

10-2-2014

## Summary of Guilfoyle v. Olde Monmouth Stock Transfer Co., 130 Nev. Adv. Op. 78

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*Nevada Law Journal*

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### Recommended Citation

Lancaster, Chelsea, "Summary of Guilfoyle v. Olde Monmouth Stock Transfer Co., 130 Nev. Adv. Op. 78" (2014). *Nevada Supreme Court Summaries*. Paper 821.

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## SECURITIES LAW: TRANSFER AGENT DUTIES

### **Summary**

The Court determined that (1) Nevada statutory law partially abrogates common law by making a stock transfer agent's duty the same as the issuer's in processing a request to register a transfer of securities; and (2) a transfer agent's statutory duty to process legend removal requests does not arise without the stockholder's request to act.

Additionally, the Court reaffirmed the liability of a transfer agent to a stockholder for common law claims asserting misfeasance.

### **Background**

#### I.

Appellants Paul Guilfoyle and Citypoint, LLC (collectively Guilfoyle) held stock that carried a restrictive legend in Pegasus Wireless Corporation. The restrictive legend required registration under Federal Securities laws or an exemption therefrom before the stock could be resold or transferred. When Guilfoyle believed the stock qualified for SEC Rule 44 exemption, he asked his broker about removing the legend and reselling the stock.

Guilfoyle's broker made an anonymous call to Respondent Olde Monmouth Stock Transfer Company, Inc., Pegasus's transfer agent. The broker asked from whom Olde Monmouth would accept a legal opinion supporting legend removals from restricted Pegasus stock. Olde Monmouth offered the contact information for Pegasus's designated counsel, John Courtade, who declined to provide an opinion without Pegasus's direction. Guilfoyle's did not communicate further with Olde Monmouth, and several subsequent attempts to contact Pegasus were unsuccessful. Meanwhile, Pegasus stock plummeted before Guilfoyle could sell his stock.

Once Guilfoyle learned that two of Pegasus's officers were convicted for defrauding investors, he sued and recovered judgment against them. Consequently, Pegasus filed bankruptcy and Guilfoyle commenced suit against Olde Monmouth. Guilfoyle faulted Olde Monmouth because they did not disclose that, under internal procedures for removing legends under SEC Rule 144, independent counsel could provide a legal opinion if Pegasus was unresponsive or that Courtade was the fourth counsel Pegasus had designated within the preceding year. Guilfoyle brought claims for (1) violation of statutory duty to timely process removal requests; (2) negligent and fraudulent misrepresentation; (3) aiding and abetting Pegasus's officers' breach of fiduciary duty; and (4) conspiracy. Guilfoyle appealed the district court's grant of summary judgment for Olde Monmouth.

### **Discussion**

#### II.

##### A.

At common law, a transfer agent was not liable to a corporation's stockholder because the failure to remove restrictive legends was nonfeasance. The transfer agent was liable only to

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the corporation, which in turn was liable to shareholders. In Nevada, however, NRS 104.8401<sup>2</sup> and NRS 104.8407 make a transfer agent's duty the same as an issuing corporation's "in performing the statutory functions involved in processing a request" to remove restrictive legends from stock.<sup>3</sup>

The statutory "duty to register transfers exists only if: [1] a registered security is presented to it; [2] the certificate is accompanied by a request to register the transfers; and [3] the requestor has satisfied the preconditions that subsection 8-401(1) authorizes the issuer to impose before registering the transfer. Thus, "Presentation of a properly supported request ... is the sine qua non of an NRS 104.8401 claim." Here, the Court rejected Guilfoyle's argument that Olde Monmouth violated its statutory duties by refusing to timely process his request for legend removal because not of the aforementioned requirements were met. First, the "brief telephone call ... did not meet the statute's requirements for a request," because Guilfoyle's broker never asked Olde Monmouth to remove the legend. Second, Guilfoyle failed to present his shares. Third, Walters did not identify Guilfoyle or his circumstances, so Olde Monmouth would have had no way of knowing whether Guilfoyle could meet the requirements in NRS 104.8401(1). Therefore, the Court held that the statutory transfer process was never engaged and Olde Monmouth assumed no statutory duty.

## B.

For claims asserting *misfeasance*, on the other hand, transfer agents remain liable to stockholders at common law. Although Guilfoyle's common law claims asserted *malfeasance*, the Court concluded they were not supported by competent evidence.

### 1.

First, the negligent and fraudulent misrepresentation claims failed, because Olde Monmouth did not "supply false information." The Court held that Olde Monmouth offered truthful information to the broker's telephone inquiry: Courtade was Pegasus's designated counsel. The Court concluded that Guilfoyle offered no evidence to support his conjectural argument that Olde Monmouth purposely sent his broker on a "wild goose chase" to avoid processing his request pointing to 26 instances where Pegasus removed legends when asked. Likewise, Guilfoyle offered no evidence to establish a special relationship with Olde Monmouth that would give rise to full disclosure. Since Olde Monmouth did not supply false information, Guilfoyle's misrepresentation claims failed.

### 2.

Second, Guilfoyle's aiding and abetting the breach of a fiduciary duty claim failed, because no evidence suggested that Olde Monmouth "knowingly and substantially participated in or encouraged" Pegasus's breach.

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<sup>2</sup> Under NRS 104.8401, "[i]f a certificated security in registered form is presented to an issuer with a request to register transfer," the issuer "shall register the transfer" provided certain criteria are met. If the statutory terms are met, so that "[the] issuer is under a duty to register a transfer of a security, the issuer is liable to the person presenting a certificated security ... or his or her principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer." NRS 104.8401(2).

<sup>3</sup> NEV. REV. STAT. §§ 104.8401, 104.8407 (2013).

3.

Finally, Guilfoyle's conspiracy claim failed because there was "no [direct or circumstantial] evidence of an agreement or intent to harm the plaintiff."

**Conclusion**

Olde Monmouth's statutory duty never arose because Guilfoyle failed to engage the statutory process by submitting a transfer request. Furthermore, Guilfoyle's common law claims were not supported by competent evidence. The Court affirmed summary judgment for Olde Monmouth.