The Power Paradox: How Virginia's Courts are Stuck Between Ordering 'Drastic' Dissolution or Nothing At All in Cases of Minority Shareholder Oppression

Stephanie Martinez

University of Richmond, School of Law

The death knell has tolled for the Disthene Group, Buckingham County's largest employer. In a move that surprised many, the Supreme Court of Virginia declined to hear the Disthene Group's appeal from a trial court's dissolution order, and the corporation will now enter receivership.

The decision opens the door for a discussion on remedies available in minority shareholder oppression cases. Many states, including Virginia, have found it appropriate for courts to step in and order dissolution when the majority shareholder's actions are oppressive. VA. CODE ANN. § 13.1-747 (1985). However, unlike other states, the Supreme Court of Virginia has expressly held that trial courts cannot order alternative remedies in oppression cases; forcing trial courts to choose either dissolution or dismissal. White v. Perkins, 189 S.E.2d 315, 320 (Va. 1972).

Virginia's oppression statute is taken directly from the Model Business Corporation Act, which a majority of states have enacted. Courts in two such states, Washington and Missouri, have held that the statute provides for alternative remedies outside of dissolution. However, these courts ignore the plain meaning of the statute; the statute makes clear that dissolution is the sole remedy available in oppression cases. "A circuit court… *may dissolve* a corporation…" VA. CODE ANN. § 13.1-747 (1985). The statute leaves no room for alternative remedies, and, as the Supreme Court of Virginia has noted, dissolution "while discretionary, is 'exclusive.'" Giannotti v. Hamway, 387 S.E.2d 725, 733 (Va. 1990). Accordingly, if Virginia wants alternative remedies, the General Assembly must be the one that adds those remedies to Virginia's oppression statute.

Legislatures in other states, such as Illinois, have done just that by adding a non-exhaustive list of alternative remedies to their oppression statutes. *See, e.g.,* 805 ILL. COMP. STAT. 5/12.56(a) (1983). Accordingly, Illinois' statute has cloaked Illinois courts with broad discretionary power to order an appropriate remedy that fits the unique facts presented by a certain case.

Of course, there is the argument that Virginia's General Assembly already addressed the issue of alternative remedies when it enacted legislation which allows for a pre-trial buyout of a complaining minority shareholder's stock. However, in a case like *Colgate*, where the minority shareholders owned 42% of the stock (at the time of trial, likely worth millions), this option was probably foreclosed simply because neither the majority shareholders nor the corporation had the liquid assets needed to buy-out the plaintiffs. Colgate v. Disthene Group, 2012 Va. Cir. LEXIS *3 (Va. Cir. 2012). Therefore, other options are likely necessary to provide Virginia courts with the power to respond to each case with an appropriate remedy. For example, in *Colgate*, had the trial court had the power, the court could have appointed a receiver to run the affairs of the corporation, thereby stopping the oppression while also avoiding dissolution.

Most states that have enacted the Model Business Corporation Act allow for remedies outside of dissolution in oppression cases. If Virginia decides that more remedies are necessary in order to provide courts with the tools to respond appropriately to unique circumstances, then it should be the General Assembly, and not the Supreme Court, that acts.