



**Security and Exchange Commission,
v.
W.J. Howey Company, et. al.**

328 U.S. 293 (1946)

FACTS:

This case involves the application of § 2 (1) of the Securities Act of 1933 to an offering of units of a citrus grove development coupled with a contract for cultivating, marketing and remitting the net proceeds to the investor.

The Securities and Exchange Commission instituted this action to restrain the respondents from using the mails and instrumentalities of interstate commerce in the offer and sale of unregistered and non-exempt securities in violation of Section 5 (a) of the Securities Act of 1933.

The SEC considered the land sales contract and the service contract over a parcel of land as investment contracts subject to regulation.

The district court denied the injunction which the court of appeals affirmed on the ground that these contracts are not investment contracts within the meaning of the Act.

The SEC challenged the denial of its request for an injunction.

ISSUE:

Whether certain transactions constituted as "investment contracts" within the meaning of the Act?

DECISION:

Yes

RULE:

An investment contract for purposes of the Securities Act of 1933 means a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.

CONCLUSION:

The Court reviewed the record, which indicated that respondents, two corporations under direct common control and management, had engaged in transactions which constituted investment contracts within the meaning of the Act, 15 U.S.C.S. § 77b(1).

An investment contract, for purposes of the Act, meant a contract, transaction, or scheme whereby a person invested his money in a common enterprise and was led to expect profits solely from the efforts of the promoter or a third party.

It was immaterial whether the shares in the enterprise were evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise. In the case before the Court, all the elements of a profit-seeking business venture were present. Investors provided the capital and shared in the earnings and profits; respondents managed, controlled, and operated the enterprise.

Because respondents failed to abide by the statutory and administrative rules in making their offerings, they violated the Act.