

IN THE SUPREME COURT OF THE STATE OF NEVADA

BIONIC BUFFALO CORPORATION,
Appellant,
vs.
INTEGRATED SYSTEMS, INC.; AND
WIND RIVER SYSTEMS, INC.,
Respondents.

No. 52912

FILED

JUL 14 2010

TRACIE W. LINDEMAN
CLERK OF SUPREME COURT
BY *A. K. [Signature]*
DEPUTY CLERK

ORDER DENYING MOTION AND
DISMISSING APPEAL

This court previously granted a motion to withdraw filed by former counsel for appellant. In that order, we directed appellant to retain new counsel and cause new counsel to file a notice of appearance with this court. We cautioned appellant that failure to retain new counsel would result in dismissal of this appeal, as a corporate entity cannot proceed on appeal in proper person. See State v. Stu's Bail Bonds, 115 Nev. 436 n.1, 991 P.2d 469, 470 n.1 (1999) (noting that "business entities are not permitted to appear, or file documents, in proper person").

In response, Michael Marking, identified as a director of Bionic Buffalo Corporation ("Bionic"), submitted a proper person document entitled, "Motion for Substitution of Parties, For Leave to Submit Briefs, and for Oral Arguments." In that motion, Mr. Marking argued that because Bionic is a dissolved corporation, the directors of Bionic "are now real parties in interest to this action." Thus, Mr. Marking requested that he and another director, Nancy Fleming, be substituted in the place of Bionic as appellants and identified as trustees of the dissolved corporation. Mr. Marking also requested that the "trustees be permitted

to file briefs,” and for this court to schedule oral argument. Respondents opposed the motion.

In our order denying that motion, we noted that pursuant to NRS 78.590, under certain circumstances,¹ the board of directors may become trustees of a dissolved corporation. However, the granting of such a motion would require a court to consider the circumstances of the dissolution of the corporation. Further, we also noted that depending on those circumstances, it may be more appropriate for a receiver to be appointed rather than recognizing the directors as trustees. See e.g., NRS 78.600. Thus, such a determination would require fact finding, a task for which this court is not suited,² and consideration of matters not contained in the appellate court record.³ Our order indicated that our denial of the motion was without prejudice to any parties’ right to pursue any appropriate substitution or receivership proceedings in the district court if deemed necessary and allowable by an appropriate statutory provision.

¹ NRS 78.590 provides that if a corporation is dissolved under the provisions of NRS 78.580, or upon the expiration of the period of its corporate existence, the directors become trustees of the corporation. Under NRS 78.580, if stock has been issued, directors become trustees of the corporation if the directors have recommended dissolution to the stockholders and the stockholders entitled to vote have approved the dissolution. If no stock has been issued, only the directors need to approve the dissolution.

² See Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

³ See NRAP 10(b); Carson Ready Mix v. First Nat’l Bk., 97 Nev. 474, 635 P.2d 276 (1981).

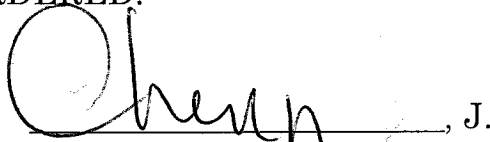
Additionally, we also noted that even as trustees, the directors would still be required to retain counsel to proceed with this appeal. As noted in our previous orders, no statute or court rule authorizes an entity to represent itself or to be represented by a nonlawyer in this court. State v. Stu's Bail Bonds, 115 Nev. 436 n.1, 991 P.2d 469, 470 n.1 (1999); See also Salman v. Newell, 110 Nev. 1333, 1336, 885 P.2d 607, 608 (1994) (trustee who is not an attorney cannot represent trust in either district court or supreme court, and trusts cannot proceed in proper person in supreme court); and Sunde v. Contel of California, 112 Nev. 541, 915 P.2d 298 (1996) (president of corporation could not represent corporation on appeal even though corporation had assigned its rights in litigation to president). Accordingly, we again directed appellant to retain new counsel and cause new counsel to file a notice of appearance with this court. We cautioned appellant that failure to retain new counsel would result in dismissal of this appeal.

In response, Mr. Marking filed a motion for an extension of time to retain new counsel for Bionic. We granted that motion and again cautioned appellant that failure to retain new counsel would result in dismissal of this appeal.

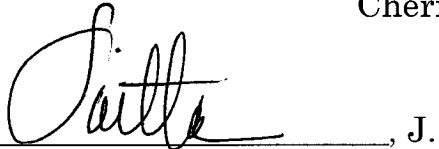
Mr. Marking has now submitted a motion requesting reconsideration of our order denying his motion to substitute himself and another former director as trustees in the place of Bionic. We deny that

motion.⁴ Further, as it appears appellant will not be retaining counsel, we dismiss this appeal.

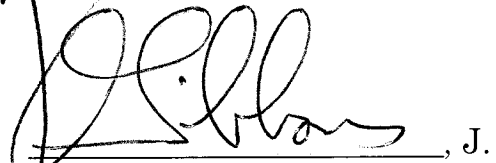
It is so ORDERED.


Cherry, J.

Cherry


Saitta, J.

Saitta


Gibbons, J.

Gibbons

cc: First Judicial District Court Dept. 2, District Judge
Cathy Valenta Weise, Settlement Judge
Bionic Buffalo Corporation
Michael Marking
Cooley Godward Kronish LLP
Robison Belaustegui Sharp & Low
Carson City Clerk

⁴ The clerk shall file the Motion for Reconsideration. We decline, however, to grant Mr. Marking permission to file any further documents in this appeal. See NRAP 46(b).