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Transfer of Stock on Books of Corporation is Sufficient for Gift Inter Vivos - Allender v. Allender

Casenotes

TRANSFER OF STOCK ON BOOKS OF CORPORATION IS SUFFICIENT FOR GIFT INTER VIVOS

Allender v. Allender[1]

On August 8, 1952, the decedent, Mr. Allender, a widower with four children, married a widow with one child. He was Secretary-Treasurer and manager of the Key Grain and Feed Company and owned 369 shares of its outstanding stock. In 1946 he had directed the Manchester Bank to add the names of two of his sons to the registry of access to his safe deposit boxes; however, neither of his sons knew of this nor had a key until after their father's death. On December 22, 1948, the decedent had made a will, but did not have it witnessed and the Orphans' Court refused to probate it. The will contained no clause respecting the stock holdings. On January 19, 1949, the decedent had surrendered his then held stock certificates and, in exchange, received four new stock certificates, each entered in his own name and one of his children as joint tenants with right of survivorship. He had previously transferred 137 shares of Detour Bank stock to himself and his wife "by the entireties". All of the shares of stock were recorded on the books of the respective companies and all stocks were placed in the safe deposit box at the Manchester Bank on January 19, 1949. At all times, the decedent voted the shares of stock himself and received all the dividends and no one except the bookkeeper and the president of the Key Grain Company knew of the transfer of stock, the new certificates having been signed at the home of the president. The decedent ran the business and, on one occasion, purchased property for the company without the permission of the president or the board of directors. The widow sued to set aside the transfer of the shares of stock and the lower court gave verdict in her favor. On appeal, the Court of Appeals reversed, holding that the gift of stock was valid.

The first question considered by the Court of Appeals was whether there was a sufficient transfer of the donor's interest by the surrender of the old shares of stock and the issuance of the new stock to the parties as joint tenants,

[1] 199 Md. 541, 87 A. 2d 608 (1952).

the transfer of stock being properly recorded on the books of the corporation. The court held such a transfer of the stock indicates an intent to completely abolish all the rights and obligations of the original holder and to create new rights and obligations in the transferee. Prior to this decision, the court had held that a transfer was not complete until made on the books of the company.[2] The court found nothing in the Uniform Stock Transfer Act[3] to negate this principle, and stated that the effect of the Act is to make the certificate negotiable, not to cast doubt on the validity of the transfer made on the books of the corporation. Such transfer constitutes an irrevocable act on the part of the donor, sufficient to give the new joint owners immediate interests, irrevocable without their consent.

The Court considered the appellee's contention that the retention by the donor of the voting power of the stock and the collection of the dividends intimated that there was no valid intent to completely part with the shares of stock. Recognizing that if the transferor had retained complete dominion and control over the stock and the right to revoke the transfer there could not be a valid gift, the court found no such intent in the donor and the fact that he improperly voted the stock and collected the dividends was merely a limitation on the quality of the gift and did not affect its validity.[4]

The Court found no difficulty with the fact that the donees knew nothing of the transfer, but held that acceptance would be presumed. No prior Court of Appeals decision had applied the presumption to a case involving stock transfer, but Mr. Machen in his work on Corporations mentions that the acceptance is presumed from the beneficial character of the gift, unless there is definite proof to the contrary.[5] Machen also points out that it might be considered as a unilateral conveyance which is complete upon registration without the necessity of any acceptance. Brown on Personal Property notes the theory that some hold that it is a bilateral contract with a rebutable presumption of acceptance.[6] Regardless of the particular rea-

[2] Baltimore Retort and Fire Brick Co. v. Mali, 65 Md. 93, 96, 3 A. 286 (1886).

[3] Md. Code (1939), Art. 23, Sec. 55, *et seq.*, now Md. Code (1951), Sec. 96, *et seq.*

[4] Grissom v. Sternberger, 10 F. 2d 764, 767 (4th Cir., 1926). See also Farmer v. Loyola College, 166 Md. 455, 463, 171 A. 361 (1934); 157 A. L. R. 1184, 1189.

[5] I MACHEN, A TREATISE ON THE MODERN LAW OF CORPORATIONS (1908), Sec. 872.

[6] BROWN, A TREATISE ON THE LAW OF PERSONAL PROPERTY (1936), Sec. 50.

soning which one might prefer, the result remains the same and is accepted. A Georgia case confirms this view,[7] and the highest court of Pennsylvania has clearly ruled that the donee's knowledge of the transaction before the death of the donor is not essential to a valid gift *inter vivos,* since there is a presumption that a person will accept what is for his benefit and by subsequent actual acceptance, the donee ratifies the original delivery by which the gift was made.[8] Now Maryland has expressly stated that the presumption is also applicable to cases involving a transfer of the shares of stock of a company.

Thus in the instant case, the necessary elements of a gift (delivery, intent to give, and acceptance)[9] were found: the acceptance was presumed; a constructive delivery had been obtained from a consideration of the circumstances of the delivery of the stock certificates to the bank and the placing of them in a safe deposit box, after the transfer had been recorded on the books of the corporation; and the intent was apparent from these acts of the donor plus all of the surrounding circumstances. The Court reasoned that the donor had parted with all effective control of the stock;[10] and that the possession of one co-tenant was in contemplation of law the possession of the other so that the holding of the stock by the decedent as one of the joint tenants was sufficient.[11]

The Court seems to have properly recognized that the determining factor of the gift was the intent of the decedent

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[7] Cannon v. Williams, 194 Ga. 808, 22 S. E. 2d 838, 844 (1942).

[8] In re Rynier's Estate, 347 Pa. 471, 32 A. 2d 736, 738 (1943).

[9] BROWN, *op. cit., supra,* n. 6, Sec. 37. For good articles discussing the general problem of gifts of choses in action and the relative importance of the several elements see: Mechem, *The Requirement of Delivery in Gifts of Chattels and of Choses in Action evidenced by Commercial Instrumnts,* 21 Ill. L. Rev. 341, 457, 568 (1926-27); Bruton, *The Requirement of Delivery as Applied to Gifts of Choses in Action,* 39 Yale L. J. 837 (1930); Williston, *Gifts of Rights under Contracts in Writing by Delivery of the Writing,* 40 Yale L. J. 1 (1930); Modesitt, *Application of the Uniform Stock Transfer Act to Gifts of Stock,* 20 Rocky Mountain L. Rev. 67 (1947); BROWN, *loc. cit., supra,* n. 6; Sykes *Inter Vivos Transfers in Violation of the Rights of Surviving Spouses,* 10 Md. L. Rev. 1 (1949).

[10] Compare to Getchell v. Biddleford Sav. Bank, 94 Me. 452, 47 A. 895 (1900), where the husband, a bank official, transferred some shares of stock and a bank account to his wife, without her knowledge, and it was he who drew the dividends and issued receipts for them in his own name. After his wife's death, he persuaded the other bank officials to transfer both the stock and the bank account to him. It was not until after his death that this affair was discovered. *Held,* the wife's estate was not entitled to the stock.

[11] Young v. Cockman, 182 Md. 246, 251, 34 A. 2d 428 (1943).

husband.[12] From the facts of the case, there appeared to be a clear intent of the father to pass the shares of stock to his own children and thus exclude his wife and her child, as he had already provided for her and he wished to leave his interest in the company to his children. This intent the father could validly accomplish, without defrauding the wife of her marital rights (as she claimed was the case) as long as he effectively carried out his intent by sufficiently relinquishing dominion and control during his lifetime.[13] The Court of Appeals found that this had been done.

[12] New York takes the lead in the newer view in relaxing the requirements of the older ideas of delivery and acceptance where a clear cut intent can be found from a contemplation of the facts involved. In re Cohn, 187 App. Div. 392, 176 N. Y. Supp. 225 (1919). In a case involving the estate of the late President Roosevelt, the New York Court went to great lengths in carrying out his wishes regarding the distribution of his papers, even though only partial delivery had been made. In re Roosevelt's Will, 190 Misc. Rep. 341, 73 N. Y. Supp. 2d 821 (1947).

[13] Allender v. Allender, 199 Md. 541, 550, 87 A. 2d 608 (1952). See also Note, 157 A. L. R. 1184, 1189; Sykes, *Inter Vivos Transfers in Violation of the Rights of Surviving Spouses*, *loc. cit.*, *supra*, n. 9; Katzenstein, *Joint Savings Bank Accounts in Maryland*, 3 Md. L. Rev. 109, 110-114 (1939).