



Griffin & Vose Inc. v. Non-Metallic Minerals Corp.

225 N.C. 434 (1945) | Cited 5 times | Supreme Court of North Carolina | September 26, 1945

There was error in denying the motion to make additional parties. This action, which was instituted to compel the defendant corporation to transfer to the plaintiff upon its books certain shares of stock which had been issued to J. A. Mayberry and others, was based upon the allegation that these shares had been endorsed and transferred to the plaintiff. This was denied in the answer, and in the affidavit of J. A. Mayberry filed in support of the motion. It was alleged that Mayberry and his associates were the owners of these shares and had not transferred them. Thus it appears that the real controversy was between plaintiff and Mayberry as to the ownership of the shares of stock claimed by plaintiff. On this issue Mayberry was entitled to be heard. He was a party to the transaction sued on, claimed a legal interest in the subject of the action, and his presence would seem to be necessary for a complete determination of the matter litigated. The court's ruling denied Mayberry opportunity to participate in the trial and to defend his asserted ownership of the stock.

It is provided by statute that "when a complete determination of the controversy cannot be had without the presence of other parties, the court must cause them to be brought in." G.S., 1-73. *McKeel v. Holloman*, 163 N.C. 132, 79 S.E., 445; *McIntosh*, 210. To entitle a party to the benefit of this statute he must have a legal interest in the subject matter of the litigation. As was said by Justice Barnhill in *Mullen v. Page* 436} *Louisburg*, ante, 53, "His interest must be of such direct and immediate character that he will either gain or lose by the direct operation and effect of the judgment." *Trust Co. v. Smith*, 266 U.S., 152; *NilesBement-Pond Co. v. Iron Moulders Union*, 254 U.S., 77; 39 A.J., 886. Here the judgment decreed the transfer to the plaintiff of shares of stock which Mayberry claims to own, some of which shares were admittedly in the possession of Mayberry and unendorsed.

The case of *Cobett v. Lumber Co.*, 233 N.C. 704, 28 S.E.2d 250, cited by plaintiff, is not helpful on this point. That case involved the legality of a stockholders' meeting. In *Holladay v. General Motors Corporation*, ante, 230, the corporation was enjoined from transferring plaintiff's stock to plaintiff's agent in violation of the terms of the agency. Both the agent and the corporation were made parties defendant. The appeal in that case was disposed of on a question of procedure, and is not here in point.

For the error in denying the motion for additional parties there must be a new trial. This disposition of the appeal renders unnecessary discussion of the other exceptions noted in the trial, as these may not arise on another hearing.

New trial.



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Disposition

New trial.

