

Standing in the Shoes of a Suspended Corporation under California Law

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A California Court of Appeal recently provided a reminder that under Code of Civil Procedure § 368, assignment of a right to recover money or other personal property (“a thing in action”) is subject to any defense existing at or before notice of the assignment, including defenses regarding the assignor’s corporate status. Thus, an assignee of rights held by a corporation suspended pursuant to California Revenue and Taxation Code § 22301 may face difficulty enforcing those rights while the assigning corporation remains suspended.

In *Casiopea Bovet, LLC v. Chiang*, plaintiff had obtained a default judgment against Financial Title Company (“FT”) in 2008. Several years later, the California Franchise Tax Board suspended FT’s “powers, rights and privileges” for nonpayment of taxes. Thereafter, the San Mateo Superior Court assigned to Casiopea funds belonging to FT that had escheated to the State under the Unclaimed Property Law (Cal. Civil Proc. §1500 *et seq.*).

Casiopea subsequently submitted claims to the California State Controller seeking the unclaimed property held by the State on behalf of FT, pursuant to the assignment ordered by the court. The Controller denied the claims on the ground FT was a suspended corporation, incapable of exercising its corporate powers, rights or privileges, and that FT lacked capacity to claim those funds until its suspension was lifted. Casiopea subsequently filed an action seeking an order directing the Controller to turn over the FT property assigned to Casiopea. The Superior Court granted the Controller’s motion for judgment on the pleadings because Casiopea’s assignment was subject to all defenses that could have been asserted against FT.

Affirming, the Court of Appeal rejected Casiopea’s arguments that as an assignee it was an “innocent third party” that should be able to claim the escheated property, and that the penalties against a suspended corporation should not apply to the corporation’s assignee in a court-ordered assignment. The *Casiopea* court found that judicial assignments are afforded no special status or greater rights than assignments made voluntarily.

The court determined that when an assignee acquires a claim from an incapacitated corporation, the assignee takes the assignment subject to the same lack of capacity. Under California law, an assignee “stands in the shoes” of the assignor, taking his rights and remedies and subject to any defenses the obligor has against the assignor prior to the notice of assignment. As an assignee’s

rights are no greater than the assignor's, Casiopea could not do that which FT could not achieve, and thus it could not recover FT's unclaimed property from the State.

Acknowledging that incapacity of a suspended corporation was not an absolute bar to all litigation, *Casiopea* distinguished instances where an action was brought based upon an independent right or harm to the assignee. For example, a stockholder derivative action is not an exercise of the rights of a suspended corporation, but enforcement of the directors' fiduciary interests on behalf of the company's stockholders. Similarly, lack of capacity of a suspended corporation makes a contract voidable, such that a third party beneficiary may independently have standing to enforce the contract. Casiopea, on the other hand, was not bringing an independent claim, but asserting FT's right to the unclaimed property.

The court found public policy was furthered by its decision. Allowing an assignee of a suspended corporation to obtain unclaimed property would allow that corporation "to enjoy the ordinary privileges of an ongoing concern by resolving its debt without the risk of paying taxes," thereby undermining the deterrent goals of Rev. and Tax. Code § 22301.

The court further found that the 90-day statute of limitations to bring an action after the Controller's decision was not tolled while FT was suspended. As the limitations period had expired while FT was suspended, Casiopea's claim was time-barred and could not be revived.

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