

ORIGINAL

Decision No. 89534 OCT 17 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Donald F. (Frank) Trexler and of Donald M. (Mike) Trexler, individuals, for either of them to acquire sole control of Atlas Marine Freight Lines, a California corporation, and of Atlas Marine Freight Lines to acquire treasury shares.

Application No. 57286
(Filed May 5, 1977)

In the Matter of the Application of ATLAS MARINE FREIGHT LINES, a corporation, for authority to execute and deliver a Security Agreement covering Operative Rights pursuant to Sections 816-830 and 851 of the California Public Utilities Code.

Application No. 57565
(Filed September 13, 1977)

O P I N I O N

By Application No. 57565, Atlas Marine Freight Lines (Atlas), a California corporation, operating as a highway common carrier of general commodities with the usual exceptions, pursuant to authority granted by Decision No. 84148 dated March 4, 1975 in Application No. 54320, seeks authority to execute and deliver a security agreement securing a promissory note in the principal amount of \$175,000.

In Application No. 57286 Donald F. (Frank) Trexler and Donald M. (Mike) Trexler (applicants) seek authority for Frank and Mike or either of them to acquire control of Atlas; for Atlas to acquire treasury shares through the contributing to the installment payments from corporate funds; and approving Mike's acquiring 50 percent of Atlas by contributing to the installment payments or by purchase of the treasury shares.

Atlas' balance sheet of December 31, 1976, as summarized from Exhibit G attached to the application, is as follows:

<u>Assets</u>	
Current Assets	\$307,807
Net Equipment	388,665
Other Assets	<u>15,448</u>
Total	\$711,920
<u>Liabilities</u>	
Current and Accrued Liabilities	\$485,123
Long Term Installment Equipment Obligations	191,732
Stockholders' Equity	<u>35,065</u>
Total	\$711,920

There is a total of 779 shares of the issued and outstanding capital stock of Atlas without par value. Frank is the issuee and holder of 359 shares and proposes to control Atlas by the acquisition of all of the shares of his former wife, Sally P. Trexler (Hunter), of an additional 359 shares, for a total of 718 shares. The balance of 61 shares is presently issued to Mike, son of the parties. The acquisition by Frank of all of the shares of Hunter is made pursuant to an Interlocutory Judgment of Dissolution of Marriage dated April 20, 1977 of the Orange County Superior Court, in the matter of the dissolution of marriage of the said Sally Patricia Trexler and Donald Frank Trexler. (See Interlocutory Judgment attached to Application No. 57565 as Exhibit A.) Judgment of the dissolution was made final on May 25, 1977.

As a part of and in accordance with the judgment of dissolution, the court ordered that all of the stock or other interests of Hunter in Atlas be awarded to Frank. The award was made upon the express condition that Frank pay to Hunter the sum of \$175,000 to be evidenced by: (1) a promissory note for said amount; and (2) a security agreement providing for the pledged security of all shares issued and outstanding in the name of Frank, the shares to be acquired from Hunter in Atlas by Frank, and all issued and outstanding stock of Atlas Freight Lines, Inc.,^{1/} a non-carrier. As further security, the

^{1/} On January 3, 1978, pursuant to Section 1110 of the Corporations Code, Atlas Marine Freight Lines merged with its subsidiary Atlas Freight Lines, Inc., assuming all liabilities. The surviving corporation is Atlas Freight Lines, Inc.

operating authority of Atlas, consisting of its certificate of public convenience and necessity as well as its Interstate Certificate of Registration, are pledged to secure the performance of said agreement and the payment of the promissory note. Pursuant to said judgment and security agreement, said certificates are to be placed in escrow with the Crocker National Bank as escrow holder, all of which has been approved and accepted by the parties as well as Atlas.

The application of Atlas indicates that both Frank and Hunter, prior to their divorce, had both actively participated in the business and, as an outgrowth of marital differences as well as differences in the respective parties' positions as to the overall operation and management of the corporate business, a climate had developed in which the affairs and operations of the corporation could not be conducted to the best advantage and benefit of the parties or the general shipping public, and based upon such facts, the Orange County Superior Court had entered its judgment providing for the severance of the parties' respective interests in Atlas by way of a "buy-out" arrangement whereby Frank would acquire all of the shareholding interest of Hunter in Atlas upon condition that the stipulated sum of \$175,000 be paid by Frank to Hunter, said sum to be evidenced by promissory note payable at the rate of \$2,500 including interest per month at 9 percent per annum. Due to the fact that there was not sufficient cash to either pay said stipulated sum forthwith or to effect a down payment, the court affixed the condition that adequate security be given by Frank to Hunter in the form of both the pledge of shares in Frank's name as well as those issued to Hunter, and a security interest in the operating authority of Atlas.

On September 21, 1977 Mike filed a protest to Application No. 57565 alleging:

1. The proposed encumbrance and lien does not comply with any statutory mandate, or Commission decision, rule, or regulation allowing the execution thereof.
2. The proposed encumbrance and indebtedness will interfere with the corporation's ability to operate as a public utility and its ability to obtain future financing.
3. There is a complete failure of consideration and the proposed transaction is without benefit to the corporation.
4. The proposed transaction would not only create a lien upon the corporation's operative assets, but also would create a corporate liability in the sum of \$175,000.
5. The creation of the encumbrance and indebtedness would be detrimental and prejudicial to Mike, a minority shareholder, and his interest in the corporation by resulting in a reduction in his shareholders' equity.
6. The proposed transaction was without the consent, approval, or authorization of the board of directors of the corporation, or Mike, as president and director of the corporation.

With respect to the above allegations, first we have granted the right of a public utility to encumber its operating authority in similar circumstances (Decision No. 85669 dated April 13, 1976 in Application No. 56306); second the encumbrance was made pursuant to a Superior Court judgment of dissolution of marriage between the controlling stockholders,^{2/} which avoided the necessity to either dissolve the corporation or sell a substantial portion of its assets in order to effect a division of the interests of the parties; third there is adequate consideration and benefit to the

^{2/} It is alleged, by counsel for Hunter, that during the court proceedings for settlement that the respective counsel and Mike were present and participated in the settlement negotiations which resulted in the court order containing the requirement of the encumbrance.

corporation in that the "buy-out" arrangement eliminates the internal dissension now existing between the shareholders and also eliminates the need to physically divide corporate assets; fourth there is no corporate liability, but only a lien pending the liquidation of the liability of Frank; and fifth there is nothing prejudicial to Mike, but rather a benefit in that he may ultimately acquire all or substantially all of the stock from his father when the indebtedness is paid off and finally the application contains a verification under oath of Frank that he is authorized to file said application for and on behalf of the corporation.

Based upon the Superior Court judgment and the respective applications of the parties in and to the acquisition of the shares and in and to the security agreement and the consideration therefor, as set forth in both the applications as well as presented to this Commission, it is considered that the protest of Mike, son of the parties, as it pertains to the security interest in the operating authority, is without merit. To the extent provided herein, the applications should be granted. Except as otherwise provided herein, the applications should be denied. A public hearing is not necessary.

Findings

1. Frank and Mike seek authority for either or both of them to control Atlas by the purchase of the stock of Hunter for the sum of \$175,000 and authority to execute and deliver a security agreement securing a promissory note for the said purchase.
2. There is a total of 779 shares of Atlas outstanding. Frank is the holder of 359 shares (47 percent), Hunter is the holder of 359 shares (47 percent), and Mike is the holder of 61 shares (6 percent).
3. Acquisition of Hunter's shares by Frank is pursuant to an Interlocutory Judgment of Dissolution of Marriage dated April 20, 1977 of the Orange County Superior Court.

4. The Superior Court ordered that all stock or interests of Hunter in Atlas be awarded to Frank upon the express conditions that Frank pay to Hunter the sum of \$175,000 to be evidenced by: (1) a promissory note for \$175,000; and (2) a security agreement providing for the pledged security of all shares issued and outstanding in the name of Frank, the shares to be acquired of Hunter in Atlas by Frank, and all issued and outstanding stock of Atlas Freight Lines, Inc. As further security, the operating authority of Atlas, both intrastate and interstate, are pledged to secure performance of the agreement and payment of the promissory note.

5. Both Frank and Hunter have actively participated in the business of Atlas.

6. Marital differences and differences as to the overall operations and management of Atlas led to a climate where the affairs could not be conducted to the best advantage of the corporation or to the general shipping public.

7. The proposed transaction would not be adverse to the public interest.

8. The proposed security issue is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

9. The protest of Mike is without merit.

Conclusion

The Commission should grant the applications to the extent provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. Donald F. Trexler may acquire control of Atlas Freight Lines, Inc. (formerly Atlas Marine Freight Lines).

2. Atlas Freight Lines, Inc. may execute and deliver a security agreement securing a promissory note in the principal amount of \$175,000 in the same form as appears in Appendix C of Application No. 57565.

3. Except as otherwise provided herein, the applications are deemed denied.

This order shall become effective upon payment of the fee in the amount of \$350 prescribed by Section 1904(b) of the Public Utilities Code, or thirty days after the date hereof, whichever date is the later.

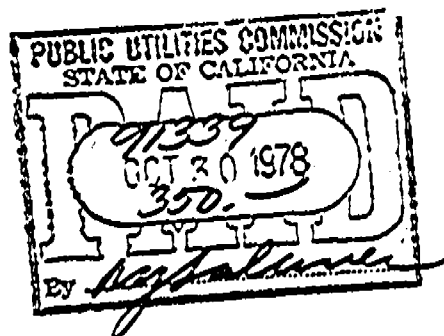
Dated at San Francisco, California, this 17th day of OCTOBER, 1978.

 President
William L. Brown, Jr.

Vernon L. Sturgeon

Charles W. Howell

Clair T. DeWitt
 Commissioners



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