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Creditor's Rights—Jurisdictional Defect Will Not Prevent Application of Real Property Tax Law Statute of Limitations

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the stockholders. That is, they are not trustees of an express trust as to which the statute of limitations does not run. They do, however, owe a fiduciary duty to the stockholders and courts of equity have held them to the same standards of trust as apply to other fiduciaries.¹⁸ Therefore, to give effect to this legislative declaration the directors of a dissolved corporation should be held to the same standards.

In order to answer the second question it is necessary to characterize the cause of action as individual or derivative in nature. Section 106 of the Stock Corporation Law does not provide a period of limitation. This does not mean that no period is applicable, but that the provisions of the New York Civil Practice Act applies. Section 48(8) of the New York Civil Practice Act provides a six-year period for all actions in law or in equity, and provides that they both be treated under the same section. However, this Section does not include actions by individual shareholders brought in their own right against the directors. In the instant case the wrong alleged by the petitioners is that the shares were not ratably distributed. This is not an injury to the corporation but one to the individual shareholders. "It is obvious that wrongful acts by directors or other managers, may result in direct injuries to individual shareholder, entitling the latter to sue for their own benefit."¹⁹ If this action is characterized as an individual cause of action, as it should be, then the appropriate period of limitations is ten years as provided by Section 53 of the New York Civil Practice Act.

The dissent argues that since there was an adequate remedy at law the choice to proceed in equity cannot enlarge the period of limitations.²⁰ However, it is difficult to see how the cause of action could be described as derivative in nature. The complaint does not allege a wrongful liquidation but the failure to ratably distribute. Although the complaint prayed that the relief be given to the corporation, the object of the action is to recover upon a chose in action belonging to the shareholders, not to compel the directors to perform a duty they owe to the corporation.

CREDITOR'S RIGHTS

JURISDICTIONAL DEFECT WILL NOT PREVENT APPLICATION OF REAL PROPERTY TAX LAW STATUTE OF LIMITATIONS

Once a petition for a corporate reorganization proceeding under Chapter X of the Bankruptcy Act¹ is approved, the Federal Court obtains exclusive jurisdiction over the debtor's property and no other court has the power to

18. 3 Fletcher Cyclopedia of Corporations § 1301 (1947).

19. Baker and Cary, Corporations 599 (3d ed. 1959).

20. Keys v. Leopold, 241 N.Y. 189, 149 N.E. 828 (1925).

1. 11 U.S.C. § 501 et seq.

make any valid orders affecting this property.² This preemption by the Federal Court is self-executing upon the entry of the order approving the reorganization petition.³

The plaintiff in *George F. Weaver Sons Company v. Burgess*,⁴ relied on this preemption doctrine to set aside three deeds, two to the defendant City of Utica and one from the latter to the defendant Burgess. The City in 1942 and 1943, at a time when the plaintiff was in a corporate reorganization proceeding under Chapter X, instituted in rem tax foreclosure actions against Weaver Sons, which resulted in the deeds to the City.⁵ The City later conveyed one of the deeds to Burgess. The defendants relied upon the applicable two year Statute of Limitations.⁶

The Court of Appeals affirmed the trial court, reversing the Appellate Division. While conceding that the tax foreclosure proceedings against Weaver Sons were jurisdictionally defective absent federal court approval, the Court of Appeals nevertheless held that Weaver Sons was barred by the Statute of Limitations and that such a holding would not violate the supreme law of the land as reflected in the Bankruptcy Act.

The Court differentiated between merely jurisdictional defects which would not prevent reliance upon a limitations provision, and a defect which renders the proceeding a nullity. In the latter instance a Statute of Limitations may not be available because of the absence of the very condition for bringing the proceedings. An example of this would be where the taxes on the land had actually been paid but nevertheless in rem tax foreclosure proceedings were initiated.⁷ But in this case the defect did not arise upon the absence of a statutory condition precedent to the commencement of the tax foreclosure act. It was therefore held that the two year Statute of Limitations was available to the defendants.

In deciding the question of Federal supremacy over state courts in Bankruptcy proceedings the Court held that its decision would not disregard exclusive Federal authority in this area. Once a Chapter X reorganization proceeding has terminated, however, state courts are automatically revested with jurisdiction

2. 11 U.S.C. § 511:

The court in which a petition (for reorganization) is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, wherever located.

11 U.S.C. § 548:

Until otherwise ordered by the judge, an order approving a petition shall operate as a stay . . . of any act or other proceeding to enforce a lien against the debtor's property.

3. *Matter of Maier Brewing Co.*, 38 F. Supp. 806 (S.D. Cal. 1941); 6 Collier, Bankruptcy 1798 (14th ed. 1947).

4. 7 N.Y.2d 172, 196 N.Y.S.2d 641 (1959).

5. N.Y. Real Prop. Tax Law § 1120 et seq.

6. N.Y. Real Prop. Tax Law § 1136:

Every deed given pursuant to the provisions of this section shall be presumptive evidence that the actions and all proceedings prior thereto . . . were regular and in accordance with all provisions of law relating thereto. After two years from the date of the record of such deed, the presumption shall be conclusive.

7. *Cameron Estates v. Deering*, 308 N.Y. 24, 123 N.E.2d 621 (1954).

and are free to proceed with a tax foreclosure against the debtors.⁸ The present case was not commenced by Weaver Sons until four years after the Chapter X proceedings were terminated and Weaver Sons had been restored to its ordinary status, and nearly twelve years after the defendant Burgess had recorded his deed from the City. Conceding then that federal supremacy may require that the Statute of Limitations be tolled during this period of reorganization the two year period nevertheless expired because more than four years had elapsed from the termination of the reorganization.

FRAUD MUST BE PROVEN, NOT PRESUMED

The issue raised in *Chemical Corn Exchange Bank v. Wassung*⁹ was whether a fraudulent intent by the defendant to conceal information concerning his financial condition had been proven.

In March, 1956, the plaintiff discounted three notes for the defendant which were subsequently paid. At that time, the plaintiff obtained from the defendant a financial statement of his net worth. Between October and December of the same year, the plaintiff discounted five more notes for the defendant. The plaintiff discounted the notes on the alleged oral assertion by the defendant that there was no material change in his financial condition since the first notes were discounted. These notes were not paid. The maker thereof was adjudged a bankrupt and discharged, as was the defendant. To escape the bankruptcy discharge, the plaintiff brought this action on the theory that the defendant had fraudulently induced the plaintiff to discount the notes and that they were ignorant of the alleged fraud when the discharge in bankruptcy was entered.¹⁰

At the trial, the defendant admitted that the real estate assets listed on the statement were over stated and that they had been sold for considerably less than appeared on the statement prior to the discounting of the five notes. Because of these admissions, the trial court found that the defendant intended to conceal information concerning his financial condition and the statement that there was no material change in his financial condition was fraudulent. The Appellate Division reversed, holding that, "There is neither proof of deliberate concealment of material facts with intent to defraud nor, . . . is there evidence of reckless disregard of truth."¹¹

The Court of Appeals affirmed the Appellate Division holding, that the plaintiff did not sustain the burden of establishing fraudulent intent. The majority pointed out that assuming the listed real estate was over stated and that the defendant had said there was no material change in his financial condition, fraudulent intent was not proven. With no proof as to defendant's actual net worth plus the fact that the five notes were assets not listed on the statement,

8. *Town of Agawam v. Commors*, 159 F.2d 360 (1st Cir. 1947).

9. 7 N.Y.2d 337, 197 N.Y.S.2d 169 (1960).

10. 11 U.S.C. § 35.

11. 8 A.D.2d 788, 187 N.Y.S.2d 548, 549 (1st Dep't 1959).