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2-13-2014

### Summary of DTJ Design v. First Republic Bank, 130 Nev. Adv. Op. 5

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*Nevada Law Journal*

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#### Recommended Citation

Guidry, Laura, "Summary of DTJ Design v. First Republic Bank, 130 Nev. Adv. Op. 5" (2014). *Nevada Supreme Court Summaries*. 20.

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## CONSTRUCTION LAW: FOREIGN FIRM REGISTRATION

### **Summary**

The Court determined one issue: whether NRS 623.349(2) and NRS 623.357 mandate a foreign architectural firm be registered in Nevada in order to bring or maintain an action in Nevada.

### **Disposition**

Regardless of whether a foreign firm employs a registered architect, NRS 623.349(2) and NRS 623.357 mandate that the firm be registered in Nevada in order to maintain an action on the firm's behalf.

### **Factual and Procedural History**

In 1998, Thomas W. Thorpe a professional architect of Downing, Thorpe & James Design, Inc. (DTJ), an architectural firm incorporated in Colorado, pursued reciprocity to practice in Nevada. He submitted an Application for Architect Registration and an Application for Registration of a Business and Firm Name Approval to the State Board of Architecture (the Board). The Board approved Thorpe's individual application but did not receive or approve DTJ's application to practice in Nevada.

In 2004, DTJ was contracted to provide architectural services for subdivision owned by Prima Condominiums, LLV (Prima). First Republic Bank granted Prima a \$14 million loan secured with a deed of trust on the Bergamo building. First Republic required an assignment of DTJ's architectural drawings concerning the Bergamo building on the condition DTJ was fully paid for services finished to date. Prima defaulted on payments and DTJ recorded a mechanic's lien against the property in July 2008. Since First Republic purchased the property, DTJ sued First Republic for lien priority and unjust enrichment. The district court concluded DTJ is barred from continuing an action against First Republic for not being properly registered in Nevada. DTJ now appeals the district court granting of summary judgment.

### **Discussion**

*The district court properly concluded that DTJ was barred from maintaining its action against First Republic*

Under NRS Chapter 623<sup>2</sup>, DTJ was required to plead and prove that it was properly registered in order to seek compensation from First Republic. Thus, NRS 623.349's registration requirements apply to foreign architectural firms like DTJ.

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<sup>1</sup> By Laura Guidry.

For a foreign business to operate in Nevada, it must satisfy the requirements found in NRS 623.349. Registered architects within the entity must satisfy the two-thirds ownership provision and the business must pay the required registration fees. Although the Board never received DTJ's application, the Board's executive testified that it "would have denied DTJ's request because Thorpe did not satisfy the two-thirds ownership requirement under NRS 623.349(1)."

### **Conclusion**

Under NRS 623.357 the burden was on DTJ to prove its registration status and First Republic was not required to plead DTJ's failure to register as an affirmative defense. NRS Chapter 623<sup>3</sup> forbids DTJ from bringing or maintaining an action in Nevada for compensation for its architectural services. The court concluded summary judgment in First Republic's favor was appropriate.

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<sup>2</sup> NEV. REV. STAT. § 623.357 (2013).

<sup>3</sup> *Id.*