

SEPTEMBER 12, 2014

### Foreign Corporation Must Have A New Jersey Certificate Of Authority In Order To Maintain Its Lawsuit

By: Ronald J. Campione, Esq.

**On September 3, 2014, the New Jersey Appellate Division ruled that a foreign corporation could proceed with a New Jersey lawsuit after taking the necessary steps to obtain a certificate of authority and filing a business activities report.** In *The Basement Store Franchise Corp. v. Natoli*, the plaintiff was a Nevada corporation with principal offices in Long Branch, New Jersey. Plaintiff, a franchisor, filed suit against a franchisee, and its principals, for various causes of action for monetary damages and injunctive relief. 2014 N.J. Super. Unpub. LEXIS 2161. Shortly after filing, Defendants consented to the injunctive relief and the case continued on monetary damage claims.

Subsequently, on Defendants' motion for summary judgment, the Court dismissed the Complaint, without prejudice, for Plaintiff's failure to obtain a certificate of authority to transact business in New Jersey. Without a certificate of authority, a foreign corporation lacks standing to "maintain any action or proceeding in any court" in New Jersey. N.J.S.A. 14A:13-11(1). The Court gave the Plaintiff approximately one month to obtain a certificate of authority and to file a business activities report and pay back taxes pursuant to N.J.S.A. 14A:13-20. Plaintiff took corrective action, filed for its certificate of authority and business activities report. Plaintiff received the certificate of authority approximately five months later in September 2012.

Despite its diligence aimed at compliance, Plaintiff was unable to meet the deadline set by the Court for reinstatement of its Complaint. The Law Division then dismissed the Complaint with prejudice finding that the delay in obtaining the certificate of authority unduly delayed the matter and prejudiced the Defendants.

On appeal, the Appellate Division reversed the dismissal of the Complaint with prejudice. The appellate court found that although New Jersey Corporation law required foreign corporations to obtain a certificate of authority to do business in New Jersey, the trial court erred in not considering Plaintiff's actions to comply. It found that Plaintiff acted within days of the first dismissal, without prejudice, and filed the necessary applications. Plaintiff also took steps to pay the back taxes and fees. Although not in full compliance by the trial court's deadline, the Appellate Division found that plaintiff was attempting to fully comply and was in full compliance before the hearing on its motion for reinstatement of the Complaint. Finding that there was no remediable prejudice to Defendants, the Appellate Division reversed the dismissal of the Complaint.

Foreign corporations doing business in New Jersey must file and obtain a certificate of authority to do business in the state. N.J.S.A. 14A:13-4. Without the certificate of authority, the foreign corporation lacks standing to maintain a legal action or proceeding in any court in New Jersey. N.J.S.A. 14A:13-11(1). Although in *The Basement Store Franchise Corp.*, Plaintiff was able to reinstate its Complaint, it lost time and expended monies for additional legal fees, which could have been avoided. The lesson learned from this case is that a foreign corporation should seek legal advice regarding the requirements to do business in New Jersey and obtain the required authority prior to filing a lawsuit.

For more information about any of the topics covered in this issue of the Litigation Alert, please contact:

Ronald J. Campione, Esq.  
rcampione@bressler.com  
973.245.0681

The information contained in this Client Alert is for general informational purposes only and is neither presented nor intended to constitute legal advice or a legal opinion as to any particular matter. The reader should not act on the basis of any information contained herein without consulting first with his or her legal or other professional advisor with respect to the advisability of any specific course of action and the applicable law.

The views presented herein reflect the views of the individual author(s). They do not necessarily reflect the views of Bressler, Amery & Ross, P.C. or any of its other attorneys or clients.