

## **Assignments are Subject to Later Attack – Recent Case Invalidates Enforcement of Assignment – By Ellen Kaufman Wolf**

Beware of this trap for the unwary—Anyone taking assignment of a Judgment for collection must be sure that all assignees of the Judgment (and any rights and claims thereunder) had proper legal capacity at the time of each assignment. A valid judgment becomes altogether unenforceable when it has been assigned at a time when the assignor's corporate charter was suspended, and has not been revived before attempts to enforce the Judgment.

The court in *Cal-Western Bus. Services, Inc. v. Corning Capital Group*, 2013 WL 5936628 (Cal.App.Dist. 2, Nov. 6, 2013), recently held that a plaintiff who was assigned rights to a judgment had no right to sue on the judgment, because the assignor was a suspended corporation at the time of the assignment. The court reasoned that a suspended corporation lacks capacity to enforce a judgment and/or maintain a lawsuit; Plaintiff assignee “stands in the shoes” of the suspended corporation and thus likewise lacked capacity to maintain the action on the Judgment. The court also held that defendant's failure to timely assert an incapacity defense did not amount to a waiver of the defense, even after years of litigation on the merits.

There are other contracts at risk of invalidity as well, not only assignments of judgments. Leases, purchase and sale contracts, and any other agreements can also be invalidated if signed by a corporation without powers. Such corporations include a suspended corporation or a foreign nonqualified corporation (not authorized to do business in the state of California), and can also include LLCs if taxed as corporations. California law provides that specified limited liability companies (LLCs) and corporations that are suspended or forfeited for failure to file a tax return or for failure to pay delinquent taxes, penalties, or interest are subject to specified consequences, including contract voidability for the time period the entity is suspended or forfeited. As in the *Cal-Western* case cited above, contract voidability can be asserted by any party or alleged party to the contract other than the suspended taxpayer.

Also, a suspended or forfeited business entity loses the right to enforce its legal contracts. *Timberline, Inc. v. Jaisinghani*, (1997) 54 Cal. App. 4th 1361 (suspended corporation disqualified from exercising any right, power, or privilege, including prosecuting or defending an action, or appealing a judgment); *accord, Ransome-Crummey Co. v. Superior Court* 54 Cal.App.4th 1366 (1992) 188 Cal. 393, 396-

397, 205 P. 446; *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1957) 155 Cal.App.2d 46, 50-51 317 P.2d 649); *Boyle v. Lakeview Creamery Co.* (1937) 9 Cal.2d 16, 20-21, 68 P.2d 968; *Gar-Lo, Inc. v. Prudential Sav. & Loan Assn.* (1974) 41 Cal.App.3d 242, 245, 116 Cal.Rptr. 389; *Brown v. Superior Court* (1966) 242 Cal.App.2d 519, 535, 51 Cal.Rptr. 633.

Any person who attempts to exercise the powers, rights and privileges of a suspended corporation (which would include prosecuting or defending claims) may be punished “by a fine of not less than \$250 and not exceeding \$1,000, or by imprisonment not exceeding one year”. California Revenue and Taxation Code Section 19719. This includes attorneys (except those retained by an insurance company, who are expressly exempt from Section 19719). Court rulings, and rules of professional responsibility, proscribe an attorney’s participation in proceedings which the attorney knows, or should know, are illegal or unjust. (See, e.g., *In re Disbarment of C. C. Stephens*, 77 Cal., 357, 359-60 (1888); California Rule of Professional Conduct No. 3-210, or No. 3-310(b)(4).)

Contracts by a suspended or forfeited business entity will remain voidable and unenforceable by the entity, and the entity will be powerless in court, unless corporate reviver and/or relief from contract voidability are sought and granted by taxing authorities, which can be a lengthy and expensive process.

This is a good reminder for all that the best practice, whenever involved with a purchase, sale, settlement, or other assignment of any asset, right or interest (and especially a judgment), is to be sure to obtain good standing certificates proving the corporate status of the applicable parties, including previous transferors of any assets. Also, in litigated matters, check the corporate status of the parties at the inception, and periodically throughout the case, especially on the eve of trials or dispositive motions. If not, be prepared to face unintended consequences later.