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CORPORATIONS-RIGHT OF CORPORATION TO EXERCISE PURCHASE OPTION AFTER DISSOLUTION

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CORPORATIONS—RIGHT OF CORPORATION TO EXERCISE PURCHASE OPTION AFTER DISSOLUTION—In 1945 appellant corporation was dissolved. Under a state statute, its officers became trustees, with "full power and authority of [the] company over [its] assets and property," with the duty to settle its affairs for the benefit of creditors and shareholders.[1] Under another statute, the corporate existence was, for this limited purpose, extended three years beyond dissolution.[2] Appellant attempted to purchase land under an option contained in an unexpired lease, but was resisted by the appellee-optionor. In an action for specific performance of the option contract, relief was denied. On appeal, *held,* affirmed. Corporate existence was continued only to permit settlement of corporate affairs, and the purchase of additional land would have been either pure speculation or a continuance in business. A dissenting judge urged that an option is an asset; that the trustees may exercise or otherwise dispose of it as they see fit, in the winding up of the affairs of the corporation; and that to prevent such exercise would deprive the corporate creditors of an asset of the corporation. *Nardis Sportswear v. Simmons,* (Tex. 1948) 213 S.W.(2d) 864.

In the United States, in absence of statute, a corporation ceases to exist on dissolution, but its property, including choses in action, vests in its creditors and shareholders.[3] In many states, however, statutes provide that for the sole purpose of aiding in the orderly disposition of corporate assets, the corporation shall have a limited existence after dissolution.[4] Even if existence of the corporation is not prolonged, its representatives are given power to bring suit on obligations owing to it,[5] at least if the suit involves matters related to dissolution, and otherwise to settle its affairs.[6] Title to corporate property, according to most of these statutes, vests in the directors on dissolution. They are empowered to act as trustees for the

[1] 3 Tex. Civ. Stat. (Vern. 1945) 1388.

[2] 3 Tex. Civ. Stat. (Vern. 1945) 1389.

[3] 16 FLETCHER, CYC. CORPS., perm. ed., §§8113, 8134 (1942). Gardiner v. Automatic Arms Co., (D.C. N.Y. 1921) 275 F. 697. Some courts, however, have held that title to corporate property remains in the corporation, to be disposed of by charter or law. Screwmen's Benevolent Assn. v. Monteleone, 168 La. 664, 123 S. 116 (1929).

[4] 13 AM. JUR., CORPS., §§ 1363 et seq. Such statutes generally apply regardless of the method of dissolution, though cases of voluntary dissolution may be excepted from their operation. They may permit the corporation to act only in disposal of its affairs and property, collection of debts, and payment of obligations. See 97 A.L.R. 477 (1935). Under some statutes, however, the corporation or its representatives have the broad power to do whatever is necessary for the settlement of its affairs. Illinois Power & Light Co. v. Hurley, (C.C.A. 8th, 1931) 49 F. (2d) 681; cert. den., 284 U.S. 637, 52 S.Ct. 19 (1931).

[5] Bloedorn v. Washington Times Co., (App. D.C., 1937) 89 F. (2d) 835; Byrnes v. Hudson Valley Lbr. Co., 294 N.Y.S. 978 (1937).

[6] See 97 A.L.R. 477 (1935) for complete analysis of the statutes in point, as interpreted by the several state supreme courts. See also 19 C.J.S., Corps., §1728.

benefit of shareholders and creditors,[7] and to maintain, in the name of the corporation, actions relevant to the corporate assets, presumably including the exercise of options. Despite the holding in the principal case, therefore, a strong argument can be made for the opposite result. An option is personal property.[8] It may, prior to its exercise, be sold for the benefit of the optionee's creditors.[9] In the absence of a provision in the option or a statute to the contrary, an option will survive not only assignment, but also the death of the optionee.[10] Accordingly, there seems to be no good reason why an option cannot survive the "death" of a corporate optionee and be exercised by its trustees under statutes of the type just mentioned, for the benefit of its creditors and shareholders, just as can leases and other contracts.[11] There being nothing in the pertinent Texas statutes to require that the option be treated differently from any other contract, the dissenting opinion in the principal case seems to present the sounder view.[12]

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[7] Jackson v. Rothschild, (Mo. 1936) 99 S.W. (2d) 859, a case involving what appears to be a typical statute, 14 Mo. Rev. Stat. Ann. (1939) §5036.

[8] Ringling v. Smith River Development Co., 48 Mont. 467, 138 P. 1098 (1914); Perpetual Trustee Co. v. Union Trustee Co., 28 N.S.W. St. Rep. 222, 15 B.R.C. 653 (1927).

[9] 55 AM. JUR., Vendor and Purchaser, §42.

[10] JAMES, OPTION CONTRACTS 247, 277 (1925).

[11] 16 FLETCHER, CYC. CORP. perm. ed., §8124 (1942).

[12] An apparent conflict with the view that a corporation, on dissolution, can exercise a land purchase option acquired before its dissolution, is found in some cases holding that where there has been no breach of an executory contract (presumably including option contracts) before dissolution of the corporate promisee, no action would lie for breach subsequent to dissolution. See, for example, People v. Globe Mutual Life Ins. Co., 91 N.Y. 174 (1883). But the better view is that executory contracts are not extinguished by dissolution of the promisee. 16 FLETCHER, CYC. CORP., perm. ed., §8120 (1942).