



Court Can't Appoint Unwilling Director To Defend Post Winding-Up Claims

By Keith Paul Bishop on November 17, 2011



The directors of a Nevada corporation become trustees upon its dissolution. NRS 78.590(1). The creditors or stockholders may apply to the district court either to continue the directors trustees in office or appoint one or more persons to act as receivers. NRS 78.600. What happens when a director has resigned and is unwilling to continue service? This was the question addressed by the Nevada Supreme Court in *Canarelli v. Eighth Jud. Dist. Ct.*, 127 Nev. Adv. Op. 72 (2011).

American West Homes, Inc. was a Nevada corporation. In 2004, it filed certificate of dissolution with the Nevada Secretary of State pursuant to NRS 78.580 and dissolved. After dissolution, some of its directors remained as trustees pursuant to NRS 78.585. The winding up process was not completed until March 2008. Thereafter, two groups of homeowners filed construction defect complaints against American West. These homeowners served their complaints on one American West's former directors, a Mr. Lawrence Canarelli. Because Mr. Canarelli was no longer a director, the homeowners asked the court to appoint him as trustee. The court "reluctantly" did so and Mr. Canarelli petitioned the Nevada Supreme Court for a writ of mandamus directing the district court to set aside the appointment.

The Nevada Supreme Court found that while NRS 78.600 authorized the district court to continue the directors trustees in office as provided in NRS 78.590, nothing in NRS 78.590 gives a director trustee the power to defend against post-dissolution claims that were unknown until after the corporation had completed its winding up. Thus, the Supreme Court found that the district court had abused its discretion in appointing Mr. Canarelli.

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

Here's some points that are worth noting:

- The Nevada legislature amended NRS 78.585 and NRS 78.590 in 2011 but the Supreme Court found that these amendment did not affect its analysis;
- The use of the term "trustee" had caused the Ninth Circuit Court of Appeals to apply the general law of trusts to the activities of directors after dissolution. *Miller v. Wahyou*, 235 F.2d 612, 616 n.4 (9th Cir. 1956). In the 2011 amendments to NRS 78.590, the Nevada legislature has added a new subsection (3) specifying "In winding up and liquidating the business and affairs of the corporation, the trustees have the duties imposed upon them, and the benefit of the presumptions established, by NRS 78.138."
- Mr. Canarelli raised, but the Supreme Court declined to address, the argument that his appointment violates the 13th Amendment to the U.S. Constitution.
- As a result of this opinion, plaintiffs are likely to face a real practical problem when trying to assert post-dissolution claims against corporations that have successfully wound up their affairs.
- The Nevada Supreme Court refused to overturn *Beazer Homes of Nev., Inc. v. District Court*, 120 Nev. 575, 97 P.3d 1132 (2004).

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>