

ORIGINAL

Decision No. 87478 June 21, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lee G. Gale, an individual,

Complainant,

vs.

Kenneth Teel, Martha Anne  
Teel and David L. Ray,  
individuals,

Defendants.

Case No. 10227  
(Filed December 30, 1976)

In the Matter of the Applica-  
tion of KENNETH TEEL and  
MARTHA ANN TEEL, individuals,  
to control PYRAMID COMMODITIES,  
a corporation and a cement  
carrier and highway permit  
carrier.

Application No. 57121  
(Filed March 3, 1977)

Karl K. Roos, Attorney at Law, for  
complainant and protestant.  
Fulop, Rolston, Burns & McKittrich,  
by Bruce J. Lurie, Attorney at Law,  
and Russell, Schureman, Fritze &  
Hancock, by Robert W. Hancock,  
Attorney at Law, for defendants and  
applicants Teel.  
Ronald G. Ress, Attorney at Law, for  
defendant David L. Ray.

INTERIM OPINION

In C.10227, the complainant Lee G. Gale (Gale) alleges that as of January 1, 1973, he owned 150 shares of the stock of Pyramid Commodities, (Pyramid) a corporation, a certificated public

utility cement carrier, which 150 shares were the entire outstanding stock of the corporation. On January 1, 1973 he and the defendant Kenneth Teel purportedly entered into a stock purchase agreement, a copy of which is attached to the complaint as Exhibit A. By that agreement, Gale purportedly agreed to sell and the defendant Kenneth Teel purportedly agreed to purchase 50 percent of all of the issued and outstanding shares of the capital stock of Pyramid owned by Gale. The purported stock purchase agreement was approved in writing by the defendant Martha Ann Teel, the wife of Kenneth Teel.

Gale alleges that the purported stock purchase agreement failed to provide that the agreement and stock transfer contemplated were subject to the prior approval of this Commission under the provisions of Section 854 of the Public Utilities Code (Section 854); he, in the mistaken belief that the agreement was valid and binding, endorsed 75 shares, or 50 percent of all the issued and outstanding shares of Pyramid to the defendant Kenneth Teel; and Kenneth Teel thereupon surrendered the shares to the corporation for cancellation, and caused the corporation to reissue 75 shares to him in his name. Gale alleges that the purported transfer and the defendant Kenneth Teel's purported acquisition of the shares constituted a direct or indirect acquisition of control of Pyramid, and was done without first securing authorization from this Commission to do so under Section 854 and was void. Gale does not allege that Kenneth Teel "acquired" Pyramid by acquisition of the stock.

The complainant also alleges that the defendants Kenneth and Martha Ann Teel (Teels) filed an action in the superior court of the State of California, county of Los Angeles, naming Gale and Donna L. Gale, his wife, as defendants in that action, seeking the voluntary or involuntary winding up and dissolution

of Pyramid under Section 4650, et seq., of the Corporations Code; and have further caused the superior court to issue its order under Section 4656 of the Corporations Code appointing the defendant David L. Ray (Ray) as a receiver to take over and manage the business and affairs of Pyramid for the purpose of winding up and dissolving Pyramid. Pursuant to the authority of the superior court, Ray has assumed control of the business and affairs of Pyramid, has ousted Gale from control of that company, has caused the company to cease all highway carrier operations including its cement carrier operations, has caused certain of its assets to be sold at public auction, has failed, refused, and neglected to pay premiums due or about to become due on Pyramid's public liability and property damage insurance coverage, and has caused other damage to Pyramid.

Gale seeks an order requiring the Teels to surrender to him all shares of stock and stock certificates held by them in Pyramid for cancellation upon the books and records of that corporation; to enjoin and restrain the Teels and each of them and order them to cease and desist from performing any act or doing anything in control or management over the business or affairs of Pyramid; an order requiring the Teels to amend their complaint on file in the superior court by disclaiming any and all rights as a shareholder or shareholders of Pyramid and to dismiss any and all causes of action in that complaint for the winding up or dissolution of Pyramid.

Gale also seeks an order requiring the receiver Ray to cease and desist from any and all acts of dominion or control over the business and affairs of Pyramid in the winding up or dissolution of the affairs of that corporation or otherwise; and an order enjoining, restraining and prohibiting Ray from assuming

the management, ownership, or control, as trustee, or receiver, or otherwise, of any public utility in this state operating under the jurisdiction of the Commission unless and until he shall have first secured Commission authorization; and to order Ray to return and surrender forthwith into the possession and control of Gale all assets of whatever kind or nature of Pyramid now in his possession or under his supervision or control.

Section 854, added in 1971, provides:

"No person or corporation, whether or not organized under the laws of this State, shall, after the effective date of this section, acquire or control either directly or indirectly any public utility organized and doing business in this State without first securing authorization to do so from the Commission. Any such acquisition or control without such prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this State shall aid or abet any violation of this section."

In A.57121, the applicants Kenneth and Martha Ann Teel (Teels) seek authority, pursuant to Sections 854 and 3551 of the California Public Utilities Code, to acquire 50 percent of the issued and outstanding common capital stock of Pyramid, and that such authorization be made effective as of January 1, 1973. In addition, they have filed a motion to dismiss the application on the grounds that such authority requested therein is not required under the provisions of Section 854 or 3551 where the purchaser of stock of a public utility or highway permit carrier seeks to purchase less than a majority of the outstanding common capital stock of a corporation from one who owns 100 percent of such stock.

Section 3551 is the same as Section 854 except that the former applies to "any highway carrier" whereas the latter applies to "any public utility". Pyramid is a public utility and is

subject to the provisions of Section 854, so it is not necessary to consider the effect of Section 3551 in this matter.

A hearing was held before Examiner James D. Tante in Los Angeles on April 19, 1977 at which time the defendants Teels' motion to dismiss the complaint, the protestant Gale's motion to dismiss the application, and the Teels' motion to dismiss the application were considered; and the motion of the Teels to continue the hearing to a later date was granted over the objection of Gale and the hearing was continued to 10:00 a.m. June 14, 1977 in Los Angeles. The attorney for the Teels was ordered to give notice of the continuance. The parties were authorized to file concurrent briefs on or before April 26, 1977.

There was no objection by any party present so A.57121 was consolidated with C.10227 for all purposes.

The attorney for the Teels made a motion to continue the hearing to May 3, 1977 stating that he was engaged in trial in the superior court and had been so engaged for the past 72 trial days. The attorney for Gale resisted the motion and stated that he would not be available until June 14, 1977. The motion was granted and the hearing was continued to June 14, 1977 as set forth above.

The Teels made a motion to dismiss the complaint and their application on the theory that the complaint does not state facts sufficient to constitute a cause of action, and the application for the approval of the transfer of 50 percent of the stock by Gale to the Teels where Gale retained the other 50 percent was not required by the provisions of Section 854. Gale made a motion to dismiss the application on the ground that if all the allegations contained therein were true the Teels would not be entitled to the relief sought. The Teels' request to refer the motions to the Commission for decision prior to further hearing was granted.

C.10227, A.57121 IV/gf/bw \*

At the request of the Teels the Commission took official notice of Exhibit 1 for identification, consisting of three pages: the Legislative Council's Digest, analysis of Senate Bill No. 1356 (SB 1356) and the background description and analysis of SB 1356 pertaining to Section 854. We also take official notice of the Commission action in Resolution No. 17991 whereby we suspended Pyramid's certificate of public convenience and necessity to operate as a cement carrier until March 14, 1978 at the request of defendant Ray, as receiver. ✓

One question presented is whether the transaction between Gale and the Teels whereby Gale, who owned all the issued and outstanding shares of stock of Pyramid transferred exactly one-half to Kenneth Teel, required the approval of the Commission pursuant to Section 854. Such approval has not been obtained, so that if such approval was necessary, the motion of the Teels to dismiss the complaint and application should be denied. If such approval was not required, the motion of the Teels should be granted unless other allegations of Gale state facts sufficient to constitute a cause of action under the provisions of Section 854. ✓

If Commission approval was not required, Gale's motion to dismiss the application should be granted. If Commission approval was required, Gale's motion to dismiss the application should only be granted if it is also found that the request of the Teels for Commission approval to acquire 50 percent of the issued and outstanding common capital stock of Pyramid as of this date or effective as of January 1, 1973 should be denied without a hearing.

The undisputed facts giving rise to the present controversy, as set forth in the pleadings, are as follows:

On June 15, 1971, by D.78782 in A.52485 the Commission authorized Gale to transfer to and Pyramid to acquire a certificate of public convenience and necessity to operate as a cement carrier

theretofore issued to Gale as an individual by D.69922 in A.46537. By its supplemental order, entered on or about June 18, 1971 in D.78880, A.52485, the Commission authorized Pyramid to issue 150 shares of its common capital stock at a par value of \$100 each in exchange for said cement carrier certificate, which transfer and stock issue were thereafter consummated and whereby Gale became the sole owner of all of the issued and outstanding capital stock of Pyramid.

By a stock purchase agreement dated January 1, 1973, a copy of which is attached as Appendix A to the complaint in C.10227 and to A.57121, Gale agreed to sell to the defendant Kenneth Teel 50 percent of the stock of Pyramid for the sum of \$12,500. The agreement was approved in writing by Martha Anne Teel, wife of the defendant Kenneth Teel.

Pursuant to said agreement, Gale endorsed a share certificate for 75 shares of the capital stock of Pyramid to the defendant Kenneth Teel. Said share certificate was surrendered to the corporation for cancellation, and 75 shares were reissued to Kenneth Teel.

No authorization by the Commission was sought or granted for the transfer of 50 percent of the shares of Pyramid from Gale to Kenneth Teel.

On or about July 9, 1976, the Teels commenced an action in the superior court of the State of California for the county of Los Angeles entitled "Kenneth Teel and Martha Anne Teel, plaintiffs, v. Lee G. Gale, et al., Defendants," C.166724, whereby the Teels sought, among other relief, court supervision of the winding up and dissolution of Pyramid and certain other corporations. By order dated August 9, 1976, the court in that matter appointed the defendant Ray as receiver for Pyramid (and other corporations) under Section 4656 of the Corporations Code

(now Section 1803) to take over and manage the business affairs of Pyramid for the purpose of winding up and dissolving the corporation, and thereafter Ray, as receiver, did take over receivership of Pyramid pursuant to said order.

Discussion

The question presented is whether the acquisition of a 50-percent interest in a public utility constitutes "control either directly or indirectly" for purposes of Section 854. We conclude that it does.

Corporations Code Section 160 defines "control" as follows:

- "(a) Except as provided in subdivision (b), 'control' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation.
- "(b) 'Control' in Sections 181, 1001, and 1200 means the ownership directly or indirectly of shares possessing more than 50 percent of the voting power."

Sections 181, 1001, and 1200 are not applicable. Thus, subsection (a) applies.

The facts in this case present a dramatic illustration of "the power to direct or cause the direction of the management and policies of a corporation." The transferee has caused the public utility operations to be abandoned. The court-appointed receiver has placed the certificate of public convenience and necessity in suspension. The equipment has been sold. Winding up and dissolving the corporation plainly amounts to directing the management and policy.

We are persuaded in part by the public policy implications of the situation. Abandonment of a public utility obligation is a very serious matter requiring PUC authorization. (Public Utilities Code Section 851.) If the Commission were to decline jurisdiction over transfers of a 50-percent interest, we would be unable to deal adequately with transactions intended to dissolve the subject corporation and abandon the public utility obligation. This is



particularly troublesome in areas of transportation where competitive consequences must be considered. The public interest in continued service requires the exercise of Commission jurisdiction.

From this conclusion it follows that the attempted voluntary dissolution is premature. The Commission authorization required for transfer has not been obtained. Accordingly, there is no basis for the petition for voluntary dissolution and the appointment of a receiver. Consequently, the actions taken by the receiver are void and the operating authority should be reinstated.

Pursuant to the authority vested in the Commission by Public Utilities Code Section 1759, the receiver shall be directed to cease and desist from interfering in the operations of Pyramid. An immediate effective date is necessary to preserve the rights of the parties pending further Commission action.

#### Findings

1. Pyramid became a public utility, a common carrier, and a cement carrier as defined in Sections 216(a), 211(d), and 214.1 of the Public Utilities Code upon its consummation of the transfer authorized by the Commission in D.78782 dated June 15, 1971 in A.52485 and acceptance of the certificate of public convenience and necessity granted to it in said decision.

2. Pyramid issued 150 shares of its common stock to Lee G. Gale (Gale) pursuant to the authorization of the Commission in D.78880 dated June 28, 1971 in A.52485, and Gale thereupon became the owner of all of the issued and outstanding shares of stock of Pyramid.

3. By a written stock purchase agreement dated January 1, 1973, Gale agreed to sell to Kenneth Teel, and Kenneth Teel agreed to purchase from Gale 50 percent of all the issued and outstanding shares of captial stock of Pyramid for the sum of \$12,500. Said agreement was approved by the defendant Martha Anne Teel.

4. Pursuant to said stock purchase agreement of January 1, 1973, Kenneth Teel acquired ownership of 75 shares, or 50 percent of the issued and outstanding stock of Pyramid.

5. Gale and Kenneth Teel did not then seek authorization of the Commission for the transfer of the said 75 shares of Pyramid from Gale to Teel.

6. On or about July 9, 1976 the Teels commenced an action in the superior court of the State of California for the county of Los Angeles seeking, among other things, the court's supervision of the voluntary dissolution of Pyramid under Sections 4600 et seq. of the California Corporations Code (now Sections 1900 et seq.), and by order dated August 9, 1976 the court appointed Ray as receiver for Pyramid. Pursuant to said order, Ray has taken over the assets and management of the business affairs of Pyramid.

7. At the request of Ray, as receiver, the Commission by Resolution No. 17991 dated May 10, 1977 has suspended Pyramid's certificate of public convenience and necessity to operate as a cement carrier until March 14, 1978. In addition, the radial highway common carrier and dump truck carrier permits of Pyramid in Cal T-97258 were suspended on March 4, 1977 at the request of Ray, as receiver.

#### Conclusions

1. The acquisition by a party of 50 percent of the stock of a corporate public utility from one who theretofore owned 100 percent of such stock constitutes "control either directly or indirectly" of such public utility within the meaning of Section 854 of the Public Utilities Code.

2. No authorization of the Commission has been received for the acquisition by Kenneth Teel from Gale of 75 shares of stock of Pyramid, representing 50 percent of all of the issued and outstanding shares of said corporation.

3. The transfer of said 50 percent of the stock of Pyramid from Gale to Kenneth Teel was invalid and not effective.

4. Ray's assumption of possession of the assets and management of the business affairs of Pyramid as receiver pursuant to order of the superior court in said action C.166724 is void.

5. The suspension of the certificate of public convenience and necessity, radial highway common carrier permit, and dump truck permit was in error. ✓

INTERIM ORDER

IT IS ORDERED that:

1. The transfer of stock issued by Pyramid Commodities (Pyramid) to Kenneth Teel is void.

2. The suspensions of the certificate of public convenience and necessity, radial highway common carrier permit, and dump truck permit of Pyramid are terminated.

3. David L. Ray shall cease and desist from any act of control or management over the business and affairs of Pyramid.

4. Mary Ann Teel and Kenneth Teel shall cease and desist from any act of control or management over the business and affairs of Pyramid.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 21st  
day of JUNE, 1977.

President  
William J. Quinn, Jr.  
Vernon L. Stutzman  
Richard W. Goble

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.