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# Archon Corp., vs. Eighth Judicial Dist. Court, 133 Nev. Adv. Op. 101 (December 21, 2017)

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## CONSTITUTIONAL LAW: Writs of Mandamus

### **Summary**

The Nevada Supreme Court denied Archon Corporation's petition for a writ of mandamus or prohibition challenging the denial of a motion to dismiss based on tolling of the statute of limitations. The court declined relief for the following three reasons; the statute-based argument that petitioners made to this court was not considered by the lower court, the court's clarification of the law would alter the district court's disposition because the district court made its decision on alternative grounds, and finally, because the district court denied the motion to dismiss without prejudice.

### **Background**

This case arose out of a class action suit on behalf of Archon stockholders and sought contract damages for the incorrect redemption price of stock. Haberkorn was listed in that class action but he was not the named plaintiff. Stockholders of Archon brought two other lawsuits and were awarded summary judgment in both cases where the stockholders claimed that Archon miscalculated the redemption price at \$5,241 per share when they should have paid \$8.69 per share.<sup>2</sup> Based on those federal court decisions, the federal district court granted partial summary judgment in the class action suit that listed Haberkorn, holding that Archon should have paid its shareholders \$8.69 per share to redeem their stock.

The class action complaint that listed Haberkorn laid claim to federal jurisdiction under 28 U.S.C. § 1332(d)(2), which creates federal jurisdiction for class action suits if the amount in controversy exceeds \$5 million. There, Archon moved to dismiss on the grounds that the amount in controversy, \$4,964,042, was insufficient. The federal district granted Archon's motion to dismiss for want of jurisdiction, and the Ninth Circuit affirmed.<sup>3</sup>

Haberkorn filed a separate complaint underlying the writ at issue before the state court's dismissal but before the Ninth Circuit affirmed. The complaint differed from the class action in that Haberkorn alleged rights of both common and preferred stockholders; added Archon's officers as defendants; and alleged that the miscalculation of redemption price invalidated the redemption, meaning that ownership rights of the stock have continued to accrue; and lastly, the complaint asserts claims for other wrongs such as breaches of fiduciary duties. Haberkorn sought a declaratory judgment, compensatory and punitive damages, and restitution for unjust enrichment as an individual and not on behalf of the class.

Archon moved to dismiss Haberkorn's complaint asserting that Haberkorn missed the statute of limitations on all of his claims. The district court denied the motion to dismiss holding that, amongst other reasons, general class action tolling and cross jurisdictional tolling also applied, and further, the ongoing harm would not allow for the motion to dismiss to be granted. The petition for writ of prohibition or mandamus followed.

### **Discussion**

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<sup>1</sup> By Landon Littlefield

<sup>2</sup> See *D.E. Shaw Laminar Portfolios, LLC v. Archon Corp.*, 755 F. Supp. 2d 1122, 1128-29 (D. Nev. 2010), *aff'd*, 483 Fed. App'x 358 (9th Cir. 2012)

<sup>3</sup> See *Rainero v. Archon Corp.*, 844 F.3d 832, 836 (9th Cir. 2016)

### *III.*

#### *A.*

Archon asked the court to exercise advisory writ review in order to clarify cross-jurisdictional class-action tolling of statutory limitation periods. The Court declined to grant the writ for three reasons. First, the statute-of-limitations argument that petitioners made to this Court was not considered by the district court. Second, the Court's clarification of the law would alter the district court's disposition because the district court made its decision on alternative grounds. Lastly, because the lower court denied the motion to dismiss without prejudice.

As to the first reason, class-action tolling suspends the statute of limitations "for all purported members of the class until a formal decision on class certification has been made, or until the named plaintiff opts out."<sup>4</sup> Additionally, cross-jurisdictional class-action tolling would suspend the statute of limitations for all purported class members even if the class action was pending in a different jurisdiction than the one in which the individual plaintiff later sues.

Archon urged the court to reject the doctrine of cross-jurisdictional class-action tolling and argued that the doctrine conflicts with NRS 11.500.<sup>5</sup> Specifically, Archon argued that the doctrine would allow the federal judiciary's actions to indefinitely extend the statute of limitations beyond the five-year period of repose set out in NRS 11.500. This argument, the Court stated, was never adequately presented to the district court. Moreover, the NRS 11.500 argument set forth in the writ petition is significantly different from the argument made in the lower court. The Court determined that in the context of extraordinary writ relief, such as here, consideration of legal arguments not properly presented to and resolved by the district court will almost never be appropriate.<sup>6</sup>

The Court determined that entertaining the argument raised by Archon for the first time on writ would deprive the opposing party of the opportunity to develop arguments and conduct research which it would normally have months or even years to develop had the issue been adequately raised in the district court. Further, advisory mandamus on an issue improperly raised and resolved in district court fails to promote judicial economy and administration.

#### *B.*

Next, the Court held that granting the writ would not promote sound judicial economy and administration because a clarification of the law would not alter the district court's denial of the motion to dismiss. Specifically, the lower court cited an alternative reason, the alleged ongoing harm, aside from the tolling issue for denying the motion. Therefore, the advisory mandamus is inappropriate because only part of the case is before the court and, as determined

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<sup>4</sup> *Bonilla v. Las Vegas Cigar Co.*, 61 F. Supp. 2d 1129, 1135 (D. Nev. 1999)

<sup>5</sup> NRS 11.500 reads in relevant part as follows: 1. Notwithstanding any other provision of law, and except as otherwise provided in this section, if an action that is commenced within the applicable period of limitations is dismissed because the court lacked jurisdiction over the subject matter of the action, the action may be recommenced in the court having jurisdiction within: (a) The applicable period of limitations; or (b) Ninety days after the action is dismissed, whichever is later. . . 2. An action may not be recommenced pursuant to paragraph (b) of subsection 1 more than 5 years after the date on which the original action was commenced.

<sup>6</sup> *See* *Califano v. Moynahan*, 596 F.2d 1320, 1322 (6th Cir. 1979) ("We decline to employ the extraordinary remedy of mandamus to require a district judge to do that which he was never asked to do in a proper way in the first place."); *United States v. U.S. Dist. Court for S. Dist. of Cal.*, 384 F.3d 1202, 1205 (9th Cir. 2004) ("[W]e will not find the district court's decision so egregiously wrong as to constitute clear error where the purported error was never brought to its attention.")

by the district court, there are forthcoming issues that even if the Court resolved the legal issue, it would not dispose of the entire controversy.

C.

Finally, because the district court denied Archon's motion to dismiss without prejudice, it would not promote judicial economy for the Court to grant the writ at this point in the proceeding. The Court pointed out that Archon will have more opportunities to present its full legal argument, including its NRS 11.500 argument, at summary judgment, or to this Court on appeal or, even, in an additional writ.

### **Conclusion**

The Court determined that this case did not provide an extraordinary cause that permitted advisory writ of mandamus relief. Further, the Court held that sound judicial economy and administration prevent the court's intervention in the district court's proceedings.