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Corporations - Minimum Subscription Requirements - Statute of Limitations and Stockholders' Liability

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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.

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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

limitations as to all persons so liable who have knowledge of and assented to it. 37 C.J. 1160. The court felt that the *Cottrell* case was decisive of the case at issue. California, Kansas and New York have statutes limiting the period of liability of stockholders for corporate obligations. Under such a statute the mere extension of time to the corporation for the payment of a debt, does not extend the statutory liability of the stockholders. *Redington* v. *Cornwall,* 90 Cal. 49, 27 Pac. 40 (1891); *Brigham* v. *Nathan,* 62 Kan. 243, 62 Pac. 319 (1900). The giving of renewal notes by a corporation does not create a new obligation or extend the limitation period on stockholder's statutory liability. *Hyman* v. *Coleman,* 82 Cal. 650, 23 Pac. 62 (1890); *Goodall* v. *Jack,* 127 Cal. 258, 59 Pac. 575 (1899); *Newman* v. *Nickell,* 50 Cal. App. 138, 194 Pac. 710 (1920); *Brown* v. *Ball,* 123 Cal. App. 758, 12 P. (2d) 28 (1932). However, where the effect of the change in a corporation's obligation is to create a new obligation, the limitation period begins to run again on the new liability from the date of its creation. *More* v. *Hutchinson,* 187 Cal. 623, 203 Pac. 87 (1921).

HOWARD W. ESLIEN.

PRINCIPAL AND AGENT—SCOPE OF AUTHORITY—AUTOMOBILE SALESMEN.—The plaintiff approached a salesman at the defendant's garage to arrange a deal for one of the defendant's used cars. The car he wanted was a Ford. He wanted to turn his old car in on the newer one. The salesman consulted the defendant's sales manager, who was willing to allow the buyer $195 for his old car. The plaintiff, at first, left his car at the garage for the salesmen to sell at the highest figure they could get. Two days later he decided to accept the $195 offer. The sales manager confirmed the offer. The salesman made out the memorandum. The plaintiff made out and delivered his check for twenty dollars, signed the application for transfer and title which the salesman gave him, and executed the conditional sale agreement and application for financing which the salesman had prepared. Before the Ford was delivered to the plaintiff the president of the defendant company refused to let the company go through with the deal at the $195 figure. The plaintiff had not tendered the certificate of title for his own car to the representatives of the company but he did that immediately thereafter. The defendant sold the Ford a day or so later. The plaintiff took back his own car and turned it in to another dealer and was allowed $135 on another car. He sued to recover from the defendant the difference between $195 and $135. The trial was by the court who entered judgment against the plaintiff. On appeal, *held,* judgment affirmed; the plaintiff had acquiesced in the defendant's abandonment of the contract. *Reader* v. *Frank H. Applegate, Inc.,* (Wis. 1937) 271 N.W. 839.

The court in the instant case found a simple answer for what might have been a difficult case. The trial judge had found for the defendant because he felt that neither the salesman nor the sales manager had the "authority" to close the deal on the terms specified. In two earlier cases the Wisconsin court has held that the automobile dealer must suffer when his salesman has negotiated with a purchaser, accepted payment and has failed to account. In *Voell* v. *Klein,* 184 Wis. 620, 200 N.W. 364 (1925), the salesman took the purchaser's old car in trade, accepted his check for the difference, cashed the check, delivered the dealer's car to the purchaser, and then absconded with the old car and the money. The court in that case made much of the fact that it is common knowledge that cars are taken in trade even in sales of used cars through automobile agencies, that this was a typical deal, and that payment by check is as