

**Dictor v. Creative Mgmt. Servs., LLC**  
**126 Nev. Adv. Op. No. 4 (February 4, 2010)<sup>1</sup>**

**Civil Procedure – Law-of-the-Case Doctrine**

**Civil Procedure – Choice of Law**

**Summary**

Appeal of district court order granting summary judgment.

**Disposition/Outcome**

The Court affirmed the district court’s order granting summary judgment. The Court concluded that the district court did not violate the law-of-the-case doctrine and did not err in its choice-of-law decision.

**Factual and Procedural History**

Creative Management Services, Inc. (“Creative”) is a Missouri company that provides trade show support and services in Las Vegas. During a Las Vegas trade show in June 2000, Loews Corporation (“Loews”) had approximately \$120,000 in property stolen. Loews in turn filed a claim with its insurance carrier, Hartford Insurance Company, which then subrogated the claim to CPCI. CPCI filed suit against Creative alleging, among other causes of action, negligence and conversion for the loss of the Loews property. Creative’s insurance company had been declared insolvent.

Creative moved for summary judgment on the basis that NRS 687A.095 (2008) precludes recovery against an insured of an insolvent insurance company. The district court granted Creative’s motion for summary judgment and CPCI appealed. An amicus brief was filed shortly before oral argument, arguing that under a choice-of-law analysis, that MO. REV. STAT. § 375.772 (2009) which mirrors NRS 687A.095, should apply. Without opining on the choice-of-law analysis pertaining to the Missouri statute, the Nevada Supreme Court determined that NRS 687A.095 did not apply,<sup>2</sup> reversed the order granting summary judgment, and remanded the case for further proceedings.

Creative filed a second motion for summary judgment with the district court arguing that since NRS 687A.095 was inapplicable, the district court should apply choice-of-law analysis and find that the Missouri statute applies. The district court granted Creative’s motion for summary judgment and CPCI again appealed.

CPCI appealed contending that the Nevada Supreme Court’s prior opinion disposed of the possibility of statutory defenses and thus, under the law-of-the-case doctrine, Creative could not assert MO. REV. STAT. § 375.722 as a defense.

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<sup>2</sup> The Court determined that the claim did not fall under the definition of a “covered claim” under NRS687A.033 (2009).

The Court framed the issues on appeal in two questions. First, does the law-of-the-case doctrine prohibit Creative from asserting a defense to the tort claims under MO. REV. STAT. § 375.772? Second, if Creative is not prohibited from asserting a defense under MO. REV. STAT. § 375.772, did the district court properly analyze the choice of law in dismissing CPCI's complaint?

## **Discussion**

### *Law-of-the-Case Doctrine*

Under the law-of-the-case doctrine, “when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case.”<sup>3</sup> The issue must be decided explicitly or by “necessary implication” for the doctrine to apply.<sup>4</sup> The doctrine does not apply if the “issues presented in a subsequent appeal differ from those presented in a previous appeal.”<sup>5</sup> The doctrine does not preclude a district court from decided issues not already decided.<sup>6</sup> The Court concluded that the district court was free to hear a renewed motion for summary judgment based on an alternate statutory defense since its prior order did not compel the district court to proceed to trial without addressing further dispositional motions.

### *Choice of Law*

General Motors Corp. v. Dist. Court,<sup>7</sup> which the district court relied for its choice-of-law analysis, adopts the RESTATEMENT (SECOND) OF CONFLICTS OF LAW (“RESTATEMENT”) for Nevada tort cases. General Motors held that the relationship test of section 6 of the RESTATEMENT governs choice-of-law analysis absent “another, more specific section” applying. The Court concluded that the district court erred in applying section 6, rather than the “more specific section,” section 161. According to the comments of section 161, defenses to tort liability based on the relationship of the parties can be governed by the law where the parties are domiciled, rather than the local law where the conduct and injury occurred. Although the district court’s choice-of-law analysis was flawed, the Court reached the same result under the section 161 analysis. The Court concluded that MO. REV. STAT. § 375.722 provides a relationship-based defense and since Creative is domiciled in Missouri and CPCI submitted to the statutes of Missouri through Hartford, MO. REV. STAT. § 375.722 applies.

## **Conclusion**

MO. REV. STAT. § 375.722 precludes CPCI’s claim against Creative and summary judgment is affirmed.

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<sup>3</sup> Hsu v. County of Clark, 123 Nev. 625, 629, 173 P.3d 724, 728 (2007); Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003).

<sup>4</sup> Snow-Erlin v. United States, 470 F.3d 804, 807 (9th Cir. 2006).

<sup>5</sup> Emeterio v. Clint Hurt & Assocs., 114 Nev. 1031, 1034, 967 P.2d 432, 434 (1998).

<sup>6</sup> Snow-Erlin, 470 F.3d at 807.

<sup>7</sup> General Motors Corp. v. Dist. Court, 122 Nev. 466, 134 P.3d 111 (2006).