EXAMINATION OF RECENT TRENDS IN CORPORATE GOVERNANCE AS IT AFFECTS THE MAJORITY RULE AND THE MINORITY PROTECTION

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ABSTRACT

This article explored the trends in corporate governance from the perspective of the common law to our contemporary statutes. This work revealed that the establishment of a minimum set of legislative standards against which all corporate actions and behaviours could be tested is imperative to ensure effective management. The method of research employed here include extensive literature review, internet facilities, examination of judicial authorities and statutes. It is realized that the failure to secure and maintain the confidence of investors could result in a decline in share purchase. It could also result in a general lethargy in investment due to the uncertainty and unpredictability of corporate behaviour. Therefore, this article considers the equitable and fair treatment of shareholders as fundamental to the maintenance of public confidence in corporations as well as the securities market in general.

Keywords: *Corporate governance, majority rule, minority protection,common law,contemporary statutes*

INTRODUCTION

In corporate governance, under the common law, the board of directors takes most decisions concerning the company's business[1]. This is because taking management decisions through the shareholders meeting could be impossibly cumbersome. The power is conferred on the board by way of delegation from the shareholders to whom the former owes accountability for the exercise of that delegated power[2]. Nevertheless, the shareholders' meeting has a crucial role to play in the governance of companies[3].

The traditional accountability of board of directors depends heavily upon the ability of the shareholders in general meeting to review the performance of the board and to take decisions should they consider the board's performance inadequate for example, by removing the existing board of directors and installing a new board[4]. Therefore, the ultimate power in decision making resides in the shareholders at general meeting. Most importantly, shareholders normally take decisions by a majority. Naturally, the opinion of some shareholders will prevail and outvote that of others in any particular decision in the floor of the general meeting. The regular occurrence of this does not arouse any legal question especially if the majority shareholders[5] consistently hold a contrary policy pattern on the governance of the company from the minority. This is the natural consequence of the principle of majority rule.

However, in the event that the majority seeks to exercise their shareholding, as to improperly divert the greater of the earning of the company to themselves, a legal question arises. It is at this point that the interventionist rules operate to deal with such private benefits of control and render nugatory the outrageous majority opportunism[6]. The rationale is to maintain the confidence in investors and encourage them to place their money in the shares of such companies, which are controlled by one or a small group of

majority shareholders. Obviously, the unfair treatment of the minority by the majority occurs through decisions taken by shareholders in general meeting. However, there is a strong efficient argument and provision of rights in favour of minority protection.

Minority Protection: Apart form the protection afforded in the Act[7], the extent of the rights enjoyed by minority shareholders was first determined by the rule in Foss v. Harbottle[7]. These rights are now dominated by the provisions of Part x of the Companies & Allied Matters Act 1990. The rights constitute the circumstances that pose exception to the majority rule. In the case of companies registered under the Act, the first line of protection for minority shareholders will be the existence of the Memorandum and Articles of Association of the Company, which will not be freely alterable by a simple majority of members[8].

In Edwards v. Halliwell[9], Jenkins L. J enunciated the rule in Foss v. Harbottle[10] as containing two elements as follows:

> *First, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is prima facie the company or association of persons itself. Secondly, where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of the members of that company or association is in favour of what has been done, then cadet quaestio.*[11]

While the first proposition is patently based on the separate legal personality of the company, the second proposition is based on the principle of majority rule. However, the major pitfall of this

rule is that, though the company is the proper person to sue, it is artificial person and can only act through its human agents usually the board of directors who may well be the actual wrongdoers. These directors may decide not to sue, and further secure the approval of this decision in the general meeting where they too could control a majority of the votes. The result is that the minority shareholders remain in the tender mercies of the majority shareholders who stand to loot the company with impunity[12]. This was most intolerable leading to the development of exceptions whereby, a minority shareholder might sue despite the rule[13]. The four exceptions or instances where the rule in Foss v. Harbottle does not apply are stated hereunder. Hence, the majority cannot confirm:

i. an act which is ultra vires the company or illegal; [14]
ii. an act which constitutes a fraud against the minority and the wrongdoers are themselves in control of the company;[15]
iii. an irregularity in the passing of a resolution which requires a qualified majority,[16] and
iv. an act, which infringes the personal rights of an individual shareholder[17].

CORPORATE GOVERNANCE UNDER THE STATUTE

The wrong done to the corporate right of a member is, strictly speaking done to the company. It is therefore the preserved right of the majority to decide whether it should be considered a redressable wrong or one to be ignored. This rule has been reinstated in the company legislation, thus:

> *Subject to the provisions of this Act, where irregularity has been committed in the course of a company's affairs or any wrong has been done to the company can ratify the irregular conduct[18].*

The foregoing principle is only a restatement in legislative form,

of the rule in Foss v. Harbottle. Under this legislative provision, the majority rule, even at common law as we noted earlier in Harbottle's case, is not an inflexible rule, as it is relaxed whenever necessary in the interest of justice.[19]

Protection of Corporate Right of Minorities: It should be recalled that at common law, considerable measures were adopted to mitigate the harsh effects of the rule in Foss v. Harbottle. This was by way of the creation of various exceptions by the court in the interest of justice. These are now protected under the Act thus:

"Without prejudice to the right of members under sections 303 to 308 and sections 310 to 312 of this Act, the court on the application of any member, may by injunction or declaration restrain the company from the following:

a) entering into any transaction which is illegal or ultra vires;[20]
b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution[21];
c) any act or omission affecting the applicant's individual rights as a member; directors fail to take appropriate action to redress the wrong done[22];
d) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and
e) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty"[23].

Protection of Individual Rights of Minorities: An action may be instituted by any individual member of the company to redress a wrong done to him in virtue of his membership[24]. He reserves the right to apply to the court for an order of injunction restraining

the company from any act or omission affecting the applicant's individual rights as a member or for a declaration[25]. Here, the member suing is only entitled to injunction or declaration and not claim for damages. Where two or more members have their individual rights infringed, they may bring individual actions. But one of them may bring a representative action on behalf of him and other affected members to enforce the right due to them. Even in this case, he will not be entitled to damages against the company but to a declaration or an injunction restraining the company and directors from committing the wrongful act[26]. In any of the forgoing instances, the court may award cost to the suing member irrespective of the success or otherwise of his court action[27].

In another dimension, a member may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party. The action is brought for the purpose of prosecuting, defending or discontinuing the action on behalf of the company. This is called a derivative action because it is one that should be properly brought by the company if it had not refused to do so. Though the action is couched as a representative one on behalf of the aggrieved minority or other shareholders, it is derived from the right of the company to sue[28].

Further measures have been evolved by legislation to protect the interest of the minority shareholders. The foregoing statutory rights granted to minority shareholders are in respect of specific purposes. However, there are yet others which are more general being potentially available whenever a minority can prove the required condition. Such minority rights can be brought under the following headings:

Relief on Grounds of unfairly Prejudicial and Oppressive Conduct: Any member, director or officer, creditor, the Commission[29] or any other person who in the discretion of the

court, is a proper person to make an application may petition the court on the grounds that the affairs of the company are being, or have been or will be, conducted in a manner unfairly prejudicial to the interest of its members including the petitioner himself[30]. In order to conveniently exploit the gains of the principle, the minority must show "oppression and unfair prejudice". The requirement that the petition be well founded is to ensure that the provisions are not abused or used for a wrongful purpose[31]. Hence, any of the persons[32] may allege that the affairs of the company are being conducted in a manner oppressive and unfairly prejudicial to or discriminatory against his interest. The Commission may also allege that any actual or proposed act or omission of the Company (including an act or omission on its behalf) which was or would be oppressive, or unfairly prejudicial to, or unfairly discriminatory against a member or members in a manner which is in disregard of the public interest[33]. Upon being satisfied that the above grounds are well founded, the court can grant any of the following reliefs by way of its orders:

a. The company be wound up.
b. For regulating the conduct of the company in future.
c. For the purchase of the shares of any member by other members of the company.
d. For the purchase of the shares of any member by the company and for the reduction accordingly of the company's capital.
e. Directing the company to institute, prosecute, defend or discontinue specific proceedings, or authorizing a member of the company to institute, prosecute, defend or discontinue specific proceeding in the name or on behalf of the company.
f. Varying or setting aside a transaction or contract to which the company or any other party to the transaction or contract is privy.

g. Directing an investigation to be made by the Commission.
h. Appointing a receiver or a receiver and manager of property of the company.
i. Restraining a person from engaging in specific conduct or from doing a specific act or thing, and
j. Requiring a persons to do a specific act or thing[34]. It is important to note here that when oppressive and unfairly prejudicial conduct has occurred, actual dissolution of the company is not the only remedy at the court's disposal. Both the statute and judicial precedents have authorized alternative remedies that are less drastic than dissolution[35]. As the alternative forms of relief have broadened over the years, orders of actual dissolution have become less frequent. In most cases, some courts have imposed an enhanced fiduciary duty and have allowed an oppressed shareholder to bring a direct action for breach of this duty[36].

Investigation of Companies and their Affairs: Inspectors may be appointed to investigate the affairs of the company. This is one of the new and unique innovations provided by the Act to protect the interest of the minorities and generally to ensure proper administration and management of the company. The background for the appointment of inspectors was well entrenched in the case of Norwst Holst v. Secretary for Trade[37]. In particular reference made to the case of Wallersteiner v. Moir, Lord Denning stated the need for inspection of companies thus:

> *"It is because companies are beyond the reach of ordinary individuals that this legislation has been passed so as to enable the Department of Trade to appoint inspectors to investigate the affairs of the company"[38].*

Suffice it to say that this is the most efficacious machinery by which the conduct of companies can be investigated. This measure is involved particularly when the circumstance appear to suggest

fraud, misfeasance or other misconduct. Therefore, the Commission must appoint an inspector to investigate the affairs of a company if the court by order declares that its affairs ought to be investigated in the light of the foregoing circumstances[39].

Investigation of Ownership of a Company: In circumstance where it appears to the Commission that there is good reason to investigate the membership of a company, it may appoint one or more competent inspectors to investigate and report on the membership of the company. The primary purpose is to determine the true persons who are or have been financially interested in the success or failure of the company or able to control or materially influence the policy of the company[40]. If it appears that there is good reason to investigate the ownership of any shares or debentures of a company but that it is unnecessary to appoint an inspector, the Commission may require any person who has bee interested in those shares or debentures or who has acted as a legal practitioner or agent, without prejudice to the protection of privilege communications[41], to give any information which such person has about them to the commission. The information is not restricted to the present interest in the shares but includes past interest in the shares and debentures as well as names of the persons or agents interested in such share or debentures[42].

Shareholder Rights and the Equitable Treatment of Shareholders: As part of the measures to secure and ensure the protection of minority shareholders, a plethora of rights has been conferred on individual shareholders. This particularly marks part of the recent and very imperative trend in corporate governance in particular respect to the protection of the minority shareholders. The law relating to fundamental rights of a shareholder is predominantly statute based and can be found in a variety of statutes

across various jurisdictions. The principal right of shareholders of attaining meetings and voting in decision making could be grouped in sets of principles as laid hereunder.

Obtaining relevant and material information on the company on a timely and regular basis and the right of shareholders to participate and vote in general meetings of shareholders: This seems to be the most fundamental rights of shareholders as it allows them to make informed decisions in a timely manner. To achieve this end, the various Acts have made provision for this right. Under the Nigeria Companies and Allied Matters Act, 1990, every member shall, notwithstanding any provision in the articles, have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting. The provision is to the effect that the articles may provide that a member shall not be entitled to attend and vote unless all calls or other sums payable by him in respect of his share in the company have been paid[43]. In other jurisdictions, the scope of this right has bee enormously widened. Under the St. Lucia Companies Act No. 19 of 1996, for example, various disclosure obligations have been imposed on the company and the company's officers:

(i) ***Disclosure of Information by the Company:*** Under section 149 of the Act, directors are required to place before the shareholders at every annual meeting of the shareholders comparative financial statement (present year and previous year), and the report of the auditor, if any. This is an equivalent provision to section 346(1) of the Nigerian Companies & Allied Matters Act 1990. However, under the Lucian Act, the company goes the extra mile, as it is required to send these documents to each shareholder not less than 21 days before each annual meeting of the shareholders[44]. The right is given to shareholders to examine the list of shareholders[45].

(ii) ***Disclosure of Directors' Interest and Holding:*** This places an obligation on a director or officer of a company who is a party to a material or proposed material contract with the company (or who is director or officer of any body or has a material interest in any body that is a party to a contract or a proposed material contract with the company) to disclose in writing as to the nature and extent of his interest[46]. This is also applicable under the company legislation in Nigeria[47].

(iii) ***Shareholders' Meetings:*** The company must give notice to each shareholder, director or auditor of the time and place for meeting neither less that 7 day nor more than 30 days before the proposed meting. To demonstrate the control that may be exercised by minority shareholders, the holders of not less than 5 per cent of the issued shares of that company that carry the right to vote at meeting sought to be held by them are given the right to requisition the directors to call a meeting of shareholders for the purpose stated in the requisition[48]. The disclosure obligation is buttressed by the requirement that notice of meeting at which special business is to be transacted must state: (a) the nature of the business in sufficient detail to permit the shareholder to form a reasoned judgment therein; (b) the text of any special resolution to be submitted to the meeting. Consequently in this manner, shareholders must be given sufficient information prior to the meeting to permit them to understand the matters to be discussed and to actively participate[49].

Shareholders' participation is further strengthened by giving the right to any shareholder entitled to vote at an annual meeting and, further gives the shareholder the right to discuss at the meting any matter in respect of which he would have been entitled to submit a proposal[50]. This is also provided in considerable detail under the company law in Nigeria[51].

Shareholders should have the right to participate in and to be sufficiently informed on decisions concerning fundamental/ material corporate change: Shareholders invest in companies as going concerns for profit and have a reasonable expectation that their companies will continue to trade in the normal manner, and carry on normal business activities that they may carry out in relation to their companies without first obtaining shareholder approval. These limitations exits in most Companies Acts, and can be seen in the Trinidad Companies of Act that states thus:

> *"A sale of lease or exchange of all or substantially all the property of a company other than in the ordinary course of business of the company requires the approval of the shareholders in accordance with this section*[52].

The St. Lucia Companies Act (1996) also recognizes the fundamental importance of shareholder participation in matters concerning "material corporate change" Section 136 of the Lucia Companies Act is in pari materia with section 138 of the Trinidad Companies Act quoted above. In the case of Jones V. Ahumanson & Co.53, value of share had increase enormously form the time the shareholder originally brought them. Plaintiff sought damages and other reliefs for losses allegedly suffered by the minority stockholders because of claimed breaches of fiduciary responsibility by defendants in the creation and operation of United Financial. Majority decided to start a new corporation and paid for that corporation with their shares. After the exchange, Untied Financial held 85% of the outstanding Association value.

They did not offer the minority stockholder of the Association to exchange their shares. Plaintiff contends that the majority used their control of the Association for their own advantage and to the detriment of the minority. The issue was whether the majority breached their fiduciary duty to the minority. The rule is that the majority must act with a duty of good faith and inherent fairness to

the minority. The controlling shareholders may not use their power to control the corporation for the purpose of promoting a market scheme that benefits themselves alone to the detriment of the minority. The holding is that the allegations of the complaint and certain stipulated facts sufficiently state a cause of action and that the judgment must therefore be reversed.

The gravamen of plaintiff's action is injury to her and the other minority stockholders and her action is individual rather than derivative. Majority shareholders have a fiduciary responsibility to the minority and to the corporation to use their ability to control the corporation in a fair, just and equitable manner. Any use of power must benefit all shareholders proportionately and must not conflict with proper conduct of the corporation's business. There is rule of inherent fairness from the viewpoint of the corporation and those interested therein. This rule applies to the officers, directors, and controlling shareholders alike. The majority excluded the minority from exchanging their stock for the new corporation. The majority acted without regard to the resulting detriment to the minority. Such conduct is not consistent with their duty of good faith and inherent fairness.

All shareholders should have opportunity to participate effectively and vote in meetings of shareholders and should be informed of the rules, including voting procedures that govern shareholder meeting: By way of example, absent or foreign shareholders are recognized and their rights preserved by use of proxies[54]. The management of the company is mandated to include a proxy form with every notice of meeting that it sends out[55]. A proxy holder is given the same right as the shareholder who appointed him[56]. This provision prominently features in the Nigeria company law. The procedure of voting, right to demand poll, proxies, corporation representation at meetings of companies, and quorum have been boldly provided for[57].

REMEDIES

The actual enforcement rights are enshrined in the legislation and provide powerful remedies to shareholders. A complainant (whether as a present or past shareholder or debenture holder, present or past director, registrar or other person who in the discretion of the court is a proper person to make an application) has a statutory right to make an application under this head[58]. He also has derivative power to prosecute, defend or discontinue an action on behalf of the company or any of its subsidiaries, or intervene in an action to which such company or any of its subsidiaries is a party[59]. Consequently, the court may make any order it thinks fit, inter alia:

(i) an order authorizing the complainant to control the action;
(ii) an order giving directions for the conduct of the action;
(iii) an order directing that any amount adjudged payable by a defendant in the action be paid in whole or in part directly to former or present shareholders instead of to the company or its subsidiary;
(iv) an order requiring the company or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action[60]. Similar to this enforcement remedy is provision dealing with the power of the court to make orders in respect of the relief on grounds of unfairly prejudicial and oppressive conduct[61].

CONCLUSION

Central in the art of corporate governance is the 'majority rule'[62] which undermines the fundamental rights and opinions of shareholders who hold low equity shareholding relative to the directors who usually hold majority shares. The enforcement of minority protection is more exigent in the Nigeria jurisdiction where the investors are less sophisticated and traditionally less prone to question corporate action. Nonetheless, corporate behaviours and

activities are not given due publicity to embrace the tears and wears of the public.

The foregoing discourse underscores the idea that good corporate governance not only requires the conferring of clear rights which entitles the shareholders to receive certain information and take certain action, but further requires the imposition of positive duties and obligations on corporations, substantial shareholders and insiders, to make full, frank, timely and continuous disclosure and laws which prohibit abusive and discriminatory activity such as insider trading and market manipulation to ensure the protection of minority shareholders.

The principle of 'majority rule' is, no doubt, a democratic corporate rule that seek in principle to maintain equilibrium amongst shareholders in terms of their varying shareholding strength. Traditionally, the principle applied strictly in favour of the directors who hold the greater of the equity shareholding relative to the populous impressionable ordinary shareholders who constitute the minority. The unpalatable consequence is that the minority are only seen and not heard as their opinions are destined to defeat each time corporate resolutions are taken at the polls. However, contemporary developments in corporate governance have swayed to mitigate the frustrations posed to the minority with the result that at specific circumstances, the minority could sue the company despite contrary opinions of the majority. There is therefore, an increasingly gradual paradigm shift to suit the ultimate interest of the minority where the interest of justice would remain unprejudiced.

NOTES

[1]Companies & Allied Matters Act, 1990.

[2]Trinidad Companies Act, No.12 of 2003. Also, St. Lucia Companies Act No. 19 of 1996.

[3] L.P. Davis, Gower and Davies Principles of Modern Company Law (Seventh edition) London Sweet & Maxwell (2003) pp. 291 & 327.

[4] Companies & Allied Matters Act, 1990, Section, 262.

[5] Majority does not depend on the physical number of shareholders but on the number of equity shares held by the shareholders.

[6] L.P. Davies, op. cit. p. 481.

[7] Part X, Companies & Allied Matters Act, 1990..

[8] (1843)2 Hare 461.

[9] R. Hollingtom, Minority Shareholders, Rights, (1990) London Sweet & Maxwell, pp. 1 & 2.

[10] (1950) 2 ALL ER 1064, CA.

[11](1950) 2 ALL ER 1064 at 1066, CA..

[12] Wallersteiner v. Moir (No.2) (1975) QB 373 at 395; (1975)1 ALL ER 862 at 862, CA.

[13] H.J. Farra, E.N. Furey, M.B. Hannigan and P. Wylie Philip, Farrar's Company Law (Second Edition) 1988 Butterworthhs London Edinburgh, pp. 382-384.

[14] Simpson v. Westminister Palace Hotel Co. (1860) 8 H. L. C. 712, 717.

[15] Russell v. Wakefield Waterworks Co. (1975)

[16] Edward v. Halliwell (1950) 2 ALL Er 1064, CA.

[17] Taylor v. National Union of Mine Workers (1985) B.C.L.C. 237, 243.

[8] Companies & Allied Matters Act, 1990, Section 299.

[19] Edokpolar & Co. Ltd. v. Sem-Edo Wire Industries Ltd. (1984) 7 S. C. 119.

[20] Pavlide v. Jensen (1956) Ch. 565, 573;

[21] Edward v. Halliwel (1950) 2 ALL ER 1064.

[22] Menier v. Hooperis Telegraph Works Ltd (1874) 9 Ch. App. 350; Cook v. Deeks (1916) 1 AC 554; Brown v. British. Abrasive Wheel Co. (1919) 1 Ch 290; Clemens v. Clemens Bro (1976) 2 ALL ER 268; Daniels v. Daniels (1978) 2 ALL ER 89.

[23] Companies & Allied Matters, 1990, Section 300 (a) - (f).
[24] Keenan Denis, Smihth & Keenan's Company Law for Students (tenth edition) Pitman Publishing (1996) pp. 265-266.
[25] Companies & Allied Matters, 1990, Section 301(1).
[26] Ibid., Section 301(2)..
[27] Ibid., Section 301(3).
[28] O.J. Orojo, Company Law and Practice in Nigeria (Third Edition), Mbeyi & Associates (Nig.) Ltd. 1992, pp. 353-354.
[29] The Corporate Affairs Commission.
[30] Companies & Allied matter Act, 1990, Section 310.
[31] D. Keenan, ibid, pp. 267-268 prejudice to a member or members.
[32] As mentioned in paragraphs (b), (c) and (e) if subsection (1) of section 310 of the Companies & Allied Matters Act 1990.
[33] Companies & Allied Matters Act, Section 311.
[34] Companies & Allied Matters Act 1990, Section 312.
[35] Re HR Harmer Ltd. (1958) 3 ALL ER 689.
[36] K.D. Moll, 'Reasonable expectations v. Implied-In-Fact Contracts: is the shareholder Oppression Doctrine Needed?' Available @ http://www.be.edu/schools/law/lawr/42_5/01_TXT.htm, accessed on 21/09/2009.
[37] (1978) 3 ALL ER. 280.
[38] (1974) 3 ALL Er. 217 at p. 292.
[39] Companies & Allied Matters Act, 1990, Sections 314-320.
[40] Ibid, Section 326(i).
[41] Evidence Act, Chapter E14, Laws of the Federation of Nigeria, 2004, Section 173.
[42] Companies & Allied Matters Act, 1990, Sections 327-330.
[43] Ibid, Section 81.
[44] St. Lucia Companies Act No. 19 of 1996, Section 153.
[45] Ibid, Section 124.
[46] Ibid, Section 91.
[47] Companies & Allied Matter Act 1990, Section 277.
Parker v. McKenna (1874) 10 Ch. App. 96.

[48] St. Lucia Companies Act, No. 19 of 1996, Sections 111 and 131.
[49] Ibid, Section 112.
[50] Ibid, Section 114.
[51] Companies & Allied Matter Act 1990, Sections 217-223.
[52] Trinidad Companies Act, No.12 of 2003, Section 138.
[53] I Col. 3d 93 (1969) p. handout; My Notes-2L Law Source, available in www.hom.pon.net/jmt/law/TwoL/busorg/juh.htm., accessed on 21/09/2009.
[54] St. Lucia Companies Act No. 19 of 1966, Section. 138.
[55] Ibid., Section 141.
[56] Ibid, Section 145.
[57] Companies & Allied Matter Act, 1990, Section 227-232; Carruth v. I.C.I Ltd. (1937) A.C. 707 at 761.
[58] St. Lucia Companies Act, Section 238.
[59] Ibid, Section 239.
[60] Ibid., Section 240.
[61] Companies & Allied Matter Act, 1990, Section 312.
[62] This is the common law principle that a director or directors (who usually hold the controlling equity share capital of the company) or officer owes no fiduciary duty to a shareholder with respect to a stock transaction. This rule has been restricted by both federal insider trading rules and state-law doctrine. See Garner Bryan A., Black's law Dictionary (Seventh Editions), West Group 1999.

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