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DINSMORE v. NATIONAL HARDWOOD CO.  
Mi. 1926

Supreme Court of Michigan.  
DINSMORE  
v.  
NATIONAL HARDWOOD CO. et al.  
No. 42.

April 14, 1926.

Error to Circuit Court, Kent County; Wm. B. Brown,  
Judge.

Action by Stephen M. Dinsmore against the National  
Hardwood Company and others. On dismissal of his  
declaration, plaintiff brings error. Affirmed.

Before the full bench.

West Headnotes

[1] Licenses 238 ↪ 36

238 Licenses

238I For Occupations and Privileges

238k36 k. Construction and Effect of Licenses.

Most Cited Cases

**Securities Regulation 349B ↪ 276**

349B Securities Regulation

349BII State Regulation

349BII(A) In General

349Bk276 k. Construction and Effect of Re-  
gistration or License; Conditions. Most Cited Cases  
Certificate of securities commission to sell corporate  
stock is not guaranty that public can purchase with  
impunity (Pub.Acts 1915, No. 46, §§ 4, 9, being  
Comp.Laws 1915, §§ 11948, 11953, as amended by  
Pub.Acts 1921, No. 404, § 1; Comp.Laws 1915, §§  
11963, 11967.

[2] Corporations 101 ↪ 80(4)

101 Corporations

101VIII Capital and Stock

101VIII(B) Subscription to Stock

101k80 Subscriptions Obtained by Misrep-

resentation

101k80(4) k. Representations Not Enter-  
ing Into Contract of Subscription. Most Cited Cases

**Securities Regulation 349B ↪ 272**

349B Securities Regulation

349BII State Regulation

349BII(A) In General

349Bk272 k. Furnishing Information, State-  
ment, or Notice. Most Cited Cases  
Representations to commission, in application for  
permit to sell stock, are not intended for prospective  
purchaser, and cannot be availed of, unless he knows  
or relies thereon when he purchases (Pub.Acts 1915,  
No. 46, § 4, being Comp.Laws 1915, § 11948, as  
amended by Pub.Acts 1921, No. 404, § 1).

[3] Corporations 101 ↪ 80(12)

101 Corporations

101VIII Capital and Stock

101VIII(B) Subscription to Stock

101k80 Subscriptions Obtained by Misrep-  
resentation

101k80(12) k. Effect of Fraud, and Rem-  
edies of Subscribers. Most Cited Cases  
Representations and disclosures made before securi-  
ties commission, in application for permit to sell se-  
curities, cannot be made basis of action for fraud and  
deceit by purchaser. Pub.Acts 1915, No. 46, § 4, be-  
ing Comp.Laws 1915, § 11948, as amended by  
Pub.Acts 1921, No. 404, § 1.

\*436 \*\*702 Norris, McPherson, Harrington & Waer,  
of Grand Rapids, for appellant.

Knappen, Uhl & Bryant, of Grand Rapids, for ap-  
pellees.

\*437 SNOW, J.

The plaintiff assigns error upon the dismissal of his  
declaration by the trial judge.

This is one of a number of cases recently brought into  
this court involving what is claimed to have been  
fraudulent sales of securities of the National Hard-  
wood Company, a Delaware corporation. Thomson v.  
Kent. Circuit Judge. 203 N. W. 108, 230 Mich. 354;

Chapple v. Jacobson et al. (Chapple v. National Hardwood Co. et al.) 207 N. W. 888 and Dinsmore v. National Hardwood Co. et al., 207 N. W. 890. The record does not disclose that defendants Jacobson and Semplimer were ever served with process.

By admission of counsel for plaintiff the fraud as alleged in the declaration is based solely upon doings and proceedings before the Michigan securities commission prior to its authorization of the sale by said corporation of its stocks and bonds. The circuit judge held:

‘Under the circumstances of this case as alleged in the declaration, the proceedings had and acts done and the statements made before the Michigan securities commission do not constitute a cause of action against the National Hardwood Company, defendant; for this reason the declaration is dismissed.’

The sole question before us is as to the correctness of this holding, and we assume in our discussion that the declaration sufficiently alleges material misrepresentations to the commission as to the true status of the company; in what respects it is unnecessary to refer.

Act No. 46, Public Acts of 1915, as amended in 1921 (Pub. Acts 1921, No. 404), now repealed (Pub. Acts 1923, No. 220), was in effect at the time of the alleged fraud on the securities commission. It required, among other things, foreign corporations to obtain permission before offering its stock and securities for sale in this state. Application,\*438 containing a statement of the financial condition of the corporation, its assets, and liabilities, together with a copy of its prospectus and advertising matter, had to be first filed with the commission. C. L. 1915, § 11948. From this application and such additional information as the commission might demand or acquire, it made its determination on the right to sell. Its records were open to the public. The statute made it a misdemeanor for any one to make false representation for the purpose of deceiving the commission (C. L. 1915, § 11963), punishable by fine or imprisonment or both (C. L. 1915, § 11967).

[1][2][3] The issuing of a certificate by the commission to a corporation to sell its stock and securities, was not, nor was it ever intended, as a guaranty to the

public that it could, with impunity, engage in their purchase. To guard against conveying any such impression to any one, the statute expressly provided that there should be printed on such certificate, in type two sizes larger than any other part of the certificate, the words:

‘The commission does not recommend the purchase of this security.’ C. L. 1915, § 11953.

The application is not made to be used as an inducement to the public to buy the securities of the applicant, but only to give the commission such information as it may require in order that permission to offer the securities for sale may be obtained. Representations to the commission are not intended for the prospective purchaser, and, unless he knows and relied upon them when he purchases, it cannot be advanced that he was in any way influenced by them. Plaintiff makes no claim that he knew of or relied upon the truthfulness of disclosures to the commission. While all records of the proceedings before the commission were at all times open to his inspection, he gave them no attention or consideration until long \*439 after he had made the purchase complained of. Shall he then be now permitted to invoke the question of fraud and deceit in representations he claims were made to some other than himself, never intended to reach him, nor to operate as an inducement for him to buy? This court has not been called upon heretofore to deal directly with this subject, but, after a careful review of the authorities cited by counsel for the respective parties, and from our research, we are not able to find authority upon which appellant's position may be sustained, but in reason, and from strong, well-considered, and exhaustive opinions from other jurisdictions, we hold that the question must be answered in the negative. Following is a brief review of some of these authorities:

Peek v. Gurney, 6 English and Irish Appeals, 377, is a leading case and referred to in practically all of the reported cases which may be regarded as in point. Here a false prospectus was put out by the corporation to induce subscriptions to its stock, and the corporation was held liable to all persons subscribing directly in reliance upon such false prospectus. But it was also held that \*\*703 there was no liability to persons who purchased the stock in the open market in

reliance upon the prospectus, and that the false representations could only be relied upon by persons to whom they were addressed or intended to be communicated, viz. such persons as subscribed directly of the corporation.

Hunnewell v. Duxbury, 28 N. E. 267, 154 Mass. 286, 13 L. R. A. 733: In this case a Maine corporation sought to do business in Massachusetts. In order to do so, it had filed with the commissioner of corporations of that state a certificate containing certain false statements as to its assets. The plaintiff claimed to have known of and relied upon these false statements and bought the company's notes because thereof. In holding that no action could be maintained because of \*440 the misstatements contained in the certificate, the court said:

'The main question, which is raised both by the demurrer to the second count of the declaration and by the exceptions, is whether the plaintiff can maintain an action of deceit for alleged misstatements contained in the certificate. In the opinion of a majority of the court this question should have been decided adversely to the plaintiff. The execution by the defendants of the certificate to enable the corporation to file it under the St. of 1884, c. 330, § 3, was too remote from any design to influence the action of the plaintiff to make it the foundation of an action of deceit. To sustain such an action, misrepresentations must either have been made to the plaintiff individually, or as one of the public, or as one of a class to whom they are in fact addressed, or have been intended to influence his conduct in the particular of which he complains. This certificate was not communicated by the defendants, or by the corporation, to the public or to the plaintiff. It was filed with a state official for the definite purpose of complying with a requirement imposed as a condition precedent to the right of the corporation to act in Massachusetts. Its design was not to procure credit among merchants, but to secure the right to transact business in the state.'

And again:

'In the case at bar, the certificate was made and filed for the definite purpose, not of influencing the public, but of obtaining from the state a specific right, which did not affect the validity of its contracts, but merely

relieved its agents in Massachusetts of a penalty. It was not addressed to or intended for the public, and was known to the plaintiff only from the search of his attorney. It could not have been intended or designed by the defendants that the plaintiff should ascertain its contents and be induced by them to take the notes. It is not such a representation, made by one to another with intent to deceive, as will sustain the action. Its statements are in no fair sense addressed to the person who searches for, discovers, and acts upon them, and cannot fairly be \*441 inferred or found to have been made with the intent to deceive him.'

Greene v. Mercantile Trust Co., 111 N. Y. S. 802, 60 Misc. Rep. 189: Here, too, the action was for fraud and deceit, based on a false prospectus issued and circulated by the defendants. The case of Peek v. Gurney, supra, was declared as 'undoubtedly the law' of the state of New York. Brackett v. Griswold, 20 N. E. 376, 112 N. Y. 470; Kuelling v. Lane Mfg. Co., 75 N. E. 1098, 183 N. Y. 78, 2 L. R. A. (N. S.) 303, 111 Am. St. Rep. 691, 5 Ann. Cas. 124; Squiers v. Thompson, 76 N. Y. S. 734, 73 App. Div. 555.

The court further said:

'One of the essential elements necessary to sustain actions of this nature is that the false representations made should have been intended to influence the action of the particular person defrauded, or the action of a class of which he is a constituent member.'

Also:

'On the face of the prospectus, we cannot see how the plaintiff can base any right of action against the defendants for deceit in buying the stock of the ship-building company, for he was not the person addressed or intended to be influenced by it.'

Hindman v. First National Bank, 112 F. 931, 50 C. C. A. 623, 57 L. R. A. 108: In the state of Kentucky an insurance company could not do business until all its capital stock had been actually paid in in cash, nor until the insurance commissioner was satisfied of this fact and issued a license. The defendant bank made certificate that it had on deposit such an amount. Before the plaintiff bought stock, he went to the office of the insurance commissioner and examined the certificate of the bank, and bought stock in the company

relying on its truth. It was not true; the stock was worthless, and plaintiff brought \*442 suit against the bank. It was held that the plaintiff had no right to rely upon the certificate, unless the company actually referred him to the certificate. Without such reference the court argues:

'To what extent did the plaintiff have a right to rely upon the truth of the representations contained in the cashier's certificate? Some direct connection between the bank and the plaintiff in error in the communication of this certificate is essential to a recovery. If the statement was addressed to, and intended only to influence the action of, the state insurance commissioner in respect to the licensing of the insurance company, he cannot sustain a recovery, even though he and others may have been led into the purchase of the shares of the insurance company as a consequence of the action of the insurance commissioner in admitting the company to do business upon the representation of the bank's certificate. The plaintiff's action, in the aspect of it now under consideration, is for fraud and deceit, and such an action must be bottomed upon false representations made to him, and with intent that he should be influenced thereby. The plaintiff does not sufficiently connect himself with the misrepresentations by the bare fact that he bought stock in a company which was improperly admitted to do business upon representations addressed to the state commissioner. The injury in such case is too remote.'

**\*\*704** A writ of certiorari in this case was denied by the United States Supreme Court. 22 S. Ct. 943, 186 U. S. 483, 46 L. Ed. 1261.

Cheney v. Dickinson, 172 F. 109, 96 C. C. A. 314, 28 L. R. A. (N. S.) 359: This was an action to recover damages because of a false prospectus put out by the company. The plaintiff, however, purchased stock from another stockholder at less than par, relying upon statements in the prospectus. In denying the right of recovery, the court said:

'Only one inference can be drawn from the prospectus. The defendants were inviting every one into \*443 whose hands the prospectus should come to buy treasury stock. That was in aid of the conspiracy, and the only conspiracy, which the evidence tended to sustain. And to all persons who bought treasury stock-who paid their money into the fund over which

the defendants had a control and interest in common-relying on the truth of the statements of fact in the prospectus, all of the defendants who were parties to the false statements might well be held answerable in damages. But the plaintiff so far as the defendants were concerned, was a purchaser on the market. And while the sponsors for false prospectuses that are issued to bring in money to the common treasury are justly made to respond to all persons who take the invited action, yet the law recognize no right of action in one who relies without invitation on a statement addressed to a particular class which he stays out of.'

The action in the instant case, based entirely upon claimed fraud and deceit upon the sureties commission, must, in view of all recognized authority, fail. The proceedings before the commission, under the law, were for the commission, and not intended to influence the public in buying the company's securities.

The circuit judge was right in his conclusion that in the case presented by the declaration, plaintiff had no right of action against the National Hardwood Company. The exceptions of plaintiff are dismissed, with costs to the defendant.

BIRD, C. J., and SHARPE, FELLOWS, WIEST, CLARK, and McDONALD, JJ., concur.  
STEERE, J., took no part in this decision.  
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234 Mich. 436, 208 N.W. 701

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