvest, Inc. v. Olson, 1979 Del. Ch. Lexis 347 (Del. Ch.)