

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARLOS LOPEZ, AN INDIVIDUAL
AND AS A DIRECTOR OF THE
CARSTAN CORPORATION; AND THE
CARSTAN CORPORATION, A NEVADA
CORPORATION,

Appellants,

vs.

G. STANMORE RASMUSSEN, AN
INDIVIDUAL AND AS A DIRECTOR OF
THE CARSTAN CORPORATION,
Respondent.

No. 43114

FILED

FEB 16 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order that granted, on remand, a motion to dismiss for lack of standing and corporate authority in a corporate shareholder action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

The parties are familiar with the facts, and we do not recount them except as necessary for our disposition.

The appellants appeal a district court order dismissing Carlos Lopez's derivative corporate opportunities claim, after the claim was remanded for a new trial pursuant to this court's previous order.¹

¹See Rasmussen v. Lopez, Docket No. 36958 (Order Affirming in Part, Reversing in Part and Remanding, July 11, 2002, p. 4) (citing Wynn v. Smith, 117 Nev. 6, 16-17, 16 P.3d 424, 430 (2001)).

In our previous order we clarified that Lopez did not have an individual partnership claim, but that he did have a derivative claim on behalf of Carstan for the alleged usurpation of Carstan's corporate opportunities. Due to the confusing and overlapping nature of the partnership and corporate opportunity instructions, it was our intent to reverse the jury's verdict as to Carstan's corporate opportunities claim and to remand this claim for a retrial.

On remand, the respondents argued, and the district court agreed, that this court did not reverse the jury's verdict as to Carstan's corporate opportunities claim. The district court consequently dismissed Lopez's derivative corporate opportunities claim under the doctrine of judicial estoppel and on unrelated procedural grounds. This dismissal was not in accord with the language and intent of our previous order. Therefore, we hold the district court erred in dismissing Lopez's derivative claim.

Lopez's derivative claim for the usurpation of Carstan's corporate opportunities must be retried.² Therefore, we once again remand Lopez's derivative corporate opportunities claim for a new trial. Accordingly, we

²We need not reach the merits of judicial estoppel, NRCP 23.1, or NRS 78.585. Furthermore, even after reviewing the record and the parties' arguments, we note that these mechanisms do not apply to bar Lopez's derivative corporate opportunities claim.

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court for proceedings consistent with
this order.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

cc: Hon. Connie J. Steinheimer, District Judge
Hale Lane Peek Dennison & Howard/Reno
Molof & Vohl
John P. Echeverria
Jeffer, Mangels, Butler & Marmaro, LLP
Washoe District Court Clerk