Earl Benjamin BUSH et al., Plaintiffs,
v.
ORLEANS PARISH SCHOOL BOARD et al., Defendants.
Civ. A. 3630.

United States District Court
E. D. Louisiana,
New Orleans Division.
July 1, 1958.

Civil action. The United States District Court for the Eastern District of Louisiana, J. Skelly Wright, District Judge, held that Louisiana statute placing in a legislative committee the power to classify any new public schools or to reclassify any existing public schools so as to designate the same for the exclusive use of children of the white race or for exclusive use of children of the Negro race subject to confirmation by the legislature is invalid.

Motion to dismiss denied.

See also, 252 F.2d 253, certiorari denied 78 S.C. 1008.

Constitutional Law ⇐220
Schools and School Districts ⇐10

Louisiana statute placing in a legislative committee the power to classify any new public schools or to reclassify any existing public schools so as to designate the same for the exclusive use of children of the white race or for exclusive use of children of the Negro race subject to confirmation by the legislature is invalid as discriminatory in violation of the Equal Protection clause. LSA–R.S. 17:341 et seq., 17:344; U.S.C.A. Const. Amend. 14.

A. P. Tureaud, A. M. Trudeau, Jr., New Orleans, La., for plaintiffs.

Browne & Rault, Gerard A. Rault, New Orleans, La., for defendants.

J. SKELLY WRIGHT, District Judge.

This litigation is long standing. On February 15, 1956 this Court, after declaring certain state laws compelling segregation in the public schools of the State of Louisiana unconstitutional,[1] restrained and enjoined this defendant, and persons acting in concert with it, from "requiring and permitting segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court in Brown v. Board of Education of Topeka, supra [75 S.Ct. 753, 99 L.Ed. 1083]."

In order to avoid the effect of the ruling of this Court in this case requiring desegregation in the public schools of the City of New Orleans, the Legislature of the State of Louisiana passed Act 319 of 1956.[2] Relying on Section 4 [3] of that

1. Bush v. Orleans Parish School Board, D.C., 138 F.Supp. 337, 342, affirmed 5 Cir., 242 F.2d 156, certiorari denied 354 U.S. 921, 77 S.Ct. 1380, 1 L.Ed.2d 1436.

2. LSA–R.S. 17:341 et seq.

3. Section 4 of Act 319 of 1956 reads:
"The President of the Senate shall appoint two (2) members from that body, and the Speaker of the House shall appoint two (2) members from the House of Representatives who shall serve as the Special School Classification Committee of the Louisiana Legislature, which Committee shall have the power and authority to classify any new public schools erected or instituted, or to re-classify any existing public school, in any city covered by the other provisions of this Sub-part, so as to designate the same for the exclusive use of children of the white race or for the exclusive use of children of the Negro race. Any such classification or re-classification shall be subject to confirmation by the Legislature of Louisiana at its next regular session, said confirmation to be accomplished by concurrent resolution of the two houses of the Legislature. It is clearly understood that the Legislature of the State of Louisiana reserves to itself the sole power to classify or to change the classification of such public schools from all white to any other classification, or

Act, the defendant herein has moved to vacate this Court's injunction and dismiss the litigation on the ground that, by reason of this section, the defendant herein, Orleans Parish School Board, no longer controls the classification of public schools as between Negro and white children.

It would serve no useful purpose to labor this matter. The Supreme Court has ruled that compulsory segregation by law is discriminatory and violative of the equal protection clause of the Fourteenth Amendment. Brown v. Board of Education of Topeka, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083. Any legal artifice, however cleverly contrived, which would circumvent this ruling, and others predicated on it, is unconstitutional on its face.[4] Such an artifice is the statute in suit.

Motion to dismiss denied.

Isadore BLAU, a stockholder of Warner Bros. Pictures, Inc., suing on behalf of himself and all other stockholders similarly situated and on behalf of and in the right of Warner Bros. Pictures, Inc., Plaintiff,

v.

Charles ALLEN, Jr., Albert Warner, Jack L. Warner and Warner Bros. Pictures, Inc., Defendants.

United States District Court
S. D. New York.
July 2, 1958.

Stockholder's action on behalf of issuing corporation to recover alleged short swing profits from defendants. The District Court, McGohey, J., held, inter alia, under "short swing profits" provision of Securities Exchange Act there is no requirement that shares purchased be identical with the ones sold and that a tender of shares in response to corporation's invitation is a sale within meaning of provisions, but pleadings and affidavits raised issues of fact which required determination at trial.

Ordered accordingly.

1. Corporations ⇐316(3)

Under "short swing profits" provision of Securities Exchange Act providing for recovery of profits made by director, officers and stockholders on short swing speculation of corporate securities, there is no requirement that shares purchased be the identical ones sold. Securities Exchange Act of 1934, § 16(b), 15 U.S.C.A. § 78p(b).

2. Corporations ⇐316(3)

An option to purchase stock extended by corporation has been included under short swing profits provision of Securities Exchange Act as constituting a "sale," and corporate invitations to tender must also be included as a sale within provisions of statute. Fed. Rules Civ.Proc. rule 56, 28 U.S.C.A.; Securities Exchange Act of 1934, § 16 (b), 15 U.S.C.A. § 78p(b).

See publication Words and Phrases, for other judicial constructions and definitions of "Sale".

3. Corporations ⇐316(3)

Under short swing profits provision of Securities Exchange Act, purchaser of stock need not have access to inside information in entering into his initial transaction, and having become an insider by virtue of becoming a director, purchaser's subsequent speculation constitutes the vice within meaning of statute. Securities Exchange Act of 1934, § 16(b), 15 U.S.C.A. § 78p(b).

from all Negro to any other classification, and the action of the Special School Classification Committee as recited hereinabove shall not become final until properly ratified by the Legislature."

4. See Lane v. Wilson, 307 U.S. 268, 59 S. Ct. 872, 83 L.Ed. 1281.