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### Summary of Canarelli v. Dist. Ct., 127 Nev. Adv. Op. 72

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*Nevada Law Journal*

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*Canarelli v. Dist. Ct.*, 127 Nev. Adv. Op. 72 (November 10, 2011)<sup>1</sup>  
CORPORATE LAW- DISSOLVED CORPORATIONS

**Summary**

A petition for a writ of certiorari or mandamus challenging the district court's order to force Petitioner to serve as trustee for a dissolved corporation in a construction defect action.

**Disposition/Outcome**

The Court granted the writ of mandamus, finding that the district court did not have the authority to compel the petitioner to serve as director trustee in order to defend the corporation in actions that arose post-dissolution of the corporation and after the completion of the winding up process. The Court determined that NRS 78.590 gave no power to director trustees to defend actions against the corporations that arise post-dissolution and after the completion of the winding up process. Furthermore, NRS 78.600 does not give the district court authority to compel a director trustee of a dissolved corporation whose winding-up process has been completed to continue in that position in order to defend against a post-dissolution claim.

**Factual and Procedural History**

American West Homes, Inc. ("American West"), constructed homes in two residential developments in Las Vegas prior to 2004. On January, 29, 2004, the corporation filed a certificate of dissolution according to Nevada law. After the dissolution, Petitioner was among the corporation's directors that remained as a trustee in accordance with NRS 78.585. The trustees completed the winding up process in March 2008, after they had distributed all the assets.

On November 18, 2008, a group of homeowners filed a construction defect complaint against American West. The Petitioner, however, officially resigned as a director trustee on June 24, 2009. Not long after, on July 1, 2009, another group of homeowners filed a separate construction defect complaint against American West. Both of the complaints were served on Petitioner, who filed motions to quash service and dismiss the complaints, arguing that his duties as trustee concluded when the wind-up process was completed. The district court denied the motions and found that service was effective because Petitioner had been an officer and director of American West.

The plaintiffs in each suit filed motions to appoint the Petitioner to continue as a trustee pursuant to NRS 78.600. Moreover, they argued that pursuant to *Beazer Homes Nevada, Inc. v. District Court*, post-dissolution claims may be filed indefinitely.<sup>2</sup> The district court granted the motions to appoint Petitioner as trustee. Petitioner subsequently filed the writ petition.

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<sup>1</sup> By Cameron Daw

<sup>2</sup> 120 Nev. 575, 584, 97 P.3d 1132, 1138 (2004).

## Discussion

Justice Hardesty wrote for the unanimous Court sitting en banc. The Petitioner made three different arguments to support his belief that the district court cannot force him to serve as a director trustee. He argued, first, that forcing him to serve as director trustee constitutes indentured servitude and violates the Thirteenth Amendment to the United States Constitution.<sup>3</sup> Second, he argued that the Court erred in *Beazer Homes Nevada, Inc. v. District Court*, when it concluded that post-dissolution claims are limited only by the statutes of limitation or repose of the underlying claim.<sup>4</sup> Finally, he argued that the term “continue” in the text of NRS 78.600 prevents the district court from appointing a director trustee who resigned from the position. The Court considered these arguments after examining NRS 78.585, 78.590, and 78.600.

Under Nevada law, NRS 78.585 allows for the continuation of a corporation after dissolution for winding up any business.<sup>5</sup> Specifically, the statute allows for “prosecuting and defending suits, actions, proceedings, and claims of any kind or character by or against it . . . to settle and close its business, to collect and discharge its obligations, to dispose of and convey its property, and to distribute its assets . . . .”<sup>6</sup> Any claim brought against it must arise before dissolution and be commenced within 2 years following dissolution.<sup>7</sup>

NRS 78.590 proscribes the statutory powers the director trustees have in settling the affairs of the corporation.<sup>8</sup> Director trustees may “collect the outstanding debts, sell and convey the property, real and personal, and divide the money and other property among the stockholders, after paying or adequately providing for the payment of its liabilities and obligations.”<sup>9</sup> The statute is silent as to any power to defend actions against the corporation that arises post-dissolution and after the winding-up process.<sup>10</sup>

The Court noted that the statutes do not provide a definition of what constitutes winding up, so in accordance with Nevada case law it used the common definition of the term.<sup>11</sup> Black’s Law Dictionary defines “winding up” as “[t]he process of settling accounts and liquidating assets in anticipation of a partnership’s or a corporation’s dissolution.”<sup>12</sup> Based on this definition, the Court concluded that winding up is completed when the director trustees have disposed all assets to the shareholders and paid all debts to creditors. As a result, the Court determined that a director trustee’s power to act on behalf of the dissolved corporation ends once the wind-up process is complete.

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<sup>3</sup> U.S. CONST. amend. XIII § 1 (“[n]either slavery nor involuntary servitude . . . shall exist within the United States . . .”).

<sup>4</sup> *Beazer*, 120 Nev. at 584, 97 P.3d at 1138.

<sup>5</sup> NEV. REV. STAT. § 78.585 (2007).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> NEV. REV. STAT. § 78.590 (2007).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *McGrath v. State Dep’t. of Pub. Safety*, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007).

<sup>12</sup> BLACK’S LAW DICTIONARY 1738 (9th ed. 2009).

NRS 78.600, however, does grant the district court authority to continue the service of a director trustee in certain situations.<sup>13</sup>

“When any corporation organized under this chapter shall be dissolved or cease to exist in any manner whatever, the district court, on application of any creditor or stockholder of the corporation, at any time, may either continue the directors trustees as provided in NRS 78.590, or appoint one or more persons to be receivers of and for the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid . . . .”<sup>14</sup>

Based on the preceding text, the Court reasoned that the statute allows the district court to continue a director trustee so they might exercise their winding-up powers proscribed in NRS 78.590. Because NRS 78.590 says nothing about defending post-dissolution claims that were unknown prior to completing the winding up process,<sup>15</sup> the Court determined that NRS 78.600 does not confer authority upon the district court to compel a director trustee who has completed the winding-up process to continue to serve to defend such suits.

Because the Petitioner opposed having to continue as director trustee to defend the suit, and all of American West’s assets were distributed and its debts paid off, the Court held that the district court did not have authority to compel him to do so.

Finally, the Court declined to overturn its holding in *Beazer Homes Nevada Inc. v. District Court*. The Court distinguished that case because it dealt with different legal issues. *Beazer* dealt with the applicability of a statute of limitations period for post-dissolution claims, not the appointment of a former director trustee to represent the corporation after completion of the wind-up process, as was the case here.

## **Conclusion**

A district court does not have the authority to compel a former director trustee to represent a corporation post-dissolution against a suit after completion of the wind-up process. NRS 78.600 does give the district court power to continue or appoint a director trustee, but only to perform the responsibilities laid out in NRS 78.590. Finally, *Beazer Homes Nevada Inc. v. District Court* is still good case law as it dealt with the applicability of a statute of limitations for post-dissolution claims.

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<sup>13</sup> NEV. REV. STAT. § 78.600 (2007).

<sup>14</sup> *Id.*

<sup>15</sup> NEV. REV. STAT. § 78.590 (2007).