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Judicial Update

Nevada Business Court Rules Transfer Agent Stockholder List Conclusively Determines Stockholders of a Corporation

By Sean Donahue

In *Ameriguard Security Services*, *Inc*. *&* *Garcia v*. *Anderson*, *et al*., Judge Maria Gall of Nevada's Eighth Judicial District's Business Court found that absent fraud or manifest error, the certified stockholder list maintained by a company's transfer agent conclusively determines the stockholders of a corporation.

This ruling is another example of Nevada Business Courts adhering to the statutory text in adjudicating business disputes. NRS 78.105(c) provides that "[a]bsent manifest error or actual fraud, the stock ledger of the corporation, as maintained by the corporation or its designated transfer agent, shall conclusively determine the stockholders of record of the corporation." Defendants did not demonstrate manifest error or actual fraud sufficient to overcome the statutory presumption of NRS 78.105(c) such that the court found that the stockholder list providing that the plaintiff, Ameriguard CEO Lawrence Garcia, held more than 80% of the stock permitted him to take certain corporate actions.

Overview of the Court's Decision

This litigation arose from an internal corporate dispute at a publicly traded company with a three-member board. It started when two of the three board members took action to remove the third board member, Garcia, as CEO. Following his removal, Garcia in his capacity as a stockholder acted by written consent to remove the two remaining directors and replace them with his two handpicked directors. NRS 78.335(1) provides that a stockholder holding two-thirds of the voting power of the issued and outstanding stock of a company may remove a director. The company's bylaws provided the same. According to the certified stockholder list from the company's transfer agent, Garcia was a greater-than-80% stockholder of the company. Even though a portion of the stock attributed to Garcia on the stockholder list was subject to certain pledging arrangements, the court found that the stockholder list maintained by the company's transfer agent conclusively determines the stockholders of a corporation. As such, the court found Garcia was entitled to take action to remove the two directors from the board.

While not discussed at length in the court's order, Garcia also acted lawfully in his capacity as the sole remaining director in filling the two vacancies on the board that resulted from his removal of the other two directors. NRS 78.335(5) provides that all vacancies, including those caused by an increase in the number of directors, may be filled by a majority of the remaining directors, though less than a quorum, unless it is otherwise provided in the articles of incorporation. The company's articles were silent on the issue and the bylaws largely tracked the statute. As such, Garcia as the sole remaining director acted lawfully in filling the two vacancies on the board.

After filling the two vacancies, the reconstituted three-member board reinstated Garcia as CEO. While not discussed at length in the court's order, this action was also lawful. NRS 78.130(3) provides that "[a]ll officers … must be chosen in such manner, hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors". The company's bylaws provided that the board shall have the right to remove officers and to fill any office that becomes vacant. As such, the board's action to remove the CEO that had been appointed to replace Garcia and reinstate him as CEO was valid.

The defendants also alleged that Garcia breached his fiduciary duties as an officer and director of the company. The court noted that he removed the two directors in his capacity as an 80%-plus stockholder and not as an officer or director. The court found that any purported breach of fiduciary duty by Garcia in his role as an officer or director is not relevant to his right to remove and replace directors in his capacity as a stockholder. This reasoning is consistent with rulings in other jurisdictions, including Delaware, where courts look at a person's capacity in the corporate law context by analyzing them through the capacity in which they are then acting, such as an officer, director or shareholder.

Key Takeaways

This ruling is another example of Nevada Business Court judges adhering to the statutory text in adjudicating business disputes. Nevada corporations or companies considering reincorporating in Nevada should take notice of this and other rulings indicating that Nevada corporate law is heavily reliant on statute. While judges will interpret the Nevada statute when necessary, the plain text of the statute will control. This statutory approach to corporate law helps with both transaction planning and assessing litigation risk.

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If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings lawyers:

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