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84 S.Ct. 1555

Supreme Court of the United States

J. I. CASE COMPANY et al., Petitioners,

v.

Carl H. BORAK, etc.

No. 402.

|
Argued April 22 and 23, 1964.

|
Decided June 8, 1964.

Synopsis

Stockholder's civil action charging deprivation of preemptive rights by reason of a consummated merger. The United States District Court for the Eastern District of Wisconsin dismissed two counts of the complaint upon holding that it had no power to redress alleged violations of the Securities Exchange Act but was limited solely to granting declaratory relief, and that state statute requiring security was applicable except with respect to the count for declaratory relief. On an interlocutory appeal, the United States Court of Appeals for the Seventh Circuit, [317 F.2d 838](#), reversed, holding that the District Court had power to grant remedial relief, and that the state statute was not applicable. Certiorari was granted. The Supreme Court, Mr. Justice Clark, held that the Securities Exchange Act authorizes a federal cause for rescission or damages to a corporate stockholder with respect to a consummated merger which was authorized pursuant to the use of a proxy statement alleged to contain false and misleading statements violative of the Act.

Affirmed.

West Headnotes (13)

[1] Federal Courts

 Particular Cases, Contexts, and Questions

Certiorari was granted to consider whether Securities Exchange Act provision authorizes federal cause of action for rescission or

damages to corporate stockholder with respect to consummated merger which was authorized pursuant to use of proxy statement alleged to contain false and misleading statements in violation of the Act. Securities Exchange Act of 1934, §§ 14(a), 27, [15 U.S.C.A. §§ 78n\(a\), 78aa](#).

[33 Cases that cite this headnote](#)

[2] Federal Courts

 Presentation of Questions Below or on Review;Record;Waiver

Supreme Court on certiorari would consider only the question raised in petition for certiorari and not other questions subsequently presented. Rules of Supreme Court, rule 40 (1) (d) (2), 28 U.S.C.A.

[2 Cases that cite this headnote](#)

[3] Corporations and Business Organizations

 Judicial regulation or review of proceedings

Securities Regulation

 Existence of private cause of action

Private parties have right under Securities Exchange Act provision to bring suit for violation of Act making it unlawful to solicit any proxy or consent authorization in violation of regulations prescribed by the Securities and Exchange Commission. Securities Exchange Act of 1934, §§ 14(a), 27, [15 U.S.C.A. §§ 78n\(a\), 78aa](#); W.S.A. 180.405, subd. (4).

[66 Cases that cite this headnote](#)

[4] Corporations and Business Organizations

 Judicial regulation or review of proceedings

Federal Courts

 Presentation of Questions Below or on Review;Record;Waiver

Securities Regulation

 Questions for jury

Causal relationship of proxy material and merger presented questions of fact to be resolved at trial of stockholder's civil action under Securities Exchange Act for rescission or damages with respect to consummated merger authorized pursuant to use of the proxy statement alleged to contain false and misleading statements violative of the Act and were not to be resolved by Supreme Court on certiorari before trial. Securities Exchange Act of 1934, §§ 14(a), 27, 15 U.S.C.A. §§ 78n(a), 78aa; W.S.A. 180.405, subd. (4).

[48 Cases that cite this headnote](#)

[5] Corporations and Business Organizations

🔑 Judicial regulation or review of proceedings

Securities Regulation

🔑 Existence of private cause of action

Private right of action under Securities Exchange Act provision for rescission or damages with respect to consummated merger authorized pursuant to use of proxy statement allegedly containing false and misleading statements in violation of Act exists both as to direct and derivative causes. Securities Exchange Act of 1934, §§ 14(a), 27, 15 U.S.C.A. §§ 78n(a), 78aa; W.S.A. 180.405, subd. (4).

[197 Cases that cite this headnote](#)

[6] Securities Regulation

🔑 Proxies

The purpose of Securities Exchange Act provision making it unlawful to solicit proxy or consent authorization in violation of commission rule is to prevent management or others from obtaining authorization for corporate action by means of deceptive or inadequate disclosure of proxy solicitation, stemming from congressional belief that fair corporate suffrage is important right that should attach to every equity security bought on a public exchange. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).

[136 Cases that cite this headnote](#)

[7] Securities Regulation

🔑 Proxies

Securities Exchange Act provision making it illegal to solicit any proxy or consent authorization in violation of commission rules was intended to control conditions under which proxies may be solicited with view to preventing recurrence of abuses which frustrated free exercise of voting rights of stockholders. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).

[21 Cases that cite this headnote](#)

[8] Securities Regulation

🔑 Proxies

Among chief purposes of Securities Exchange Act provision making it unlawful to solicit proxy or consent authorization in violation of commission rules is protection of its investors. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).

[9 Cases that cite this headnote](#)

[9] Corporations and Business Organizations

🔑 Judicial regulation or review of proceedings

Securities Regulation

🔑 Relief granted in general

It is duty of court to be alert to provide such remedies as are necessary to make effective congressional purpose in Securities Exchange Act provision making it unlawful to solicit proxy or consent agreement in violation of commission rules. Securities Exchange Act of 1934, § 14(a), 15 U.S.C.A. § 78n(a).

[210 Cases that cite this headnote](#)

[10] Federal Civil Procedure

🔑 Nature and Form of Remedy

It is for federal courts to adjust their remedies so as to grant necessary relief where federally

secured rights are invaded, and when federal statute provides for general right to sue for such invasion, federal courts may use any available remedy to make good wrong done.

[61 Cases that cite this headnote](#)

[11] Corporations and Business Organizations

🔑 [Judicial regulation or review of proceedings](#)

Securities Regulation

🔑 [Relief granted in general](#)

Private remedies under Securities Exchange Act provision making it unlawful to solicit any proxy or consent agreement in violation of commission rules are not limited to prospective relief. Securities Exchange Act of 1934, § 14(a), [15 U.S.C.A. § 78n\(a\)](#).

[68 Cases that cite this headnote](#)

[12] Federal Courts

🔑 [Securities regulation](#)

Overriding federal law would, where facts required, control appropriateness of relief sought by shareholder attacking consummated merger as allegedly achieved by proxy statement containing false and misleading statements in violation of Securities Exchange Act, despite provisions of state corporation law. Securities Exchange Act of 1934, § 14(a), [15 U.S.C.A. § 78n\(a\)](#); W.S.A. 180.405, subd. (4).

[31 Cases that cite this headnote](#)

[13] Federal Courts

🔑 [Securities regulation](#)

Fact that questions of state law had to be decided in shareholder's suit seeking, inter alia, rescission or damages with respect to consummated merger authorized allegedly pursuant to proxy statements containing false and misleading statements in violation of Securities Exchange Act did not change character of right; but it remained federal. Securities Exchange Act of 1934, §§ 14(a), 27, [15 U.S.C.A. §§ 78n\(a\)](#), 78aa.

[36 Cases that cite this headnote](#)

Attorneys and Law Firms

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Philip A. Loomis, Jr., for Securities and Exchange Commission, as amicus curiae, by special leave of Court.

Opinion

Mr. Justice CLARK delivered the opinion of the Court.

[1] [2] This is a civil action brought by respondent, a stockholder of petitioner J. I. Case Company, charging deprivation of the pre-emptive rights of respondent and other shareholders by reason of a merger between Case and the American Tractor Corporation. It is alleged that the merger was effected through the circulation of a false and misleading proxy statement by those proposing the merger. The complaint was in two counts, the first based on diversity and claiming a breach of the directors' fiduciary duty to the stockholders. The second count alleged a violation of s 14(a)¹ of the Securities Exchange Act of 1934 with reference to the proxy solicitation material. The trial court held that as to this court it had no power to redress the alleged violations of the Act but was limited solely to the granting of declaratory ***428** relief thereon under s 27 of the Act.² ****1558** The Court held Wis.Stat., 1961, s 180.405(4), which requires posting security for expenses in derivative actions, applicable to both counts, except that portion of Count 2 requesting declaratory relief. It ordered the respondent to furnish a bond in the amount of \$75,000 thereunder and, upon his failure to do so, dismissed the complaint, save that part of Count 2 seeking a declaratory judgment. On interlocutory appeal the Court of Appeals reversed on both counts, holding that the District Court had the power to grant remedial relief and that the Wisconsin statute was not applicable. [317 F.2d 838](#). We granted certiorari. [375 U.S. 901](#), [84 S.Ct. 195](#), [11 L.Ed.2d 143](#). We consider only the question of whether

s 27 of the Act authorizes a federal cause of action for rescission or damages to a corporate stockholder with respect to a consummated merger which was authorized pursuant to the use of a proxy statement alleged to contain false and misleading statements violative of s 14(a) of the Act. This being the sole question raised by petitioners in their petition for certiorari, we will not consider other questions subsequently presented. *429 See Supreme Court Rule 40(1)(d)(2);³ [Local 1976, United Brotherhood of Carpenters v. National Labor Relations Board](#), 357 U.S. 93, 96, 78 S.Ct. 1011, 1014, 2 L.Ed.2d 1186 (1958); [Irvine v. California](#), 347 U.S. 128, 129—130, 74 S.Ct. 381, 382, 98 L.Ed. 561 (1954).

I.

Respondent, the owner of 2,000 shares of common stock of Case acquired prior to the merger, brought this suit based on diversity jurisdiction seeking the enjoin a proposed merger between Case and the American Tractor Corporation (ATC) on various grounds, including breach of the fiduciary duties of the Case directors, self-dealing among the management of Case and ATC and misrepresentations contained in the material circulated to obtain proxies. The injunction was denied and the merger was thereafter consummated. Subsequently successive amended complaints were filed and the case was heard on the aforesaid two-count complaint. The claims pertinent to the asserted violation of the Securities Exchange Act were predicated on diversity jurisdiction as well as on s 27 of the Act. They alleged: that petitioners, or their predecessors, solicited or permitted their names to be used in the solicitation of proxies of Case stockholders for use at a special stockholders' meeting at which the proposed merger with ATC was to be voted upon; that the proxy solicitation material so circulated was false and misleading in violation of s 14(a) of the Act and Rule 14a—9 which the Commission had promulgated thereunder;⁴ *430 that the merger was **1559 approved at the meeting by a small margin of votes and was thereafter consummated; that the merger would not have been approved but for the false and misleading statements in the proxy solicitation material; and that Case stockholders were damaged thereby. The respondent sought judgment holding the merger void and damages for himself and all other stockholders similarly situated, as well as such further relief 'as equity shall require.' The District Court ruled that the Wisconsin security for expenses statute

did not apply to Count 2 since it arose under federal law. However, the court found that its jurisdiction was limited to declaratory relief in a private, as opposed to a government, suit alleging violation of s 14(a) of the Act. Since the additional equitable relief and damages prayed for by the respondent would, therefore, be available only under state law, it ruled those claims subject to the security for expenses statute. After setting the amount of security at \$75,000 and upon the representation of counsel that the security would not be posted, the court dismissed the complaint, save that portion of Count 2 seeking a declaration that the proxy solicitation material was false and misleading and that the proxies and, hence, the merger were void.

II.

[3] [4] It appears clear that private parties have a right under s 27 to bring suit for violation of s 14(a) of the *431 Act. Indeed, this section specifically grants the appropriate District Courts jurisdiction over 'all suits in equity and actions at law brought to enforce any liability or duty created' under the Act. The petitioners make no concessions, however, emphasizing that Congress made no specific reference to a private right of action in s 14(a); that, in any event, the right would not extend to derivative suits and should be limited to prospective relief only. In addition, some of the petitioners argue that the merger can be dissolved only if it was fraudulent or non-beneficial, issues upon which the proxy material would not bear. But the causal relationship of the proxy material and the merger are questions of fact to be resolved at trial, not here. We therefore do not discuss this point further.

III.

[5] While the respondent contends that his Count 2 claim is not a derivative one, we need not embrace that view, for we believe that a right of action exists as to both derivative and direct causes.

[6] [7] [8] The purpose of s 14(a) is to prevent management or others from obtaining authorization for corporate action by means of deceptive or inadequate disclosure in proxy solicitation. The section stemmed from the congressional belief that '(f)air corporate suffrage is an important right that should attach to every equity security bought on a public exchange.' H.R.Rep. No.

1383, 73d Cong., 2d Sess., 13. It was intended to ‘control the conditions under which proxies may be solicited with a view to preventing the recurrence of abuses which * * * (had) frustrated the free exercise of the voting rights of stockholders.’ *Id.*, at 14. ‘Too often proxies are solicited without explanation to the stockholder of the real nature of the questions for which authority to cast his vote is sought.’ S.Rep.No.792, 73d Cong., 2d Sess., 12. These broad remedial purposes are evidenced in the language of *432 the section which makes it ‘unlawful for any person * * * to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security * * * registered on any national securities exchange in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.’ (Italics supplied.) While this language makes no specific reference to a private right of action, among its chief purposes is ‘the protection of investors,’ which certainly implies the availability **1560 of judicial relief where necessary to achieve that result.

The injury which a stockholder suffers from corporate action pursuant to a deceptive proxy solicitation ordinarily flows from the damage done the corporation, rather than from the damage inflicted directly upon the stockholder. The damage suffered results not from the deceit practiced on him alone but rather from the deceit practiced on the stockholders as a group. To hold that derivative actions are not within the sweep of the section would therefore be tantamount to a denial of private relief. Private enforcement of the proxy rules provides a necessary supplement to Commission action. As in anti-trust treble damage litigation, the possibility of civil damages or injunctive relief serves as a most effective weapon in the enforcement of the proxy requirements. The Commission advises that it examines over 2,000 proxy statements annually and each of them must necessarily be expedited. Time does not permit an independent examination of the facts set out in the proxy material and this results in the Commission's acceptance of the representations contained therein at their face value, unless contrary to other material on file with it. Indeed, on the allegations of respondent's complaint, the proxy material failed to disclose alleged unlawful market manipulation of the stock of ATC, and this unlawful manipulation *433 would not have been apparent to the Commission until after the merger.

[9] [10] We, therefore, believe that under the circumstances here it is the duty of the courts to be alert to provide such remedies as are necessary to make effective the congressional purpose. As was said in [Sola Electric Co. v. Jefferson Electric Co.](#), 317 U.S. 173, 176, 63 S.Ct. 172, 174, 87 L.Ed. 165 (1942):

‘When a federal statute condemns an act as unlawful, the extent and nature of the legal consequences of the condemnation, though left by the statute to judicial determination, are nevertheless federal questions, the answers to which are to be derived from the statute and the federal policy which it has adopted.’

See also [Tunstall v. Brotherhood of Locomotive Firemen & Enginemen](#), 323 U.S. 210, 213, 65 S.Ct. 235, 237, 89 L.Ed. 187 (1944); [Deitrick v. Greaney](#), 309 U.S. 190, 201, 60 S.Ct. 480, 485, 84 L.Ed. 694 (1940). It is for the federal courts ‘to adjust their remedies so as to grant the necessary relief’ where federally secured rights are invaded. ‘And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.’ [Bell v. Hood](#), 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed. 939 (1946). Section 27 grants the District Courts jurisdiction ‘of all suits in equity and actions at law brought to enforce any liability or duty created by this title * * *.’ In passing on almost identical language found in the Securities Act of 1933, the Court found the words entirely sufficient to fashion a remedy to rescind a fraudulent sale, secure restitution and even to enforce the right to restitution against a third party holding assets of the vendor. [Deckert v. Independence Shares Corp.](#), 311 U.S. 282, 61 S.Ct. 229, 85 L.Ed. 189 (1940). This significant language was used: ‘The power to enforce implies the power to make effective the right of recovery afforded by the Act. *434 And the power to make the right of recovery effective implies the power to utilize any of the procedures or actions normally available to the litigant according to the exigencies of the particular case.’ At 288 of 311 U.S., at 233 of 61 S.Ct.

See also **1561 [Porter v. Warner Holding Co.](#), 328 U.S. 395, 66 S.Ct. 1086, 90 L.Ed. 1332 (1946); [Mitchell v. Robert DeMario Jewelry, Inc.](#), 361 U.S. 288, 80 S.Ct.

332, 4 L.Ed.2d 323 (1960); *Schine Chain Theatres, Inc., v. United States*, 334 U.S. 110, 68 S.Ct. 947, 92 L.Ed. 1245 (1948).

[11] [12] [13] Nor do we find merit in the contention that such remedies are limited to prospective relief. This was the position taken in *Dann v. Studebaker-Packard Corp.*, 6 Cir., 288 F.2d 201, where it was held that the ‘preponderance of questions of state law which would have to be interpreted and applied in order to grant the relief sought. * * * is so great that the federal question involved * * * is really negligible in comparison.’ At 214. But we believe that the overriding federal law applicable here would, where the facts required, control the appropriateness of redress despite the provisions of state corporation law, for it ‘is not uncommon for federal courts to fashion federal law where federal rights are concerned.’ *Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448, 457, 77 S.Ct. 912, 918, 1 L.Ed.2d 972 (1957). In addition, the fact that questions of state law must be decided does not change the character of the right; it remains federal. As Chief Justice Marshall said in *Osborn v. Bank of United States*, 9 Wheat. 738, 6 L.Ed. 204 (1824):

‘If this were sufficient to withdraw a case from the jurisdiction of the federal Courts, almost every case, although involving the construction of a law, would be withdrawn * * *.’ At 819—820 of 9 Wheat.

Moreover, if federal jurisdiction were limited to the granting of declaratory relief, victims of deceptive proxy statements would be obliged to go into state courts for remedial relief. And if the law of the State happened *435 to attach no responsibility to the use of misleading proxy statements, the whole purpose of the section might be frustrated. Furthermore, the hurdles that the victim might face (such as separate suits, as contemplated by *Dann v. Studebaker-Packard Corp.*, supra, security for expenses statutes, bringing in all parties necessary for complete relief, etc.) might well prove insuperable to effective relief.

IV.

Our finding that federal courts have the power to grant all necessary remedial relief is not to be construed as any indication of what we believe to be the necessary and appropriate relief in this case. We are concerned here only with a determination that federal jurisdiction for this purpose does exist. Whatever remedy is necessary must await the trial on the merits.

The other contentions of the petitioners are denied.

Affirmed.

All Citations

377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423

Footnotes

- 1 Section 14(a) of the Securities Exchange Act of 1934, 48 Stat. 895, 15 U.S.C. s 78n(a), provides: ‘It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of any national securities exchange or otherwise to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered on any national securities exchange in contravention of such rules and regulations as the (Securities and Exchange) Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.’
- 2 Section 27 of the Act, 48 Stat. 902—903, 15 U.S.C. s 78aa, provides in part: ‘The district courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this title or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this title or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this title or rules and regulations thereunder, or to enjoin any violation of such title or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.’
- 3 ‘The phrasing of the questions presented need not be identical with that set forth in the jurisdictional statement or the petition for certiorari, but the brief may not raise additional questions or change the substance of the questions already

presented in those documents. Questions not presented according to this paragraph will be disregarded, save as the court, at its option, may notice a plain error not presented.'

- 4 [17 CFR s 240.14a—9](#) provides: 'False or misleading statements. No solicitation subject to ss 240.14a—1 to 240.14a—10 shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication written or oral containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct an statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.'

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