



1983

Casenotes: Corporations — Fiduciary Duty of Majority Shareholders — Has Spring Arrived for the Frozen out Minority? *Twenty Seven Trust v. Realty Growth Investors & RGI Holding Co.*, 533 F. Supp. 1028 (D. Md. 1982)

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Recommended Citation

Bolton, Bryan D. (1983) "Casenotes: Corporations — Fiduciary Duty of Majority Shareholders — Has Spring Arrived for the Frozen out Minority? *Twenty Seven Trust v. Realty Growth Investors & RGI Holding Co.*, 533 F. Supp. 1028 (D. Md. 1982)," *University of Baltimore Law Review*: Vol. 12: Iss. 3, Article 9.

Available at: <http://scholarworks.law.ubalt.edu/ubl/vol12/iss3/9>

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CORPORATIONS — FIDUCIARY DUTY OF MAJORITY SHAREHOLDERS — HAS SPRING ARRIVED FOR THE FROZEN OUT MINORITY? *Twenty Seven Trust v. Realty Growth Investors & RGI Holding Co.*, 533 F. Supp. 1028 (D. Md. 1982).

Twenty Seven Trust (Twenty Seven) owned a minority interest in Realty Growth Investors (Realty). American Invesco Corporation formed RGI Holding Company (RGI) as part of a plan to acquire Realty.¹ RGI then proceeded to make a tender offer for the Realty stock.² Through this tender offer, RGI obtained over ninety percent of the Realty stock, leaving Twenty Seven as the only minority shareholder. RGI then used its controlling interest to force Realty to merge into RGI.³ When the two corporations merged, Twenty Seven was to receive cash for its minority interest in Realty.⁴ Twenty Seven objected to this plan, charging that RGI was attempting to freeze out⁵ Twenty Seven's minority interest in Realty by making a grossly inadequate cash offer and by failing to consider the federal tax loss carryforward⁶ created by losses incurred by Realty in previous years.⁷ Twenty Seven filed suit⁸ claiming the actions by RGI as Realty's majority shareholder amounted to a breach of fiduciary duty.⁹ Judge Miller, writing for the

1. *Twenty Seven Trust v. Realty Growth Investors & RGI Holding Co.*, 533 F. Supp. 1028, 1030 (D. Md. 1982).

2. *Id.* The offer stated that if less than 100 percent of the stock was tendered, RGI would consider a merger with Realty to eliminate any minority interest.

3. *Id.* at 1031-32.

4. *Id.* at 1032.

5. Because the terms freeze out, squeeze out, and cash out are essentially synonymous, they will be treated under the heading of freeze out. See Brudney & Chirelstein, *A Restatement of Corporate Freezeouts*, 87 YALE L.J. 1354 (1978). Brudney & Chirelstein describe a freeze out as follows:

The essence of a freezeout is the displacement of public investors by those who own a controlling block of stock of a corporation, whether individuals or a parent company, for cash or senior securities. The public investors are thus required to give up their equity in the enterprise, while the controllers retain theirs. Freezeouts most commonly take the form of a merger of a corporation into its existing parent or into a shell corporation newly formed for the purpose by those who control the merged entity.

Id. at 1357.

6. See 26 I.R.C. § 172 (1976 & Supp. V 1981). A tax loss carryforward permits a taxpayer to carry losses forward to future taxable years.

7. *Twenty Seven Trust*, 533 F. Supp. at 1030.

8. *Id.* at 1032. Although in its five count amended complaint Twenty Seven alleged violations of section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5, breach of a common law fiduciary duty by the majority shareholders, common law fraud in connection with the proxy materials, violation of the Maryland Securities Act, and unlawful shareholder discrimination, this casenote will be confined to the allegation of breach of fiduciary duty by the majority shareholders.

9. *Id.* The essence of the Twenty Seven complaint was directed at RGI as the new majority shareholder, not as the selling majority shareholder of Realty. *Id.* Had Twenty Seven claimed a breach of fiduciary duty by the selling majority shareholder of Realty, Twenty Seven would have had to prove that the majority could foresee a fraud upon the minority. *Claggett v. Hutchinson*, 583 F.2d 1259, 1262

United States District Court for the District of Maryland, held that Maryland would recognize a claim for breach of fiduciary duty under these circumstances and denied the defendants' motion to dismiss.¹⁰

Theoretically, a corporation functions as a miniature democracy.¹¹ Thus, to a certain extent majority rule is encouraged and permitted. A system of majority rule always involves some degree of coercion, and therefore there are times when the minority must accept the unfavorable consequences of the majority vote. The system of majority rule presumes that the majority and minority have a common goal with a difference of opinion on how to accomplish that goal. The validity of this presumption may be questioned, however, when the majority acts for a selfish benefit without any corresponding benefit to the corporation or the minority shareholders.

In an early United States Supreme Court case, *Southern Pacific Co. v. Bogert*,¹² the Southern Pacific Company sought to exclude the minority shareholders of the Houston & Texas Central Railway Company from participating in the new Houston Company formed under a reorganization plan. Under the reorganization plan, the Southern Pacific Company got all of the stock in the new Houston Company and the minority shareholders received nothing.¹³ The Supreme Court recognized the inequities of a reorganization plan which gave all of the stock to the majority shareholder, and imposed a constructive trust upon the stock held by the Southern Pacific Company.¹⁴ The Court held that the majority shareholder did not have an unlimited right of control to the detriment of the minority.¹⁵

Thus, the Supreme Court has recognized that a fiduciary duty is owed to the minority shareholder whenever the majority shareholder

(4th Cir. 1978). The allegations in *Twenty Seven* are substantially different from those in *Claggett* and any broad reading of *Claggett* indicating the majority never owes the minority shareholders a fiduciary duty would seem to be incorrect. See Note, *Corporations — Fiduciary Duty — Circumstances Held Not Sufficiently Suspicious to Invoke Majority Stockholder's Duty to Investigate Purchasers Prior to Sale of Stock*, 8 U. BALT. L. REV. 341 (1979).

10. *Twenty Seven Trust*, 533 F. Supp. at 1039 (defendant's motion was made under FED. R. CIV. P. 12(b)(6) — failure to state a claim upon which relief may be granted).
11. See H. HENN, *HANDBOOK OF THE LAW OF CORPORATIONS* §§ 186-202 (2d ed. 1970).
12. 250 U.S. 483 (1919).
13. *Id.* at 486.
14. *Id.* at 487-88.
15. *Id.* In regard to the rights of the majority shareholders, the Court stated: The majority has the right to control; but when it does so, it occupies a fiduciary relation toward the minority, as much as the corporation itself or its officers and directors. If through that control a sale of the corporate property is made and the property is acquired by the majority, the minority may not be excluded from a fair participation in the fruits of the sale.

Id.

uses its right to control.¹⁶ According to the Supreme Court in *Southern Pacific* the majority would be accountable to the minority shareholders for a breach of fiduciary duty in a manner similar to an officer or director of a corporation being accountable to all of the shareholders.¹⁷

Although the Supreme Court's opinion in *Southern Pacific* has not been widely applied, many state courts have reasoned that the majority shareholders owe the minority shareholders a fiduciary duty.¹⁸ The first courts to recognize a fiduciary duty did so in the context of a judicially recognized close corporation.¹⁹ The courts imposed a fiduciary duty on the majority shareholders because of the lack of alternative remedies available to the minority shareholders in a close corporation.²⁰ Later, state court opinions expanded this concept of fiduciary duty to apply to all controlling shareholders in all corporations.²¹

Because the claim for breach of fiduciary duty by a controlling shareholder in *Twenty Seven Trust v. Realty Growth Investors & RGI Holding Co.*²² was one of first impression in Maryland, the district court *sua sponte* raised the issue of whether Maryland would recognize such a claim.²³ Judge Miller began by reasoning that the conduct of Realty and RGI was tantamount to a short form merger.²⁴ After surveying the case law of other jurisdictions to determine whether use of a short form merger might amount to a breach of fiduciary duty, the court concluded that the Maryland courts would recognize such a claim in this limited factual setting, and that a majority shareholder breaches his fiduciary duty to the minority shareholder either when he acts without a legitimate business purpose or when the transaction is unfair to

16. *Id.*; see also *Pepper v. Litton*, 308 U.S. 295 (1939). In that case the Court stated: [The majority stockholder's] dealings with the corporation are subjected to . . . scrutiny and where any of their contracts or engagements with the corporation are challenged the burden is on the director or stockholder not only to prove the good faith of the transaction but also to show its inherent fairness from the viewpoint of the corporation and those interested therein.

Id. 306.

17. *Southern Pacific Co.*, 250 U.S. at 487-88. A director must act in the best interests of the corporation relying on his business judgment. See, e.g., *Panter v. Marshall Field & Co.*, 646 F.2d 271 (7th Cir. 1981).

18. See, e.g., *Weinberger v. UOP, Inc.*, 426 A.2d 1333 (Del. Ch. 1981); *Wilkes v. Springside Nursing Home, Inc.*, 370 Mass. 842, 353 N.E.2d 657 (1976).

19. See, e.g., *Tillis v. United Parts, Inc.*, 395 So. 2d 618 (Fla. Dist. Ct. App. 1981); *Donahue v. Rodd Electrotpe Co. of New Eng.*, 367 Mass. 578, 328 N.E.2d 505 (1975).

20. See, e.g., *Donahue v. Rodd Electrotpe Co. of New Eng.*, 367 Mass. 578, 328 N.E.2d 505, 514 (1975).

21. See, e.g., *Singer v. Magnavox Co.*, 380 A.2d 969 (Del. 1977).

22. 533 F. Supp. 1028 (D. Md. 1982).

23. *Id.* at 1039.

24. *Id.* at 1034; see also MD. CORPS. & ASS'NS CODE ANN. § 3-106 (1975 & Supp. 1983). A short form merger occurs when a small corporation merges into a large corporation which already owns ninety percent of the small corporation's stock. *Id.*

the minority interest.²⁵

The merger technique applied in *Twenty Seven Trust* is often referred to as going private. In this type of merger the majority shareholder is seeking to eliminate public ownership of the corporation by

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25. *Twenty Seven Trust*, 533 F. Supp. at 1039. In regard to what specifically constitutes a breach of fiduciary duty the district court stated that a mere legitimate business purpose is not sufficient to justify freezing out the minority — the merger must also be fair with respect to the minority interest. *Id.* Although Judge Miller does not explain what this standard of fairness requires, in Delaware the fairness standard seems to require a balancing of the effect of the transaction with the benefit to the majority and minority interest. *See* *Roland Int'l Corp. v. Najjar*, 407 A.2d 1032, 1037 (Del. 1979); *Singer v. Magnavox Co.*, 380 A.2d 969, 980 (Del. 1977). If, after weighing the benefits, the court feels the transaction is "fair" then the majority has fulfilled its fiduciary duty. If, however, the majority receives a great financial benefit while the minority receives no financial gain by the merger, then the majority may have breached its fiduciary duty. In its complaint, *Twenty Seven* alleged that the majority shareholder's sole purpose for the merger was to deprive *Twenty Seven* of participation in the federal tax loss carryforward. Judge Miller's refusal to grant the defendants' motion to dismiss seems to indicate that exclusion of the minority interest from participation in a federal tax loss carryforward at least raises a rebuttable presumption that there was not a legitimate business purpose and thus a breach of fiduciary duty. *See* *Twenty Seven Trust*, 533 F. Supp. at 1039.

The legitimate business purpose test when applied in this way seems appropriate to regulate the behavior of majority shareholders. If the majority can show a legitimate business purpose for the merger, then the merger should be permitted despite any harm to the minority. As owner of the controlling interest, the majority shareholder has the right to control the corporation. *Southern Pacific Co. v. Bogert*, 250 U.S. 483, 487 (1919). However, the court must carefully scrutinize the majority's actions to ensure there is a *legitimate* business purpose for the merger, and not a contrived excuse to exclude the minority. Assuming the majority can show such a purpose for the merger, then the effect on the minority becomes a secondary concern.

There are some purposes, however, which may benefit the majority shareholder but should not be considered legitimate. *See* *United Funds v. Carter Products, Inc.*, FED. SEC. L. REP. (CCH) ¶ 91, 229 (Balto. City Cir. Ct. May 16, 1963). In this case, the court issued an injunction preventing the majority shareholder from issuing nonvoting stock for the sole purpose of perpetuating the majority's control. The court held that this was not a sufficient purpose to permit the majority to act to the detriment of the minority. The court believed that the phrase "legitimate business purpose" should not include the intent to continue the business for the sole benefit of the majority shareholder. *But see* *Dower v. Mosser Indus., Inc.*, 648 F.2d 183, 188-91 (3d Cir. 1981) (the court recognized that continuing the business for the sole benefit of the majority was not a legitimate business purpose but permitted the freeze out, reasoning that a merger could not be enjoined absent a showing of "fraud or fundamental unfairness").

Similarly, a merger solely to eliminate the minority interest should not be considered a legitimate business purpose. *See* *Singer v. Magnavox Co.*, 380 A.2d 969, 980 (Del. 1977). "[T]he dominant corporation, or a majority shareholder standing . . . under . . . a merger transaction, has the burden of establishing its entire fairness to the minority stockholders sufficiently to pass the test and careful scrutiny by the courts." *Id.* at 976. If either of the two above reasons was a "legitimate business purpose" for a merger, the imposition of a fiduciary duty on the majority shareholder would be for naught because the majority shareholder would always have a legitimate purpose and would never breach his fiduciary duty to the minority shareholders.

forming a holding company in which to place all stock, and exchanging his shares in the public corporation for shares in the holding company.²⁶ The holding company then votes the shares in the public corporation to merge with it. When the public corporation is merged with the holding company the minority interests usually accept cash in exchange for their shares.²⁷ Judge Miller ruled in *Twenty Seven Trust* that in the limited situation when a corporation goes private, the majority shareholder owes a fiduciary duty to the minority shareholder.²⁸ The rationale seems to be that when a public corporation seeks to go private, the main concern of the majority shareholder is personal benefit; therefore, absent a fiduciary duty, the majority shareholder will not have an incentive to protect the minority.

The Maryland district court's imposition of a fiduciary duty upon the majority shareholder is an important first step in providing an adequate remedy for the frozen out minority shareholder. The minority shareholder in Maryland will now be able to bring suit and enjoin capricious conduct by the majority shareholder which has no legitimate business purpose or is unfair to the minority.²⁹ Implicit in the court's rationale is that the imposition of a fiduciary duty is justified by the need to supplement the currently inadequate remedies available to the frozen out minority. Additionally, imposition of the duty protects several interests of the minority shareholder.

Often the main concern of a minority shareholder, such as *Twenty Seven*, is to avoid being excluded from participation in the benefits arising out of the stock ownership, including receiving dividends and voting on management decisions. The legitimate business purpose test seems to adequately protect this concern by requiring the majority shareholder to show a *legitimate* purpose for the merger, thereby protecting the minority from arbitrary exclusion by the majority. This test also appropriately balances the majority's right to control with the minority's need for protection while providing resort to courts of equity in the case of disagreement.

In addition, the imposition of a fiduciary duty upon the majority shareholders is important in allocating who bears the burden of proving a breach. Generally, when a beneficiary advances a claim for breach of fiduciary duty and shows a benefit to the fiduciary, then the fiduciary bears the burden of proving the fairness of the transaction.³⁰ In a case such as *Twenty Seven Trust*, the minority shareholder would bear the burden of showing that the majority owns controlling interest

26. Brudney & Chirelstein, *A Restatement of Corporate Freezeouts*, 87 YALE L.J. 1354, 1370 (1978).

27. *Id.* at 1365.

28. *Twenty Seven Trust*, 533 F. Supp. at 1039.

29. *See id.*

30. *Singer v. Magnavox Co.*, 380 A.2d 969, 976 (Del. 1977); *McDaniel v. Hughes*, 206 Md. 206, 220, 111 A.2d 204, 210 (1955); *see also Trusts and Estates*, 21 M.L.E. § 134 (1960 & Supp. 1983).

in both corporations and, therefore, is on both sides of the transaction.³¹ The burden would then shift to the majority shareholder to show a legitimate business purpose and the fairness of the transaction.³²

The imposition of a fiduciary duty upon the majority shareholders may be further justified by the inadequacies of the statutory remedy provided for the protection of the minority. Maryland's statutory appraisal remedy provides for the minority shareholder to receive "fair value" for his stock.³³ To so limit the remedy of minority shareholders assumes that the only value they have in their shares is to be paid fair value.³⁴ However, the minority shareholders' interest goes beyond fair value, as the *Twenty Seven Trust* case indicates. The value of the stock, according to *Twenty Seven*, was the federal tax loss carryforward.³⁵ This tax loss carryforward was considered of even greater value to *Twenty Seven* than the control price premium offered to it.³⁶ Moreover, the difficulty in making a statutory appraisal of a federal tax loss carryforward makes any determination of the stock's fair value suspect. The statutory appraisal of the stock may be further complicated by the difficulty minority shareholders may have in obtaining access to corporate records controlled by the majority shareholder.³⁷

31. *Singer v. Magnavox Co.*, 380 A.2d 969, 976 (Del. 1977).

32. *Twenty Seven Trust*, 533 F. Supp. at 1039. A shift in the burden of proof seems entirely appropriate in the case of a controlling shareholder who is accused of breaching his fiduciary duty to the minority shareholder because: (1) he has control and access to the corporate records; and (2) he is in a better position to prove a legitimate business purpose. This allocation of the burden of proof is a significant departure from the current fiduciary duty imposed upon the directors of a corporation. See *Panter v. Marshall Field & Co.*, 646 F.2d 271 (7th Cir. 1981). On the other hand, a director is protected by the business judgment rule which presumes sound judgment when any rational business purpose may be attributed to the conduct. *Id.* at 293. To overcome this presumption a plaintiff would have to show that "impermissible motives predominated in the making of the decision in question." *Id.* at 294. Such a heavy burden of proof may be entirely appropriate with respect to directors of corporations, but any such presumption of a business purpose imputed to the controlling shareholder would nullify the consequences of an imposition of a fiduciary duty. See *id.* "[B]y the very nature of corporate life, a director has a certain amount of self-interest in everything he does. The very fact that the director wants to enhance corporate profits is in part attributable to his desire to keep shareholders satisfied so that they will not oust him." *Id.* In addition, the justification for presuming sound business judgment on the part of directors is not present in the case of a controlling shareholder. A controlling shareholder has no inherent conflict of interest.

33. MD. CORPS. & ASS'NS CODE ANN. §§ 3-201 to -212 (1975 & Supp. 1983).

34. *Singer v. Magnavox Co.*, 380 A.2d 969, 977 (Del. 1977).

35. *Twenty Seven Trust*, 533 F. Supp. at 1039.

36. *Id.*

37. If the only available remedy to a frozen out minority shareholder is an appraisal of the fair value of his stock, there seems little to deter a majority shareholder from attempting to freeze out the minority, since his liability is limited to payment of fair market value. If, however, a claim for breach of fiduciary duty is permitted, it may result in greater damages assessed against the majority shareholder, thus serving to deter majority shareholders from engaging in egregious behavior.

Twenty Seven Trust goes further than the earlier Maryland common law and explicitly recognizes the right of the majority shareholders to bring a claim for breach of fiduciary duty against the majority shareholder.³⁸ However, as Judge Miller points out, the majority shareholder does have defenses to this newly-recognized claim of breach of fiduciary duty.³⁹ One such defense is that a legitimate business purpose exists for the merger.⁴⁰ An example of a legitimate business purpose, as determined by the benefit to the majority shareholder, might include a merger when the majority shareholder intends to use the newly merged assets in order to obtain debt financing.⁴¹ The benefit to the controlling shareholder in such a situation would seem to be legitimate. Another legitimate business purpose is the economic gains realized by not duplicating corporate functions once the merger is complete.⁴²

The court's reasoning in *Twenty Seven Trust*, however, should not be limited to its facts, but expanded in future decisions to include all freeze outs attempted by *controlling* shareholders. In Title Four corporations, for example, the concept of fiduciary duty should be expanded to protect the frozen out minority shareholders.⁴³ Title Four corporations are usually small with stockholders who have invested their life-savings to start a business. Thus, although a freeze out may be more difficult to accomplish in a Title Four corporation,⁴⁴ the consequences of the freeze out are often much greater because a minority shareholder who has risked everything may be left with nothing.⁴⁵

38. *Twenty Seven Trust*, 533 F. Supp. at 1039.

39. *Id.*; see also *Singer v. Magnavox Co.*, 380 A.2d 969 (Del. 1977).

40. *Twenty Seven Trust*, 533 F. Supp. at 1039; *Singer v. Magnavox Co.*, 380 A.2d 969 (Del. 1977).

41. *Tanzer v. International Gen. Indus., Inc.*, 379 A.2d 1121, 1124 (Del. 1977).

42. *Id.*

43. See MD. CORPS. & ASS'NS CODE ANN. § 4-201 (1975 & Supp. 1983). Corporations formed under this section will be referred to as Title Four corporations. Although a Title Four corporation may have many of the attributes of a judicially defined close corporation, *i.e.*, small number of shareholders, the Title Four corporation is a statutory creation. Thus, in Maryland the only corporations which may be distinguished are those incorporated under the General Statute of Incorporation, *id.* § 2-102, and those formed under Title Four.

44. See *id.* §§ 4-201(b)(2)(ii), 4-203, 4-401(b), 4-501, 4-504(b), 4-601. These provisions essentially provide that all major corporate moves or changes in corporate form be approved unanimously by all the shareholders. However, one method the majority might employ to freeze out the minority would be to deprive the minority of employment in the Title Four corporation. In a Title Four corporation most of the profits are paid out in the form of salaries, thus depriving the minority of substantial participation in the benefits of stock ownership. See, *e.g.*, *Wilkes v. Springside Nursing Home, Inc.*, 370 Mass. 842, 353 N.E.2d 657 (1976).

45. In addition to the fiduciary duty imposed upon majority shareholders in Title Four corporations, the majority shareholder may also owe a fiduciary duty to the minority in the merger of affiliate corporations. This type of merger occurs most frequently when a large corporation owns a controlling interest in a smaller one. The large corporation will vote for a merger when the economic benefit to it is the greatest. The minority shareholders will usually be forced to accept cash for their

This expansion of the concept of fiduciary duty is also necessary to fill in gaps in the federal securities laws created by the Supreme Court's restriction of the scope of rule 10b-5.⁴⁶ In addition, to confine the fiduciary duty to cases involving mergers is unrealistic, because many freeze outs occur without one.⁴⁷ For example, a majority shareholder may issue more stock knowing that the minority cannot afford to purchase it.⁴⁸ The fiduciary duty would require a showing that a legitimate business purpose for the issuance of more stock exists and that the issuance was fair. If the majority cannot show such a purpose, then there seems to be no reason to permit the merger.

Judge Miller's decision in *Twenty Seven Trust* was the first Maryland case to specifically find that the majority shareholders owe the minority shareholders a fiduciary duty. This duty requires the majority to show a legitimate business purpose and that the transaction is fair to the minority. In future decisions, the Maryland courts should expand the concept of fiduciary duty to include controlling shareholders in all

interest. Thus, in the merger of affiliates the majority shareholder should owe the minority a fiduciary duty, requiring proof that there was a legitimate business purpose for the merger and that such action was fair. Brudney & Chirelstein, *A Restatement of Corporate Freezeouts*, 87 YALE L.J. 1354, 1370 (1978). Absent such a fiduciary duty there is little to protect the minority shareholder from the whim of the controlling shareholder. In other situations, the imposition of a fiduciary duty on the majority shareholder in a merger may be limited by the relationship of the corporations. *Id.* In the traditional setting for a merger, two nonaffiliated corporations merge to form one. *Id.* Because of the merger's financial benefit to each corporation, the minority does not need protection. In this limited setting the majority shareholder should not owe a fiduciary duty to the minority. *Id.* The minority does not need the fiduciary duty for protection and the imposition of a duty is an unnecessary burden on the majority shareholder.

46. Traditionally, rule 10b-5 has been used as an all-purpose remedy for material misstatements in connection with the purchase and sale of securities. See, e.g., *Santa Fe Indus. v. Green*, 430 U.S. 462 (1977) (the Court refused to permit a cause of action for breach of fiduciary duty under rule 10b-5); *Chiarella v. United States*, 445 U.S. 222 (1980) (the Court rejected the idea that a person may incur liability under rule 10b-5 for failure to disclose information because of the person's position as a "market insider"). *But cf.* *Huddelstein v. Herman & MacLean*, 103 S. Ct. 683 (1983) (Supreme Court, for the first time, recognized that a implied private right of action exists under rule 10b-5). Prior to *Huddelstein* the Court seemed to be hostile toward actions brought under rule 10b-5. Perhaps *Huddelstein* indicates a future expansion in the scope of the rule.
47. See, e.g., *Wilkes v. Springside Nursing Home, Inc.*, 370 Mass. 842, 353 N.E.2d 657 (1976). The court found a breach of fiduciary duty when the majority shareholders voted Wilkes out of his director position with no legitimate business purpose. Thus, Wilkes, as a minority shareholder, was unlikely to receive any benefit of stock ownership since in a judicially defined close corporation one of the main benefits is employment. *Id.* at 849, 353 N.E.2d at 662.
48. See *Klaus v. Hi-Shear Corp.*, 528 F.2d 225, 233-34 (9th Cir. 1975) (the issuance of more stock at a time clearly advantageous to those in control, and without a business justification, violated the majority shareholder's fiduciary duty to the minority shareholder).

corporations. In addition, the controlling shareholder should owe the minority a fiduciary duty regardless of how the freeze out occurs.

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