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CORPORATIONS - REORGANIZATION - EFFECT OF FORFEITURE OF CHARTER

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CORPORATIONS — REORGANIZATION — EFFECT OF FORFEITURE OF CHARTER — The charter of a Michigan corporation was forfeited for non-payment of franchise fees.¹ The statute provided conditions upon the fulfillment of which a forfeited charter might be reinstated.² Without fulfilling the conditions and after the expiration of the statutory period during which it was allowed to continue in existence for the purpose of winding up its affairs,³ the corporation petitioned for reorganization under the Bankruptcy Act. *Held*, that the petitioner had no corporate existence under the laws of Michigan, and that, therefore, it could not invoke the jurisdiction of the federal bankruptcy court.⁴ *In re Columbia Hotel Co. of Kalamazoo, Mich.*, (D. C. Mich. 1939) 29 F. Supp. 848.

On identical facts, and under substantially similar statutes,⁵ a Delaware corporation petitioned for reorganization. *Held*, that so long as the corporation could be reinstated, it was not dead but merely under a suspension of its powers, and that it could institute reorganization proceedings in the federal court. *Watts v. Liberty Royalties Corp.*, (C. C. A. 10th, 1939) 106 F. (2d) 941.

The supremacy of federal bankruptcy legislation over state liquidation procedure is undisputed.⁶ Similarly conceded is the exclusive control of the states over the termination of existence of corporations incorporated under state laws.⁷ The source of conflict between the federal and state powers lies in attempts by corporations whose charters have been forfeited by state proceedings to reorganize under the federal Bankruptcy Act. Since the debtor's petition must be made by an entity having corporate capacity,⁸ the state declaration of the corporation's death would appear to be decisive. However, the state statutes commonly provide for the continuation of the corporate existence for winding-up purposes during a certain period of time after its formal termination;⁹ and it is established

¹ Mich. Pub. Acts (1931), No. 327, § 91, as amended by Pub. Acts (1933), no. 96.

² Mich. Pub. Acts (1939), No. 1: "upon . . . payment of such delinquent fees, the voidance of charter of said corporation shall be waived, and it shall be revived in full force and effect. . . . Upon compliance with the provisions of this act, the rights of such corporation shall be the same as though no forfeiture had been operative. . . ."

³ Mich. Pub. Acts (1933), No. 96. A three year period is provided.

⁴ Bankruptcy Act, 52 Stat. L. 885 (1938), 11 U. S. C. (Supp. 1938), § 526: "A corporation . . . may . . . file a petition under this chapter."

⁵ Del. Rev. Code (1935), §§ 2104, 2106, 2074. The petition was brought under the Bankruptcy Act of 1934, § 77B, 48 Stat. L. 912, providing that "Any corporation which could become a bankrupt . . . may file an original petition. . . ."

⁶ U. S. Constitution, art. 1, § 8, par. 4; *Stellwagen v. Clum*, 245 U. S. 605, 38 S. Ct. 215 (1918); *Hanover Nat. Bank v. Moyses*, 186 U. S. 181, 22 S. Ct. 857 (1902).

⁷ *Chicago Title & Trust Co. v. 4136 Wilcox Bldg. Corp.*, 302 U. S. 120 at 127, 58 S. Ct. 125 (1937).

⁸ See note 4, *supra*.

⁹ The Michigan and Delaware statutes, cited in notes 3 and 5, *supra*, are typical.

that federal bankruptcy jurisdiction may attach at any time during this period.¹⁰ But it has been held, in the leading case of *Chicago Title & Trust Co. v. 4136 Wilcox Bldg. Corp.*,¹¹ that a petition of a debtor-corporation, filed after the expiration of this statutory period, will not be entertained by the federal court.¹² This decision would clearly have been controlling in the principal cases had it not been for the presence, in these cases, of statutory provisions for the revival of forfeited corporate charters. Although the courts are not completely agreed as to the effect of such provisions, it is generally said that the possibility of reviving the charter connotes a continuing existence of the corporate entity.¹³ It would seem possible, therefore, to distinguish the *Chicago Title & Trust Co.* case, where there was no such provision for reinstatement, and where the corporation was legally dead, under the court's construction of the applicable Illinois law. Whether or not such a mechanical distinction, in terms of the life or death of the corporation, should be drawn, would seem properly to depend upon considerations of policy. It is submitted that these considerations are predominantly in the corporation's favor. If it appears, as it often may, that the debtor can have no reasonable expectation of effecting a successful reorganization, its petition will be rejected under the good faith requirement of the Bankruptcy Act.¹⁴ But if there are good prospects of profitable operation under a plan of reorganization, it seems that the corporation should be allowed to work out its problem along this line rather than be forced into liquidation. To permit a reorganization under these circumstances would not contravene any vital state policies,¹⁵ since the corporate fee requirements are essentially revenue measures.¹⁶ In neither of the principal cases were the decisions expressly rested on grounds of policy; but the result obtained by the Circuit Court of Appeals for the Tenth Circuit seems preferable to the decision of the federal district court for Michigan.

Edward S. Biggar

¹⁰ *Old Fort Improvement Co. v. Lea*, (C. C. A. 4th, 1937) 89 F. (2d) 286; *In re International Sugar Feed Co.*, (D. C. Minn. 1938) 23 F. Supp. 197.

¹¹ 302 U. S. 120, 58 S. Ct. 125 (1937).

¹² Creditors may petition for the debtor's reorganization after the statutory period has expired. *In re 211 East Delaware Place Bldg. Corp.*, (C. C. A. 7th, 1935) 76 F. (2d) 834.

¹³ *Partan v. Niemi*, 288 Mass. 111, 192 N. E. 527 (1934); *Bokel v. Zitnik*, 93 Colo. 565, 27 P. (2d) 753 (1933); *Hibernia Securities Co. v. Morey*, 23 Cal. App. (2d) 482, 73 P. (2d) 939 (1937); *Mathews v. Life Ins. Co. of Detroit*, 284 Mich. 352 at 357, 279 N. W. 858 (1938): "As long as the corporation remained eligible to reinstatement of its charter the foreclosure suit could be brought against it."

¹⁴ 52 Stat. L. 887 (1938), 11 U. S. C. (Supp. 1938), § 541; *In re Stanley Drug Co.*, (D. C. Pa. 1938) 22 F. Supp. 664; *First Nat. Bank of Wellston v. Conway Road Estates Co.*, (C. C. A. 8th, 1938) 94 F. (2d) 736, cert. denied 304 U. S. 578, 58 S. Ct. 1047 (1938). (These cases concern the similar requirement of § 77B of the Bankruptcy Act.)

¹⁵ Cardozo, J., dissenting in *Chicago Title & Trust Co. v. 4136 Wilcox Bldg. Corp.*, 302 U. S. 120 at 133, 58 S. Ct. 125 (1937): "the state will be amply competent to vindicate her own dignity if there is a fraud upon her laws."

¹⁶ *Hibernia Securities Co. v. Morey*, 23 Cal. App. 482 at 492, 73 P. (2d) 939 (1937).