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### Summary of Redl v. Secretary of State, 120 Nev. Adv. Rep. 13

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*Redl v. Secretary of State*, 120 Nev. Adv. Rep. 13, 85 P.3d 797 (2004).<sup>1</sup>

## CORPORATIONS

### Summary

Petition for writ of mandamus.

### Disposition/Outcome

Petition denied. Under NRS 78.730, the Secretary of State has discretion to revive a corporate charter that has been revoked for a period of five or more years.

### Factual and Procedural History

411 New York Owners Corp. (NYO), incorporated in Nevada on September 23, 1994. NYO failed to file a list of officers and directors and designate a resident agent with the Nevada Secretary of State. NYO also failed to pay the required fees and penalties. The Secretary of State permanently revoked NYO's charter on July 1, 2001. On November 6, 2002, NYO filed a list of officers and designated a resident agent. NYO also paid all of the fees and penalties that were due and submitted an application for revival. The Secretary accepted the application and revived the corporate charter.

Harry Redl (Mr. Redl) and NYO entered into a land purchase contract.<sup>2</sup> The agreement provided that Mr. Redl would sell eleven lots of land in Marin County, California, to NYO. Mr. Redl breached the contract by failing to acquire title to three of the eleven lots. Thereafter, NYO filed suit in California for breach of contract.

On October 6, 2002, Mr. Redl requested a certificate of revocation of NYO's corporate charter from the Nevada Secretary of State in order to show that NYO was not a corporation in good standing when the contract was executed. Mr. Redl later discovered that the Secretary of State had revived NYO's corporate charter. Mr. Redl claimed that the revival of the charter compromised his position in the breach of contract litigation.

Mr. Redl subsequently petitioned for a writ of mandamus to compel the Secretary of State to revoke NYO's corporate charter.

### Discussion

The supreme court denied the writ. First, the court held that NRS 78.180,<sup>3</sup> did not apply to NYO because the application was for revival, not reinstatement. Utilizing rules of statutory construction, the court found that revival and reinstatement are not the same terms; hence, that statute did not apply. However, the court found that NRS 78.730<sup>4</sup> did

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<sup>1</sup> By Mike Feliciano

<sup>2</sup> The court states that the agreement was entered into "approximately five years ago." The exact date is not stated.

<sup>3</sup> NEV. REV. STAT. 78.180 (2003) contains the provisions for corporate reinstatement.

<sup>4</sup> NEV. REV. STAT. 78.730 (2003) contains the provisions for corporate revival.

apply to NYO. However, since NYO had complied with all of the procedures required under NRS 78.730, the revival was proper. Further, the limitation prohibiting reinstatement after five years did not apply because NYO applied for revival, not reinstatement.<sup>5</sup> Revival is not subject to the five-year limitation.

The court also rejected Mr. Redl's argument that the Secretary of State can only revive a dissolved corporation because the statute specifically states that it applies to corporations that did exist or currently exist.<sup>6</sup> Finally, Mr. Redl argued that NYO should not have been revived because it failed to file a list of directors with the Secretary of State as required by statute.<sup>7</sup> The court held that although the list of directors was omitted, NYO substantially complied with the statute, and the Secretary of State had the discretion to revive the corporation.

### **Conclusion**

In *Redl*, the supreme court clarified any ambiguity that may have existed with regards to the difference between corporate reinstatement and corporate revival. The court also reaffirmed that it will only issue a writ of mandamus in only the most compelling cases.

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<sup>5</sup> See NEV. REV. STAT. 78.180(4)(2003).

<sup>6</sup> NEV. REV. STAT. 78.730(1)(2003).

<sup>7</sup> NEV. REV. STAT. 78.730(1)(b)(2003).