

claims a lien upon the generator, the title to which is in the Westinghouse Company; and this lien is to secure a debt due the electric company from the cable company, which debt is of a character entitling it to preference in payment over the mortgage creditors of the cable company. If the Westinghouse Company should now clear the title to the generator by paying the debt due from the cable company to the electric company, thereby discharging the lien on the generator, it would be entitled to be subrogated to the right of the electric company, as against the cable company, and thus become entitled to receive from the proceeds of the sale the amount due the electric company for the power used to operate the railway line. The rights of the parties are therefore protected by ordering the payment of the sum due the electric company out of the money in the registry of the court, thereby releasing and discharging the lien on the generator, and ordering the delivery of the generator to the Westinghouse Company. Decree accordingly.

ZIEGLER v. LAKE ST. EL. R. CO.

(Circuit Court of Appeals, Seventh Circuit. October 5, 1896.)

1. EQUITY PLEADING—MULTIFARIOUSNESS.

A bill is properly dismissed, on demurrer, as multifarious, when it joins separate and independent matters, so distinct from each other that they are not the proper subjects of attack in one suit.

2. CORPORATIONS—SUIT BY STOCKHOLDER.

A stockholder cannot maintain a suit for a wrong to the corporate body without showing either an effort to set the corporation in motion to redress the wrong, an application to the directors to that end, or that such effort or application would be useless; and a failure to seek action on the part of the corporation itself cannot be excused by vague and general averments of complicity on the part of the directors in the wrongs complained of. 69 Fed. 176, affirmed.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

S. P. Shope and T. S. McClelland, for appellant.

Knight & Brown, Dupee, Judah & Willard, S. P. McConnell, and John A. Rose, for appellee.

Before WOODS and JENKINS, Circuit Judges, and BUNN, District Judge.

WOODS, Circuit Judge. The bill in this case was brought by William Ziegler against the Lake Street Elevated Railroad Company, its directors and other officers, and John J. Mitchell, to enjoin the carrying out of certain contracts, and to obtain a receiver of the company named. The bill was afterwards amended, later an amended and supplemental bill was filed, and still later amendments were added whereby the Metropolitan West Side Elevated Railroad Company and the Chicago and South Side Rapid-Transit Railroad Company were made defendants. General and special demurrers to the bill and amendments were filed, and on July 3,

1895, an order was entered sustaining the demurrers, and dismissing the bill for want of equity. For a fuller statement of the case reference is made to the opinion delivered in the circuit court. *Ziegler v. Lake St. El. R. Co.*, 69 Fed. 176.

After a careful study of the very elaborate and able briefs, upon which the case was submitted without an oral argument, we are of opinion that the decision of the circuit court was right. We entertain no doubts upon the merits, but, even if that were not so, we should be constrained to approve the order of dismissal, for the reason, not mentioned in the opinion below, though it was one of the grounds of demurrer, that the bill is multifarious. The agreements of December 18 and 28, 1894, though not between the same parties on both sides, are so nearly related as to be the proper subject of attack in one suit; but the agreements proposed or made with the Columbia Construction Company, with the West Chicago Street-Railroad Company, and the proposed agreement for scaling the mortgage debt of the Lake Street Elevated Railroad Company are plainly separate and independent matters, distinct from each other, as well as from the contracts concerning the construction and use of the loop road. Whether the contract by which the West Chicago Street-Railroad Company was permitted to attach its trolley wires, for support, to the timbers beneath the track of the Lake Street Elevated Railroad Company was one which ought not to have been made, is a question between those companies alone, and in which the other respondents had no interest to justify making them parties to a suit for its annulment. The same is true of the parties to the other contracts mentioned.

We desire to emphasize here the necessity, in suits like this, for a full and unequivocal compliance with the requirements of equity rule 94. As we had occasion to say in *Watson v. United States Sugar Refinery*, 34 U. S. App. 81, 88, 15 C. C. A. 662, 666, and 68 Fed. 769, 772:

"The rule is well settled that a stockholder cannot maintain a suit for a wrong to the corporate body without showing either an effort to set the corporation in motion to redress the wrong, an application made to the board of directors to that end, or that such effort or application would be useless; and this requirement is not satisfied by an allegation that the directors, or a majority of them, are acting in the interest or under the control of others, who are charged with the fraud. *Brewer v. Proprietors*, 104 Mass. 378; *Dodge v. Woolsey*, 18 How. 331."

A failure to seek action on the part of the corporation itself cannot be excused by vague and general averments of complicity on the part of the directors in the wrongs against which relief is sought. The decree of the circuit court is affirmed.

TATE et al. v. HOLMES et al.

(Circuit Court of Appeals, Ninth Circuit. October 6, 1896.)

No. 285.

DEEDS—CAPACITY TO EXECUTE—FRAUD.

In an action to set aside a deed upon the grounds that the grantor was of unsound mind, and the grantee had taken advantage of that fact to fraudulently procure the conveyance, it appeared that the grantee had lived with the grantor, who was 87 years old, for many years, and cared for her, and was regarded by her with the warmest feelings of gratitude. It was shown that the conveyance was made in pursuance of the fixed intention of the grantor, and the wishes of her husband, from whom she had inherited the property, and whose niece the grantee was. There was evidence to show that the grantor's mind was failing, but it nearly all related to a period subsequent to the execution and delivery of the deed, while lifelong friends testified that at the time of such execution she was in full possession of all her faculties. It was shown that when the grantor executed the deed no one was present except the attorneys, and that they took particular pains that she should be aware of the effect of the conveyance, and her words and manner convinced them that she fully understood the transaction, and was capable of executing the deed. *Held*, that the deed was valid.

Appeal from the Circuit Court of the United States for the District of Oregon.

This was an action by Mary R. Tate and others, heirs at law of Eliza Francis, against Hulda G. Holmes and Byron Z. Holmes, to set aside a conveyance from said Eliza Francis to the first-named defendant. Judgment was rendered for defendants, and plaintiffs appeal.

A. H. Fanner, for appellants.

L. L. McArthur, for appellees.

Before GILBERT and ROSS, Circuit Judges, and HAWLEY, District Judge.

GILBERT, Circuit Judge. The appellants, as heirs at law of Eliza Francis, deceased, commenced a suit in the circuit court to set aside a certain conveyance made by the said Eliza Francis on January 21, 1890, conveying to Hulda G. Holmes, one of the appellees, lots 3 and 4 in block 254 in the city of Portland, Or. It was alleged in the bill that Eliza Francis died on April 30, 1893, and that for a number of years prior thereto the appellees, the defendants in the bill, resided with her in her house, situated on said property; that they had control of her and of the said premises, and that she lived with them, and under their protection and control, until her death; that about five years before her death she became of unsound mind, by reason of extreme old age, and that she was weak and feeble in body, and incapable of leaving her room except occasionally; that her memory was destroyed; that she did not recognize her relatives or her most intimate acquaintances when they called to see her, and that during all of said period she was in such a state of mental imbecility as to be incapable of transacting business, or of understanding the nature or consequence of any business transaction; that the defendants caused a deed to be prepared and