DENMARK

"Potatoes and The Business Judgment Rule"

Danish High Court, West, 29 October 2014, Ugeskrift for Retsvæsen (Weekly Law Review) 2015.257V.

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The Business Judgment Rule

Not expressed explicitly in the decision (It never has been expressed explicitly in previous similar court decision):

Kamin v. American Express 1976:

"The directors' room rather than the courtroom is the appropriate forum for thrashing out purely business questions which will have an impact on profits, market prices, competitive situations, or tax advantages…"

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- Facts of the case:
  - Largest Danish potato distributor – founded in 1936
  - Had been struggling with poor results over 5-year period
  - A new managing director was hired two years before bankruptcy – he was working on a "turn-around-case" with different kinds of initiatives
  - Prices of potatoes is very volatile – making it hard to make long-term budgets
  - The prices of potatoes was catastrophic in the last year before bankruptcy
  - The shareholder equity was close to 0, going into the last year before bankruptcy
  - In the last six months before bankruptcy the company lost an amount equivalent to the worst yearly deficit historically!
  - Their bank had given them a commitment of giving them enough money to pay their bills – given certain economic results were reached – it showed quite early into the last year that the those certain results were not (at all) going to be fulfilled.
  - The management tried to merge the company with competing companies
  - The bank suddenly withdrew their commitment – and the management called in their legal and economic advisors – who advised the management to go bankrupt – which happened.
  - Claimant – a creditor delivering potatoes on credit and lost a large amount of money
  - Problem: never before had a case with such immense losses in the last period up until the bankruptcy.

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High Court's decision:

- The management of the company should not have terminated the operation of the company until the bank redrew their commitment

  The possibilities of future operations in the company were poor, due to the economic situation

  The management of the company (7 officers and the director) could not be held liable for the loss of the creditor