

him the amount of the debt or claim of the plaintiff; in such a case if any reason exists to question the judgment against the corporation, it is the duty of the receiver to apply to the court rendering it, to reopen the judgment and to be permitted to defend. *Pringle v. Woolworth*, 1882, 90 N.Y. 502.

84. Review

A receiver who has been appointed in an action for the dissolution of a corporation may take an appeal either in his own name or in that of the corporation, and an appeal taken in the name of the

corporation will be deemed to be that of the receiver in the name of the corporation. *People v. Troy Steel, etc., Co.*, 1894, 82 Hun 303, 31 N.Y.S. 337.

Where creditors, and not the receiver, applied for summary relief and this was granted notwithstanding the opposition of the receiver and the interests which he represented, the receiver was a party aggrieved within the meaning of section 1294 of the Code of Civil Procedure, now Civil Practice Act, § 557 [CPLR § 5511] and had the right of appeal. *People v. St. Nicholas Bank*, 1894, 77 Hun 159, 28 N.Y.S. 407.

§ 1207. Duties of receiver upon appointment

(a) Upon appointment and qualification, a receiver shall have the following duties:

(1) To give immediate notice of his appointment by publication once a week for two successive weeks in two newspapers of general circulation in the county where the office of the corporation is located or, in the case of a foreign corporation against which an action has been brought under subparagraph (a)(4) of section 1202 (Appointment of receiver of property of a domestic or foreign corporation), in a newspaper of general circulation as directed by the court, requiring:

(A) All persons indebted to the corporation to render an account of all debts owing by them to the corporation and to pay the same to the receiver at a specified place and by a specified day.

(B) All persons having in their possession any property of the corporation to deliver the same to the receiver at the specified place and by the specified day.

(C) All creditors and claimants, including any with unliquidated or contingent claims and any with whom the corporation has unfulfilled contracts, to present their claims to the receiver in writing and in detail at a specified place and by a specified day, which shall not be less than six months after the first publication of such notice. Whenever a receiver is appointed in dissolution proceedings under article 10 (Non-judicial dissolution) or article 11 (Judicial dissolution), section 1007 (Notice to creditors; filing or barring claims) shall apply and shall control the giving of notice to creditors and claimants and the filing and barring of claims.

(2) To call a general meeting of the creditors of the corporation within four months from the date of his appointment by a notice to be published as directed in subparagraph (a)(1), setting forth the

time and place of such meeting, which time shall be not more than two months, nor less than one month after the first publication of such notice. At such meeting, or at an adjournment thereof, the receiver shall present a statement of all accounts and demands for and against the corporation, its subsisting contracts, and the money and other assets in his hands.

(3) To keep true books of account of all moneys received and expended by him as receiver, which books shall be open for inspection at reasonable times by creditors or other persons interested therein. On or before the first day of February in each year, for the preceding calendar year, and at such other times as the court shall direct, the receiver shall file with the clerk of the court by which he was appointed a verified statement showing the assets received, the disposition thereof, the money on hand, all payments made, specifying the persons to whom paid and the purpose of the payments, the amount necessary to be retained to meet necessary expenses and claims against the receiver, and the distributive share in the remainder of each person interested therein. A copy of such statement shall be served by the receiver upon the attorney-general within five days after the filing thereof.

(L.1961, c. 855; amended L.1962, c. 317, § 13; L.1962, c. 834, § 87; L.1963, c. 748, § 30.)

Historical Note

1963 Amendment. L. 1963, c. 748, § 30, eff. Sept. 1, 1963, redesignated former subpar. (1), cl. (D) as subpar. (2), and former subpar. (2) as (3).

Derivation. Gen.Corp.Law of 1929, §§ 171, 172, 174, 177, 178; repealed by L.1973, c. 451, § 2.

For history of said section 171, see derivation note under section 1206.

Said section 172, formerly sections 107 and 247; renumbered 172, L.1929, c. 650. Former section 107 derived from R.S., pt. 3, c. 8, tit. 4, art. 2, § 42, amended L.1858, c. 348, § 1. Former section 247 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 26.

Said section 174, formerly 250; renumbered 174, L.1929, c. 650. Section

250 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 8; R.S., pt. 3, c. 8, tit. 4, art. 3, § 70.

Said section 177, formerly 253; renumbered 177, L.1929, c. 650. Section 253 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 74; R.S., pt. 2, c. 5, tit. 1, art. 8, § 27.

Said section 178, formerly 254; renumbered 178, L.1929, c. 650. Section 254 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 28; R.S. pt. 3, c. 8, tit. 4, art. 8, § 74.

CPA § 977-b(6). For history of said section, see derivation note under section 1202.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law §§ 171, 172, 174, 177 and 178; C.P.A. § 977-b(6).

2. Changes: Consolidated and revised.

Comment: This section merges present statutory material relating to

what a receiver must do upon appointment in order to allow for the varying interests of creditors, claimants, shareholders and the state.

The requirement for publication of notice of the receiver's appointment has been changed to publication in two newspapers for two weeks, as compared with one newspaper for three weeks under

General Corporation Law § 174 and two newspapers for six weeks under C.P.A. § 977-b(6).

It is provided in paragraph (a)(1)(C) that if a receiver is appointed in dissolution proceedings § 1007 shall apply and be controlling as to notice to creditors and the filing and barring of claims.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1207.
 Notice of intention to file final account, see section 1216.
 Penalty for concealing property from receiver after day specified in notice, see section 1208.

West's McKinney's Forms

Notice by receiver of—
 Claims, see BCL Forms § 12:21.
 General meeting of creditors, see BCL Forms § 12:22.

Library References

Corporations ⇨511, 560(1 to 6), 622 (1) et seq., 671. C.J.S. Corporations §§ 1357, 1505, 1506, 1517, 1524, 1753, 1755, 1928, 1929.

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1. Notice of appointment

Publication of notice of appointment of a receiver for New York assets of a Cuban corporation in a foreign language newspaper was in conformity with former statutory, CPA § 977-b, requirements [now contained in this section], where the summons so published was itself printed in the English language, even though the newspaper was a Spanish language newspaper. *Hershbaum v. Compania Petrolera Trans-Cuba, S.A.*, 1961, 215 N.Y.S.2d 898.

2. Notice of meeting

The rights which the statutes secure to creditors in the case of a statutory final receiver of an insolvent corporation have been declared to be such only as pertain to the property which comes to the receiver to be administered and dis-

tributed to creditors by him, and they are not entitled to notice or a hearing except as to claims upon, and their rights in, such property. *Herring v. New York, etc., R. Co.*, 1887, 105 N.Y. 340, 12 N.E. 763.

3. Accounting by receiver

Interim account of receiver appointed under this article for administration of dissolution of corporation was incomplete and deficient in that balance sheet by accounting firm which supported intermediate account did not indicate that it was prepared in conformity with usual and customary accounting procedures, and transmittal letter from accountants stated that they relied upon representations of management and did not audit or review financial statements and therefore expressed no opinion thereon. *Matter of T.J. Ronan Paint Corp.*, 1984, 98 A.D.2d 413, 469 N.Y.S.2d 931.

A receiver appointed in proceedings to sequester the property of a corporation after the return of execution

against it unsatisfied will not be required to file an account where it appears that no assets of the corporation

have come into his hands. *Lyons v. Atlanta Hill Gold Min. & Mill Co.*, 1891, 60 Hun. 578, 14 N.Y.S. 533.

§ 1208. Penalty for concealing property from receiver

Any persons having possession of property belonging to the corporation, who shall wrongfully withhold such property from the receiver after the day specified in the notice given under section 1207 (Duties of receiver upon appointment), shall forfeit to the receiver double the value of such property, and the same may be recovered in an action by the receiver.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, § 176, repealed by L.1973, c. 451, § 2. Section 176 was formerly 252, renumbered 176, L.1929, c. 650. Section 252 derived from R.S., pt. 2, c. 5, tit. 1, art. 8, § 11.

Legislative Studies and Reports

1. Source: McKinney General Corporation Law § 176. withheld wrongfully from a receiver. It does not apply to the simple failure to pay a debt as provided in General Corporation Law § 176.
 2. Changes: Revised.
- Comment: This section provides a penalty of double the value of property

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1208.

Library References

Corporations ⇨560(4), 561(1). Receivers ⇨74. C.J.S. Corporations §§ 1506, 1507. C.J.S. Receivers § 119 et seq.

§ 1209. Recovery of assets

(a) Whenever a receiver, by verified petition to the supreme court at a special term held in the judicial district in which he was appointed shall show that he has good reason to believe that any person has in his possession or under his control, or has wrongfully concealed, withheld or disposed of, any property of the corporation, or that any person can testify concerning such facts, the court, with or without notice, shall make an order requiring such person to appear before the court or a referee, at a time and place designated, and submit to an examination concerning such facts. In such order, or at any time thereafter, in its discretion, the court may enjoin and restrain such person from disposing of any property of the corporation in his possession or under his control.