

A Director No More, But It Does Not Matter: California Supreme Court Rules That Director Of Nonprofit Public Benefit Corporation May Maintain Action To Remedy A Breach Of General Trust Or Cover Damages For Self-Dealing Even If The Director Loses His Or Her Position On The Board During The Pendency Of The Lawsuit

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Under California Corporations Code §§ 5142 and 5233, a director of a nonprofit public benefit corporation may bring an action to remedy a breach of the charitable trust or recover damages for self-dealing transactions by other directors. Similarly, under Corporations Code § 5223, the trial court may, "at the suit of a director" remove from office any director guilty of malfeasance. However, a question has arisen as to whether a director of a charitable corporation loses standing to maintain a suit against a nonprofit public benefit corporation when the director loses his or her director position (i.e., if the director loses the position on the Board, does the director lose standing to maintain the lawsuit).

In Turner v. Victoria (2023) 532 P.3d 1101, the California Supreme Court answered this question. The California Supreme Court ruled that, based on an examination of statutory text, surrounding context, legislative history, and the "overarching purpose of" the director enforcement statutes, a director who fails to maintain the director's position will not lose standing to continue a previously filed lawsuit.

As for the Turner case, Conrad Prebys (Prebys) was a wealthy philanthropist. Prebys created an intervivos trust, The Conrad Prebys Trust (The Trust). Prebys funded The Trust and directed it to make distributions to specific beneficiaries after his death. The assets remaining after the gift distributions were to "go to the Foundation to be used for charitable purposes." Under the Foundation's bylaws, all of the directors were also members of the Foundation, and the Foundation had no other members. Most of the directors had a personal relationship with Prebys.

On May 15, 2017, while still a director, officer, and member of the Foundation, Plaintiff Debra Turner filed a Petition with the Probate Court (after Prebys' death) in July 2016 against her fellow board members. The suit included claims for breach of charitable trust, breach of the board members' duty of care, etc. The director defendants, fully aware of the lawsuit, held a meeting in November 2017, at which time the Board conducted an election of Foundation directors and officers. Following the election, Plaintiff lost her position as a director, officer, and consequently, a member of the Foundation. The Plaintiff alleged that the loss of positions was an act of retaliation.

Thereafter, the Probate Court Ordered the Four Causes of Action discussed above severed and transferred for resolution as a separate civil proceeding. Plaintiff Turner subsequently filed a civil Complaint in the Superior Court. The Defendants Demurred, arguing that the Plaintiff no longer had standing. The Trial Court agreed and Dismissed the claims against the director Defendants.

The Court of Appeal affirmed.

However, the California Supreme Court granted review to resolve the question of standing. In a lengthy Opinion issued on August 3, 2023, the California Supreme Court analyzed the relevant statutes, as well as their historical context, and public policy concerns, and held that Plaintiff Turner did not need to maintain her director position in order to pursue her claims. What the Turner case says is that, once a charitable board member has asserted claims of, for example, self-dealing, that director need not retain the position of director to pursue the director's claims as, ultimately, a former director.

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