



## California Suspended Corporations Law Alert

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### California Supreme Court Applies Rule Of Retroactive Revival To Notices Of Appeal Filed By A Suspended Corporation

On March 4, 2013, the California Supreme Court issued its highly-anticipated ruling on the question of whether a corporation that filed notices of appeal while its corporate powers were suspended may proceed with the appeals by reviving its powers, even if the revival occurs after the time to appeal has expired. The court answered this question in the affirmative, holding in *Bourhis v. Lord*, Case Nos. S199887 and S19889, that the rule of retroactive revival applies to notices of appeal.

Brown Eyed Girl (“BEG”), a California Corporation, timely filed notices of appeal while its corporate powers were suspended pursuant to Rev. & Tax. Code §23301, et seq., for the failure to pay taxes. Those notices were invalid because a corporation may not appeal from an adverse judgment in an action while its corporate powers are suspended. BEG subsequently received a certificate of revivor, which revived its corporate powers. However, by that time the appeals period had expired, raising the question of whether the revival of BEG’s corporate powers validated its earlier notices of appeal.

Under principles of stare decisis, the California Supreme Court applied the four decades old rule of retroactive revival stated in *Rooney v. Vermont Investment Corp.* (1973) 10 Cal. 3d. 351 and *Peacock Hill Assn. v. Peacock Lagoon Constr. Co.* (1972) 8 Cal. 3d 369. The court found that good reason exists not to overrule those cases because, over the years, appellate courts have cited them in the resolution of a variety of issues concerning the suspension of corporate powers, often holding that corporate revival validates prior actions. The court also indicated that, if the rule stated in this precedent was to be modified, it should be modified by the Legislature.

The court acknowledged the tension between the rule that there is no retroactive revival regarding statutes of limitations, and a rule that there is retroactive revival regarding notices of appeal. However, it felt that the two could be reconciled under Rev. & Tax. Code §23305a, which provides that revival “shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension . . .” The court explained that statutes of limitation constitute a substantive “defense” under §23305a, while being in a position to move to dismiss an untimely appeal is not a “right” under that section—it is merely a jurisdictional requirement.

The court held that, upon application of the rule of retroactive revival to this case, the reinstatement of BEG’s corporate powers made its invalid but timely notices of appeal both valid and still timely.

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