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Corporations - Legal Entity - Failure to File Annual Reports

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was no actual proof that he had any inside information as to the bank's condition, and hence a payment to him could not be considered preferential. The dissenting justices thought, that the mere proposal of a merger officially communicated to a director was sufficient that he might reasonably infer during the recent crisis that the bank which proposed it was financially embarrassed.

RICHARD M. RICE.

CORPORATIONS—LEGAL ENTITY—FAILURE TO FILE ANNUAL REPORTS.—The plaintiff sued the investment company, a Wisconsin corporation, and others to recover damages growing out of an investment made by the plaintiff in 1932. The trial court found that on January 1, 1931, the investment company ceased to exist as a corporation, because on that day its charter was forfeited for failure of the company to file its annual report with the secretary of state in compliance with Section 180.08 (2) of the Wisconsin Statutes (1935). The court therefore held that the company was not in existence as a corporation or as a legal entity when the plaintiff deposited his investment with the secretary of the company in 1932. Judgment, however, was entered in favor of the plaintiff against all the defendants. On appeal, *held,* judgment affirmed, but the finding of the trial court that the company was not in existence as a corporation or as a legal entity was a conclusion of law unsupported by the evidence. "The failure of a corporation to file its annual report as required by Section 180.08(2), Stats., does not work a forfeiture of corporate rights and privileges ipso facto." *Lindsley* v. *Farmers Exchange Investment Company,* (Wis. 1937) 271 N.W. 364.

The question arising is whether a statute providing a declaration of forfeiture of corporate privileges by a public administrative official for failure of the corporation to comply with the statute dissolves an offending corporation, or merely renders it liable to dissolution. Decisions quite uniformly hold to the latter alternative. In *Greenbrier Lumber Co.* v. *Ward,* 30 W.Va. 43, 3 S.E. 227 (1887), on the general question of forfeiture of corporate rights, the court held that a suit by a private corporation cannot be dismissed because the corporation has been dissolved by forfeiture of its charter for non-payment of a license tax. The theory was that a cause of forfeiture cannot be enforced collaterally against a corporation, but can be enforced only by the state in a direct proceeding for that purpose. See also *Held* v. *Crosthwaite,* 260 Fed. 613 (C.C.A. 2d, 1919), where the corporation was the defendant rather than the plaintiff and the court held that a corporation whose charter has been repealed for failure to pay a state tax is liable for debts contracted after the repeal. In a North Dakota case involving failure to file an annual report under a statute providing for cancellation of the corporate charter by the secretary of state in that event, the court held that the statute by itself would not work a forfeiture of the corporate charter in the absence of a direct proceeding for that purpose, and that a collateral attack in that direction would be inadmissible. *Farmers State Bank* v. *Brown,* 52 N.D. 806, 204 N.W. 673 (1925). Section 180.08(2) of the Wisconsin Statutes (1935) provides that if a corporation fails to file its annual report within the specified time, "the corporate rights and privileges granted to such corporation shall be declared forfeited by the secretary of state . . . " The Wisconsin court, in interpreting this section, has adopted the reasoning of the *Brown Case, supra,* in *West Park Realty Co.* v. *Porth,* 192 Wis. 307, 212 N.W. 651 (1927), and follows it in the principal case. The section is interpreted as not declaring a forfeiture, but providing a declaration which operates as a cause for forfeiture which may be enforced by proceedings instituted by the

attorney general, or any person in the name of the state, under Section 286.36, to vacate the corporate charter. The court is aided in reaching this interpretation by Section 180.08(6), which provides that the secretary of state may rescind the forfeiture on the payment of $25 and the filing of a proper affidavit. The court says that this section indicates that an offending corporation "might still be recognized as a valid operating legal entity on compliance with certain conditions," and therefore Section 180.08(2) does not declare an absolute forfeiture.

PAUL G. NOELKE.

CORPORATION—MINIMUM SUBSCRIPTION REQUIREMENTS—STATUTE OF LIMITATIONS AND STOCKHOLDERS' LIABILITY.—Articles of incorporation were signed and filed, and a certificate of organization was issued. Before 50 per cent of the stock had been subscribed, the corporation borrowed $2,000 from the bank. Six months later the 50 per cent was subscribed. The original note was renewed each year for seven years. The interest was paid semi-annually by the corporation. All of the defendants, stockholders of the corporation, knew of the original note and consented to the renewals, and had knowledge of the interest payments. Two years after the last renewal the bank began this action, based on the statutory liability of Section 180.06, Wisconsin Statutes (1935) against the defendants. The trial court held that the plaintiff was barred by the statute of limitations, that the bank could reach either the corporation or the stockholders, and that the payment of interest by the corporation debtor did not toll the statute as to the stockholders. On appeal by the bank, *held,* judgment affirmed, the court holding that while the corporation debtor and the stockholders were not joint debtors they could be sued together, and that stockholders may avail themselves of the bar of the statute of limitations even when the corporation could not do so. *Bank of Verona* v. *Stewart,* (Wis. 1936) 270 N.W. 534.

To escape personal liability the stockholders of a corporation, organized and incorporated under the local statutes, must comply with Section 180.06, Subsection 4, which places the penalty of personal liability on existing stockholders for any corporate obligation incurred before 50 per cent of the capital stock has been subscribed and 20 per cent paid in. The Wisconsin court has held that a creditor of a corporation debtor cannot fix the stockholder with personal responsibility under the above statute, when he has already elected to proceed against the corporation. *Kaestner* v. *Kuechle,* 194 Wis. 72, 216 N.W. 141 (1927). The trial judge made much of that case which the appellate court purported to overrule, pointing out that it was contrary to the policy of Section 286.18 of the Wisconsin Statutes (1935). Nevertheless, the appellate court concluded that the stockholders in the instant case were protected by the statute of limitations although they knew that the corporation debtor had been making interest payments within the six year period. Section 330.47 of the Wisconsin Stats. (1935), pertaining to payments by joint contractors, did not govern this case because the stockholder and the corporation were not co-obligors. *Cf.* (1935) 20 MARQ. LAW REV. 42. A mortgagor and his vendee who has assumed and agreed to pay the mortgage are not co-obligors; they may be sued in the same action, but conduct on the part of the vendee will not affect the mortgagor's standing as to the statute of limitations. *Cottrell* v. *Shepherd,* 86 Wis. 649, 57 N.W. 983 (1894). The *Cottrell* case follows the majority rule. See Note (1922) 18 A.L.R. 1027, 1033. It is generally stated that payment by any one liable tolls the statute of