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CORPORATIONS—EXTENT OF POWERS TO DISPOSE OF PROPERTY IN WINDING UP ITS AFFAIRS UNDER STATUTES EXTENDING CORPORATE EXISTENCE—According to the common law a dissolved corporation ceased to exist for all purposes. Whether the dissolution was voluntary or involuntary, the effect of the dissolution was to deprive the corporation of all powers either *de jure* or *de facto*.¹ It was necessary, therefore, that corporations facing dissolution proceed without delay toward a final liquidation and distribution of assets. Disregarding the old theory that personal property of dissolved corporations escheated to the state,² and that its real estate reverted to the original grantor or his heirs,³ and that debts due the corporation were extin-

¹ 16 FLETCHER, *CYCLOPEDIA CORPORATIONS*, perm. ed., § 8113 (1942), and cases cited therein.

² KENT, *COMMENTARIES*, 2d ed., 307 (1832), "All the personal estate of the corporations vests in the people, as succeeding to this right and prerogative of the crown, at common law."

³ 2 KENT, *ibid.*; also, *Folger v. Chase*, 35 Mass. 63 (1836).

guished,⁴ it is still apparent that hurried liquidation is not conducive to a realization of the true value of assets. Where the corporation could foresee dissolution, for example, the expiration of its charter at a time certain, and prudently initiated its winding up procedure in adequate time for a judicious disposal of its assets, it had to sacrifice a valuable part of its remaining corporate life which might otherwise have been used in carrying on the business for which it was formed.⁵

Legislatures and courts early realized that some additional privileges should be given corporations in order that hardship be averted upon dissolution. In *Folger v. Chase*,⁶ the court, in speaking of a statute which continued the existence of corporations for three years after dissolution for the purpose of settling its affairs, said that it was a "just and wise remedial law, and ought to be liberally expounded. The object of the statute was effectually to guard against the inequitable consequences of [the] rule of common law."⁷ Although the statutes vary in the different states,⁸ the Michigan statute may be taken as a typical example of the legislative extension of corporate existence for special purposes after dissolution. It provides: "All corporations whose charters shall have expired by limitation or dissolution or shall be annulled by forfeiture or in any other way or manner have become void shall nevertheless continue to be bodies corporate for the further term of three years from such expiration, dissolution or forfeiture for the purpose of prosecuting and defending suits for or against them and of enabling them gradually to settle and close their affairs and to dispose of and convey their property and to divide their assets; but not for the

⁴ In *Clinton v. Coppedge*, (D.C. Okla. 1933) 2 F. Supp. 935, the court held that, under the Iowa law, debts to or from the corporation were extinguished on dissolution. The modern view is more nearly approached in 2 KENT, COMMENTARIES, 2d ed., 307 (1832), wherein it is recognized that such an extinguishment results in gross inequities.

⁵ This argument is expounded as a reason for liberal construction of the extension clauses in *Bewick v. Alpena Harbor Improvement Co.*, 39 Mich. 700 at 706 (1878). See also *Ruggles v. Buckley and Douglas Lumber Co.*, 210 Mich. 58 at 65, 177 N.W. 270 (1920).

⁶ 35 Mass. 63 (1836).

⁷ *Id.* at 66.

⁸ Some statutes have no express time limit on the period of extension; see for example Ky. Rev. Stat. (1944) § 271.300. In *Holliday v. Cornett, Sheriff*, 224 Ky. 356, 6 S.W. (2d) 497 (1928), it was held that reasonable length of time is the period of extension contemplated by the legislature. Flexibility would appear to be a desired result. It appears however that the majority of the states have statutes which fix a definite time limit; although some permit extension beyond the statutory period for special purposes, for example, allowing corporations to carry through actions to a final judgment. See Hornstein, "Voluntary Dissolution—A New Development In Intracorporate Abuse," 51 YALE L. J. 64 at 71-74 (1941). In *Gamalski Hardware, Inc. v. Sheriff*, 298 Mich. 662, 299 N.W. 757 (1941), the court held that even though the statutory three year extension had expired the dissolved corporation could maintain an action of replevin.

purpose of continuing the business for which such corporations were organized. . . ."⁹ Although the prohibition of continuing its business after dissolution is such a natural result of dissolution that the express limitation partakes of cautious redundancy, its application to particular situations may not be so obvious.

In *Kay Furniture Company v. Rovin*,¹⁰ a corporation, which had been engaged in the furniture business, and had assigned all its assets, except a lease on the premises occupied, to its sole stockholder who had in turn sold to defendant "the entire stock of merchandise, fixtures and good will,"¹¹ exercised after dissolution its option to extend its lease on the building for two years. Although the corporation thereby assumed obligations incident in the lease, the Michigan Supreme Court held that it was not engaging in business for which it had been created, and that it was a valid step in the winding up of corporate affairs. Under the statute, assets of the corporation do not pass to stockholders, but, rather, title remains in the corporation.¹² The option to renew the lease obviously was of value; in order to realize the most out of this asset the corporation exercised the option. One more step appears necessary, however, in this winding up procedure; that is, disposal of the lease, since the corporation could no longer engage in the furniture business and had no other assets, the lease would seemingly be valuable to the corporation only in the amount it could realize by subletting the premises. The case arose, however, because the corporation was seeking possession from its former tenant. Although this does not appear at first glance to be a step toward liquidation of assets, the court unanimously rejected the defendant's argument that the corporation was continuing its business by renewing the lease. It is difficult to see any validity to the argument that a corporation is engaging in the furniture business by renewing a lease, its only remaining asset. The defendant-tenant was undoubtedly disappointed that the corporation would not sub-lease to him; and the fact that the corporation had a single stockholder, and that after the sole stockholder acquired the

⁹ Mich. Acts (1931) Act 327, § 75, as amended, Mich. Acts (1933) Act 96. Prior to its amendment, the Michigan statute was held inapplicable to corporations voluntarily dissolved in *Jacobs v. E. Bement's Sons*, 161 Mich. 415, 126 N.W. 1043 (1910).

¹⁰ 312 Mich. 290, 20 N.W. (2d) 194 (1945).

¹¹ *Id.* at 292.

¹² *Id.* at 294-295. In the absence of statute, "On dissolution, the legal title to land passes to the stockholders, and title to the corporate property vests in the stockholders as tenants in common. . . ." 16 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 8134 (1942). Compare, *Stearns Coal and Lumber Co. v. Douglas*, 299 Ky. 314, 185 S.W. (2d) 385 (1945). Where statutes are present, see 13 AM. JUR., Corporations, § 1365, p. 1206, wherein it is stated that "the purpose of statutes of the kind under discussion is manifestly . . . to allow the retention of the title to their property by the corporations themselves. . . ."

business, he had sold it to the defendant, makes the situation more appealing for the defendant. A corporation, however, should not be compelled to dispose of its assets to any particular buyer; one of the purposes of the statutes, it appears, is to give the corporation time to shop around for more advantageous liquidation. Nor does it appear that this corporation, in taking this preliminary step toward liquidation of its remaining asset, engaged in new business.

In *Rhode Island Hospital Trust Company v. American National Red Cross*¹³ it was held that a charitable association which had forfeited its charter for failure to file returns could receive donations, if the corporation revived before the expiration of the statutory period of extension. This case has been cited as authority for the proposition that a dissolved corporation may, in winding up its affairs, acquire property.¹⁴ The Michigan court cited the proposition in the *Kay Furniture Company* case.¹⁵ While it is difficult to compare the obligations assumed by the corporation in the Michigan case with those of a donee of a gift, it is submitted that it is no undue extension of the privileges generally given corporations to hold that "within proper limitations . . . a corporation may assume obligations which are incident to the liquidation of its assets."¹⁶ Although it was not material to the issue, a statement of a New Hampshire court gives us further insight into the scope of powers implied from statutes extending the existence of corporations. The corporation, it was said, could, after dissolution, exercise its option under a lease to purchase the premises, although the corporation could not continue to use the premises in the performance of its corporate business.¹⁷ There is no reason why the limitations placed upon the exploitation of assets by dissolved corporations should be strictly construed.

While it may be true that some courts are hesitant to permit dissolved corporations to assume further obligations in the process of liquidation of assets,¹⁸ it is submitted that the Michigan case was no undue extension of the implied powers of dissolved corporations in view of the purpose of the statutes giving the privileges, and the fact that for all practical purposes in this case the only way to receive the

¹³ 50 R.L. 461, 149 A. 581 (1930).

¹⁴ 16 FLETCHER, CYCLOPEDIA CORPORATIONS, perm. ed., § 8171 (1942).

¹⁵ 312 Mich. 290 at 296, 20 N.W. (2d) 194 (1945).

¹⁶ Id. at 295.

¹⁷ Conn. v. Manchester Amusement Co., 79 N.H. 450, 111 A. 339 (1920).

¹⁸ Bank of Alameda County v. McColgan, (Cal. App. 1945) 159 P. (2d) 31, although it will be noted that the restriction upon defunct corporations' power to contract and incur debts operated for the benefit of the corporation in this case. *McBride v. Clayton*, 140 Tex. 71, 166 S.W. (2d) 125 (1942), strictly construing powers remaining in dissolved corporations. Also, *Cushman Motor Works v. Commissioner of Internal Revenue*, (C.C.A. 8th, 1942) 130 F. (2d) 977.

true value of the option was to exercise it, with the view of disposing of the resulting estate. Does this broad interpretation of the "winding up" clause imperil the satisfaction of creditor claims against the corporation, or weaken the protection of stockholders who will ultimately receive the remaining assets? The protection is not dissipated, because the very flexibility contended for the clause gives the courts more discretion in permitting actions which benefit the corporation and ultimately its creditors and stockholders.

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