



**SO ORDERED.**

**SIGNED this 22 day of June, 2006.**

*Dale L. Somers*

Dale L. Somers  
UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In re:**

**JAHN ELDREDGE ROEDEMEIER,  
  
DEBTOR.**

**CASE NO. 06-20292  
CHAPTER 11**

**MEMORANDUM AND ORDER SUSTAINING OBJECTION TO EXEMPTION OF  
DENTAL EQUIPMENT**

The matter before the Court is the objection of Bankers Healthcare Group, Inc. to the Debtor's exemption of dental equipment. Bankers Healthcare Group, Inc. (hereafter "BHG") appears by Elizabeth A. Carson of Bruce, Bruce & Lehman, LLC. The Debtor appears by Thomas M. Mullinix and Joanne B. Stutz of Evans & Mullinix, P.A. There are no other appearances. The Court has jurisdiction to decide the matter.<sup>1</sup>

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<sup>1</sup> This Court has jurisdiction pursuant to 28 U.S.C. § 157(a) and §§ 1334(a) and (b) and the Standing Order of the United States District Court for the District of Kansas that exercised authority conferred by § 157(a) to refer to the District's Bankruptcy judges all matters under the Bankruptcy Code and all proceedings

Debtor in his Amended Schedule C<sup>2</sup> claims as exempt pursuant to Missouri law<sup>3</sup> \$3000 of office equipment, furnishings, and supplies, constituting a portion of dental equipment used by Deer Creek Family Dental Care, LLC, having an estimated total value of \$20,000. BHC objects asserting that Debtor is not entitled to the exemption because the dental equipment belongs to Roedemeier-Quattrocchi PC (hereafter "R-Q"), a Kansas corporation.<sup>4</sup> For the following reasons, the Court sustains the objection.

From 1980 through February, 2004, Debtor practiced dentistry as an employee/shareholder of R-Q, in Overland Park, Kansas. Sometime prior to February 2004, Debtor became the sole stockholder of the R-Q. Thereafter, R-Q ceased doing business. The articles of incorporation of R-Q were forfeited, but no formal dissolution was undertaken, and no conveyance of the corporation's dental equipment was made to either creditors or stockholders. The dental equipment is now being used by the Debtor in his dental practice with Deer Creek Family Dental Care, LLC.

BHG asserts that Debtor does not own the dental equipment and therefore may not claim a portion of it exempt. Debtor responds that upon forfeiture of the articles of incorporation of B-Q, he, as sole stockholder, became the owner of the equipment and therefore may claim the exemption.

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arising under the Code or arising in or related to a case under the Code, effective July 10, 1984. The allowance or disallowance of an exemption is a core proceeding which the Court may hear and determine as provided in 28 U.S.C. § 157(b)(2)(B). There is no objection to venue or jurisdiction over the parties.

<sup>2</sup> Doc. 28.

<sup>3</sup> R.S. Mo. § 513.430.1(4).

<sup>4</sup> Doc. 35.

The question presented is whether the Debtor became the owner of the dental equipment upon the forfeiture of B-Q's corporate charter and cessation of its business. In Kansas, any corporation that fails to timely submit its annual report and to pay the annual report fee forfeits its articles of incorporation.<sup>5</sup> Although corporate status may be restored at any time,<sup>6</sup> no corporation may be dissolved until all state corporate fees are paid.<sup>7</sup> The Kansas statute addressing wind up of affairs following dissolution or forfeiture is K.S.A. 17-6807.<sup>8</sup> It provides in relevant part:

All corporations, whether they expire by their own limitation or are otherwise dissolved, including revocation or forfeiture of articles of incorporation pursuant to K.S.A. 17-6812 or 17-7510, . . . shall be continued, nevertheless, for the term of three years from such expiration or dissolution or for such longer period as the district court in its discretion shall direct, bodies corporate for the purpose of prosecuting and defending suits, . . . and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to their stockholders any

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<sup>5</sup> K.S.A. 17-7510.

<sup>6</sup> K.S.A. 17-7002.

<sup>7</sup> K.S.A. 17-6806.

<sup>8</sup> See K.S.A. 17-6810, which provides:

The directors, . . . of a dissolved corporation, after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefore, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose. If there shall be any balance remaining after the payment of the debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation or their legal representatives.

remaining assets, but not for the purpose of continuing the business for which the corporation was organized.

Both the Federal District Court for the District of Kansas and the Kansas Court of Appeals have held that under Kansas law forfeiture of articles of incorporation does cause the corporation's property to revert to the stockholders. Judge Rogers in *Pottorf v. United States*<sup>9</sup> held that the forfeiture of articles of incorporation did not preclude the attachment of a federal tax lien on real property of the corporation. The court reasoned that under Kansas law a corporation which had forfeited its articles of incorporation for nonpayment of state franchise taxes did no more than forfeit the corporate right to do business; the corporation was not dissolved or extinguished as a legal entity. Therefore, any real property owned by the corporation prior to the forfeiture did not pass to the stockholders but remained in the corporation's property until conveyed by the corporation.

The Kansas Court of Appeals in *Doniphan County v. Miller*<sup>10</sup> relied upon *Pottorf*. It held that a corporation that had forfeited its right to transact business in 1990 could effectively convey its real property in 1994, after expiration of the three year wind-up period. The contentions that the conveyance was ineffective and the real property reverted to the stockholder upon forfeiture of the right to do business was rejected. The Court of Appeals interpreted *Pottorf* as holding that "where the articles of incorporation have been forfeited, the corporation retains legal title to its assets until a proper conveyance is made."<sup>11</sup>

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<sup>9</sup> 773 F. Supp. 1491 (D. Kan. 1991), aff'd 982 F.2d 529 (10th Cir. 1992).

<sup>10</sup> 26 Kan. App. 2d 669, 993 P.2d 648 (1999) rev. denied Feb. 11, 2000

<sup>11</sup> *Id.*, 26 Kan. App.2d at 670, 993 P.2d at 649-50, citing *Pottorf v. United States*, 773 F. Supp. at 1495.

This Court finds that the holding of the Kansas Court of Appeals applies in this case. The personal property at issue in this case, like the real property at issue in *Doniphan County*, remains corporate property notwithstanding the forfeiture. It was not transferred to a third party and did not revert to the Debtor, the corporation's sole stockholder. The property of B-Q is not owned by the Debtor and may not be claimed as exempt. At most the Debtor owns a contingent right to distribution of the assets of B-Q upon dissolution of the corporation, after satisfaction of its creditors.

The foregoing constitute Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. A judgment based upon this ruling will be entered on a separate document as required by Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58.

**IT IS SO ORDERED.**

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