

Decision 82 07 026 JUL 7 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of Richard Swanson a shareholder)
 of Wes-Mar Transportation, Inc.,)
 aka Pacific Ports Transportation)
 Inc., to abandon his authority to)
 operate as highway common carrier,)
 Compton.)

Application 82-05-15
 (Filed May 7, 1982)

O P I N I O N

This application was originally filed as a petition of Richard Swanson for an order under Corporation Code § 8510(d)(1) allowing him to file an involuntary dissolution action in the superior court. Although the petition was recaptioned by the docket office as an abandonment application, the substance of the matter, as set forth in the body of the pleading, controls.

Swanson alleges that he and Charles Snydergaard each hold 50% of the stock of Pacific Ports Transportation, Inc. (Pacific Ports). He states that Pacific Ports has been operating as a certificated highway common carrier and that internal dissension has arisen between himself and Snydergaard to the extent that the business cannot be conducted to the advantage of its shareholders. He alleges several grounds for dissolution, the specifics of which are not relevant here.

Documents in Application (A.) 59610, wherein Pacific Ports was authorized to transfer a highway common carrier certificate (§ 1063) to 9-Way Leasing, Inc., reveal that Pacific Ports was known as Wes-Mar Transportation, Inc. before a corporate name change.

Discussion

For our purposes the relevant parts of Corporations Code § 8510 are as follows:

"(a) A complaint for involuntary dissolution of a corporation on any one or more of the grounds specified in subdivision (b) may be filed in the superior court of the proper county by any of the following persons:"

* * *

"(2) A person...holding...not less than 33-1/3 percent of the voting power..."

* * *

"(b) The grounds for involuntary dissolution are that:"

* * *

"(3) There is internal dissension and two or more factions of members in the corporation are so deadlocked that its activities can no longer be conducted with advantage."

* * *

"(d) This section does not apply to any corporation subject to:

"(1) The Public Utilities Act (Part 1 (commencing with Section 201) of Division 1 of the Public Utilities Code) unless an order is obtained from the Public Utilities Commission authorizing the corporation either (a) to dispose of its assets as provided in Section 851 of the Public Utilities Code or (b) to dissolve."

Under this statutory scheme the first issue for us to address is whether Pacific Ports is subject to the Public Utilities Act. In Decision (D.) 92142, dated August 19, 1980, in A.59610 Pacific Ports was authorized to transfer its highway common carrier certificate to 9-Way Leasing, Inc. That transfer ultimately was

consummated on April 15, 1982, after delays caused by litigation. However, A.59610 did not seek, and D.92142 did not authorize, the transfer of Pacific Port's highway common carrier certificate issued under Public Utilities Code § 1063.5. (See File T-120,711.) Thus, Pacific Ports is still subject to the Public Utilities Act.

The second issue is the effect of our order "authorizing the corporation...to dissolve." The statute would have been clearer if it had said "authorizing the corporation...to file a complaint for involuntary dissolution." But we are convinced that that is what the Legislature intended. Looking at § 8510(d) as a whole, § 8510 does not apply unless the Commission authorizes the corporation to dissolve. Thus, our authorization merely permits the prospective complainant to invoke the complaint procedures established in § 8510. Our order does not effect a dissolution. This procedure was the Legislature's solution to a possible jurisdictional conflict between the court and the Commission. If and when a complaint is filed by Swanson, the superior court would then determine questions regarding his standing to file and his grounds for dissolution.

The last question to decide is whether the public interest will be affected by the dissolution of Pacific Ports. We think not. Pacific Ports' principal operating authority has already been transferred. Even assuming that in the process of the dissolution Pacific Port's § 1063.5 certificate were extinguished (and that assumption is neither a likely nor a necessary one), the public convenience and necessity would not be seriously affected, since there are thousands of such certificates outstanding. The public interest does not require us to stand in the way of a judicial dissolution of Pacific Ports.

Findings of Fact

1. Pacific Ports holds a § 1063.5 highway common carrier certificate.

2. Pacific Ports is subject to the Public Utilities Act.

3. The public interest will not be adversely affected by a dissolution of Pacific Ports.

4. A copy of the application was personally served upon Charles Snydergaard on May 18, 1982. No protests have been received.

5. In a letter dated May 21, 1982, attorneys for 9-Way Leasing, Inc. state that their client holds at least 50% of the stock of Pacific Ports and that it has no objection to the issuance of the order sought by Swanson.

Conclusions of Law

1. The effect of the following order is to permit Swanson to file a complaint for involuntary dissolution in the superior court under Corporation Code § 8510.

2. The application should be granted.

O R D E R

IT IS ORDERED that Richard Swanson is authorized to file an action for involuntary dissolution of Pacific Ports Transportation, Inc. in accordance with the requirements of Corporation Code § 8510(a), (b), and (c).

This order becomes effective 30 days from today.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director