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**Boucher v. Shaw,
124 Nev. Adv. Op. No. 96 (November 26, 2008)¹**

Corporate Law – Liability of Corporate Officers

Summary

Acceptance of the Ninth Circuit’s certified question: “[c]an individual managers be held liable as employers for unpaid wages under Chapter 608 of the Nevada Revised Statutes?”

Disposition/Outcome

The Court answered the question in the negative concluding that individual managers cannot be held liable for unpaid wages under NRS Chapter 608.

Factual and Procedural History

Thelma Boucher, Ardith Ballard, and Joseph W. Kennedy, III [collectively hereinafter “Appellants”] worked for The Castaways Hotel Casino and Bowling Center. In June 2003, Castaways filed for Chapter 11 bankruptcy. Shortly thereafter, Appellants were discharged and then Castaways closed down.

Dan Shaw, Michael Villamor, and James Van Woerkom [collectively hereinafter “Respondents”] were high-level managers at Castaways. Shaw was the Chairman and CEO at the time Appellants were discharged. Villamor was responsible for labor and employment matters. Woekon was the CFO. Shaw and Villamor jointly owned and were members of VSS Enterprises, Castaway’s parent company.

After being discharged and Castaway’s subsequent closing, Appellants sued in state court, alleging Respondents were “employers” under NRS Chapter 608,² and therefore were liable for Appellants’ unpaid wages. Respondents moved the case to federal court and filed a motion to dismiss. The court granted the motion to dismiss holding that Respondents were not “employers” under NRS Chapter 608.³ Appellants appealed to the Ninth Circuit⁴ who certified the question pursuant to NRAP 5. The question to the court was whether individual managers could be held liable as employers for unpaid wages under NRS Chapter 608.

Discussion

Chapter 608 of the Nevada Revised Statutes provides a statutory scheme for wage protection. The Court was asked to determine if “employer” includes individual managers, such that individual managers could be held personally liable for unpaid wages.

Employers under NRS Chapter 608

Appellants argue that the Court should construe the definition of “employer” broadly; and when employer is construed broadly, it extends beyond common law employers to also include individual managers. The Court disagrees. Appellants contend that to give full meaning to all the words in NRS 608.011, the Court should recognize that individual managers may have “custody or control” of employment and workplace, and therefore the Court should extend the reach of liability beyond the common law contract employer. Respondents counter argue that if the Court holds managers personally liable for unpaid wages, the Court would

¹ By Elham Roohani

² In relevant part NEV. REV. STAT. § 608.011 defines “employer” as “every person having control or custody of any employment, place of employment or any employee.”

³ Boucher v. Shaw, No. CV-S-04-1738-PMP (PAL) (D.Nev. Jan. 25, 2005).

⁴ Boucher v. Shaw, 483 F.3d 613 (9th Cir. 2007).

cause a serious departure from the common law rule and absent a clear statement of intent, individual managers cannot be held liable. In considering both arguments, the Court notes that the definition of “employer” is ambiguous and therefore turns to statutory construction to determine meaning.

Statutory Construction

When statutory language is ambiguous, the Court examines “the context and the spirit of the law” and considers the statute’s multiple legislative provisions.

Legislative Intent

The current version of NRS 608.011 definition of employer was adopted in 1985. The current definition includes “persons,” while the earlier version defined employer as “any person, firm, corporation, partnership, stock association, agent, *manager*, representative or other person.” The Court noted that the word “manager” was not carried over and when the Legislature amends a statute, it is presumed that intent changes the law. However, the Court reasons that while the language may have changed, it remains unclear whether the definition was substantially changed, and the term “employer” is therefore ambiguous. As there is no legislative history on point, the Court turns to other jurisdictions for similar issues.

*Leonard v. McNorris*⁵, a case out of Colorado, addressed a similar issue. The Colorado Supreme Court interpreted Colorado’s statute, considering long-standing corporate law principles, and held that the Legislature did not intend to hold corporate officers personally liable for corporate debts. The Colorado Supreme Court compared Colorado’s statute⁶ to definitions of “employer” in Illinois⁷ and Kansas⁸, both of which provided for officer and agent liability. The *Leonard* Court noted how a legislature might choose to pierce the corporate veil and make some officers and agents personally liable for corporate debts.

The Nevada Supreme Court agrees with the reasoning of the *Leonard* Court and concludes that if the legislature intended to impose liability on individual managers it would have done so explicitly. This interpretation comports with traditional principles of Nevada corporate law, which does not extend individual liability to officers, directors, or stockholders except as specifically provided for by statute.

Appellants argue that evidence of legislative intent to impose liability on individual managers is shown by the criminal penalties in NRS Chapter 608, referring the Court to *Butler v. Hartford Technical Institute*⁹. Specifically, Appellants point to the holding that the presence of criminal statutes shows legislative intent to hold officers and agents individually liable. The Court found *Butler* unpersuasive holding that absent a clear statement of legislative intent, it cannot conclude the legislature intended to pierce the corporate veil and depart from well-settled principles of corporate law.

Conclusion

Under NRS Chapter 608, the definition of “employer” is ambiguous. Interpreting this provision and in adhering to established Nevada corporate law, individual managers are not “employers,” and thus cannot be held personally liable for employees' unpaid wages.

⁵ 63 P.3d 323 (2003).

⁶ In relevant part COLO. REV. STAT. § 8-4-101(5) defines “employer” as every person, firm, partnership, association, corporation, migratory field labor contractor or crew leader, receiver, or other officer of court in Colorado, and any agent or officer thereof.”

⁷ In relevant part 820 ILL. COMP. STAT. ANN. § 115/13 provides that “[a]ny *officers* of a corporation or *agents* of an employer who knowingly permit such employer to violate the provisions of this Act shall be deemed to be the employers of the employees of the corporation.” (emphasis added).

⁸ In relevant part KAN. STAT. ANN. § 44-323(b) provides that “[a]ny *officer, manager, major shareholder* or other person who has charge of the affairs of an employer. . . may be deemed the employer for purposes of this act.” (emphasis added).

⁹ 243 Conn. 454 (1997).