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BANKRUPTCY-LIMITATION OF ACTIONS BY TRUSTEE AS AFFECTED BY SECTION ll(E) OF THE FEDERAL BANKRUPTCY ACT

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RECENT DECISIONS

BANKRUPTCY—LIMITATION OF ACTIONS BY TRUSTEE AS AFFECTED BY SECTION 11(E) OF THE FEDERAL BANKRUPTCY ACT—Trustee in bankruptcy sued to recover a preference voidable under a state statute which also provided that an action to recover such a preference must be commenced within six months after application for a trustee.[1] The present suit was commenced one year after the bankruptcy petition was filed. Defendant moved to dismiss for failure to comply with statutory limitations. *Held,* motion denied. Section 11(e) of the Bankruptcy Act supersedes the state statute of limitations in this case. *Engstrom v. De Vos,* (D.C. Wash. 1949) 81 F. Supp. 854.

The old limitation section of the federal act, 11(d), was negatively framed, providing that "Suits shall not be brought by or against a trustee . . . subsequent to two years after the estate has been closed."[2] The construction of that section was never conclusively settled. While some courts said that 11(d) was a superseding statute of limitations that applied to all actions by the trustee under state or federal law,[3] other courts felt that it did not supersede, but merely limited the maximum time in which the trustee could act.[4] Another view was that 11(d) applied to all actions arising under the Bankruptcy Act, but did not supersede limitations on derivative actions arising under state law.[5] In addition to this major conflict in the meaning of the section, there was a dispute as to the application of 11(d) to special limitations conditioning a statutory cause of action.[6] With these problems still unsettled, the Chandler Act added section 11(e) which states affirmatively that a trustee "may, within two years subsequent to the date of adjudication or within such further period of time as the Federal or State law may permit, institute proceedings . . . upon any claim against which the period of limitation fixed by Federal or State law had not expired at the time of the filing of the petition in bankruptcy."[7] At the same time, 11(d) was written down to a limitation on suits *against* the trustee or receiver.[8] It would seem that the new

[1] Wash. Laws (1941) c. 103.

[2] 30 Stat. L. 549 (1898).

[3] Isaacs v. Neece, (C.C.A. 5th, 1935) 75 F. (2d) 566 at 569; Callaghan v. Bailey, 293 N.Y. 396, 57 N.E. (2d) 729 (1944).

[4] Nairn v. McCarthy, (C.C.A. 7th, 1941) 120 F. (2d) 910 at 912. Cf. Harrigan v. Bergdoll, 270 U.S. 560 at 564, 46 S.Ct. 413 (1926).

[5] Davis v. Willey, (C.C.A. 9th, 1921) 273 F. 397; Meikle v. Drain, (C.C.A. 9th, 1934) 69 F. (2d) 290.

[6] In Charlesworth v. Hipsh, Inc., (C.C.A. 8th, 1936) 84 F. (2d) 834, cert. den., 299 U.S. 594, 57 S.Ct. 119, one of two grounds for decision was that 11(d) did not supersede a special statute of limitations. In re Handy-Andy Stores, (D.C. La. 1931) 51 F. (2d) 98, held that 11(d) superseded special limitations in bulk sales statute. Callaghan v. Bailey, 293 N.Y. 396 at 402, 57 N.E. (2d) 729 (1944), holding 11(d) supersedes a general statute, suggests a different result if special limitation were involved.

[7] 52 Stat. 849 (1938), 11 U.S.C. §§29(d), 29(e) (1946).

[8] Id. §11(d).

language was intended to settle the major conflict, since words used were capable of embracing derivative claims as well as claims arising out of the bankruptcy act.[9] Less clear, however, is its application to conditionally limited statutory actions. Shortly after the passage of the 1938 act, a federal district court in Tennessee, without referring to the language of 11(e) or of old 11(d), held that a statutory action to recover usurious interest paid by the bankrupt did not exist unless the action was commenced within two years of payment as provided in the usury statute, and therefore the time in which to sue was not extended by the "uniform limitation" of the Bankruptcy Act.[10] On the other hand, a district court in Pennsylvania, distinguishing cases decided under old 11(d), felt that a ninety-day limitation embodied in the state bulk sales act must yield to the limitation of 11(e).[11] Since the legislative records are bare of any indication that Congress considered the problems of special statutes of limitation, there is room for nice distinctions.[12] In a double birth the same legislative minds bring forth the right and the limitation, and it is understandable that some courts have felt that they are Siamese twins.[13] It is submitted, however, that the classification of limitations in the conflict of laws should not be allowed to obscure the evident desire of Congress to meet the practical requirements of bankruptcy administration. The plan of 11(e) seems clear. When a trustee inherits a cause of action from the bankrupt or from one of his creditors, he needs a reasonable period to dig up the facts, which too often have been artfully concealed. Naturally this contingency is not provided for in the limitation law governing action by the original party, so Congress gives the trustee a two-year breather reckoned from the date of adjudication. On the other hand, there is no reason bankruptcy should hasten the process of limitation, wherefore Congress provides in the alternative that the trustee may sue within "such further period" as the prior limitation law permits.[14] But one type of case stands apart. When a trustee asserts, not a claim inherited from the bankrupt or his creditors, but one conferred upon him as an original right (for example, when he acts under 60(b) to set aside a preferential transfer),

[9] See Herget v. Central Natl. Bank & Trust Co., 324 U.S. 4, 65 S.Ct. 505 (1945); 31 VA. L. REV. 681 (1945); McBride v. Farrington, (D.C. Ore. 1945) 60 F. Supp. 92 at 95.

[10] In re Appalachian Publishers, Inc., (D.C. Tenn. 1939) 29 F. Supp. 1021.

[11] Sproul v. Gambone, (D.C. Pa. 1940) 34 F. Supp. 441.

[12] Except for a brief paraphrase, no attention was paid to 11(e) in H. REP. 1409, 75th Cong., 1st sess. (1937), and S. REP. 1916, 75th Cong., 3rd sess. (1938). Nor are special limitations mentioned in recommendations for amendment of 11(d) in 6 J. NATL. ASSN. REF. IN BANKR. 65 (1931).

[13] "Where a statute creates a wholly new substantive right . . . and it is provided therein that the right shall not be available unless suit is commenced within a specified time, there can be no doubt of the legislative intention. . . . [T]he time element is an integral part of the right created . . . it accompanies the right wherever it is put in suit." Ailes, "Limitation of Actions and the Conflict of Laws," 31 MICH. L. REV. 474 at 495 (1933). Compare In re Appalachian Publishers, Inc., (D.C. Tenn. 1939) 29 F. Supp. 1021.

[14] Most of the cases decided under 11(e) would seem to bear out this rule. See MacLeod v. Kapp, (D.C. N.Y. 1948) 81 F. Supp. 512; and cases cited in notes 7 and 9, supra.

no prior limitations, federal or state are involved, and those clauses of 11(e) that refer to such limitations are quite inapplicable. Therefore this case is governed exclusively by the two-year clause.[15] The solid policies and plain terms of 11(e) are untouched by the distinction between ordinary limitations and the special limitation that is written into the statute creating the right of action. All these rules are fairly stated in 11(e), though not with the fullness that would preclude argument. It is to be hoped that the courts will not demand greater precision of statutory language.

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[15] Herget v. Central Natl. Bank & Trust Co., 324 U.S. 4, 65 S.Ct. 505 (1945); 19 J. NATL. ASSN. REF. IN BANKR. 75 at 81 (1945).