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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CAROLYN ROBINSON et al.,
Plaintiffs and Appellants,
v.
SSW, INC.,
Defendant and Respondent.

A130174

(San Francisco County
Super. Ct. No. CGC-06-457534)

This is an appeal from final judgment after the trial court granted the motion for summary judgment filed by defendant and respondent SSW, Inc. The decedent in this wrongful death action, a California resident, died of mesothelioma, an asbestos-related cancer. The trial court granted summary judgment to SSW, Inc., a Nebraska company, on two distinct grounds. First, the trial court found that, pursuant to the Nebraska corporate survival statute, the decedent's heirs are barred from suing SSW, Inc. because the company was dissolved in 2002, over five years before it was brought into this lawsuit. Second, the trial court found no triable issue of fact with respect to whether decedent had been exposed to an asbestos-containing product manufactured, distributed or sold by SSW, Inc. On appeal, plaintiffs challenge both findings by the trial court and ask this court to reverse the judgment against them. For reasons discussed below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Douglas G. Robinson (decedent) died on November 10, 2005, at the age of 64 from mesothelioma, a cancer linked to asbestos exposure. On November 1, 2006, decedent's wife, Carolyn Robinson, and their three children, Donna, Aaron and Paul

Robinson (collectively, plaintiffs) filed a complaint for wrongful death and survival, alleging that decedent's death was caused by his occupational exposure to asbestos. The complaint, which was later amended, alleged in particular that decedent was harmed by asbestos-containing boilers or boiler components manufactured, distributed or sold by Nebraska Boiler Company, Inc. (Nebraska Boiler). Nebraska Boiler, in turn, was a division of National Dynamics Corporation, which later became known as SSW, Inc. (defendant or SSW).

Decedent worked as a boiler tender and boiler repairman, first, in the United States Navy from 1958 to 1969 and, second, at a fruit cannery in Modesto owned by the Signature Fruit Company, formerly known as Tri-Valley Growers (Tri-Valley) from 1969 to 1971 and again from approximately 1973 to 2000. At Tri-Valley, the relevant work site for our purposes, decedent was in charge of maintenance, including all aspects of cleaning and repair, for all boilers housed at Plant No. 7 ("Plant No. 7").[1]

Plant No. 7 was just one of several plants located on the premises of Tri-Valley in Modesto. Plant No. 7 was constructed in 1969 with two brand new boilers. In 1974, a third boiler was added and, by the early 1980's, there were four to five boilers housed within the plant. Plant No. 7 used these boilers to generate steam to, among other things, operate the fruit canning machinery.

In the early 1970s, Tri-Valley purchased two boilers from Nebraska Boiler that were shipped to its Modesto facility, one in 1973 and the other in 1974. An SSW corporate representative acknowledged that, during this time period, some Nebraska boilers may have been equipped with asbestos-containing manway gaskets manufactured by third parties.[2] Purchase orders and shipping invoices reflect that at least some of the components on the two Nebraska boilers shipped to Tri-Valley in 1973 and 1974 contained asbestos. The boilers did not contain warning labels advising of the health risks associated with asbestos.

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[1] There is no evidence decedent worked anywhere at Tri-Valley besides Plant No. 7.

[2] According to Roger Swanson, a former SSW director and National Dynamics president, Nebraska Boiler stopped using asbestos around 1979.

On June 1, 2002, SSW, of which Nebraska Boiler was a division, dissolved as a corporation, publishing the requisite notice of dissolution in a Nebraska newspaper. Over four years later, on November 1, 2006, this lawsuit was filed in California court naming several defendants, but not SSW, as well as several "Doe" defendants. SSW was then added as a defendant in a "Doe" amendment filed February 18, 2009.[3]

On August 27, 2010, SSW moved for summary judgment on two grounds. First, SSW asserted that, as a dissolved Nebraska company subject to Nebraska's five-year corporate survival statute (Neb. Rev. Stat. § 21-20,157), it was immune from suit. Second, SSW argued there was no evidence decedent had any contact with an asbestos-containing product placed into the stream of commerce by Nebraska Boiler and, thus, no evidence that SSW caused his injuries.

Plaintiffs responded that SSW was subject to California's corporate survival statute rather than Nebraska's statute, and thus was not immune from suit. In addition, plaintiffs offered the deposition testimony of one of decedent's former co-workers at Tri-Valley, Lindon Brumley. According to Brumley's testimony, decedent did a variety of repair and maintenance work on the Nebraska boilers at Plant No. 7 from "1973, I think" until the 2000s, which work included dust-producing tasks such as removing and replacing gaskets and removing insulation. Plaintiffs also relied upon purchase orders and shipping invoices produced in this case by Tri-Valley to show that Nebraska Boiler shipped asbestos-containing products to Tri-Valley Modesto in 1973 and 1974. Finally, plaintiffs presented the declaration of expert William Longo, who opined that decedent would have been exposed to asbestos while performing tasks on the Nebraska boilers such as removing old refractory cement from inside the boilers and removing and replacing gaskets on the manholes of the boilers.

After a contested hearing on SSW's summary judgment motion, the trial court found that plaintiffs' lawsuit was barred by Nebraska's five-year corporate survival statute for dissolved corporations. (Neb. Rev. Stat. § 21-20,157.) In so ruling, the trial

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[3] SSW, one of several named defendants, is the sole respondent in this appeal.

court rejected plaintiffs' argument that California's corporate survival statute, Corporations Code section 2010, controlled in this case. Rather, the trial court ruled that the Nebraska corporate survival statute controlled, reasoning that Corporations Code section 2010 applies only to domestic corporations, not to foreign corporations like SSW. Further, the trial court found that even if Corporations Code section 2010 applied, SSW would nonetheless be entitled to summary judgment because there was no triable issue of fact regarding decedent's exposure to asbestos-containing products attributable to SSW. As such, the trial court granted the motion and entered judgment in favor of SSW, prompting this timely appeal.

DISCUSSION

On appeal, plaintiffs raise the same arguments they raised before the trial court with respect to corporate survivorship and asbestos exposure. For reasons set forth below, we conclude the trial court properly granted summary judgment on the ground that SSW is immune from suit under the applicable corporate survival statute – to wit, Nebraska Revised Statutes section 21-20,157. As such, we need not reach the asbestos exposure issue. In explaining our conclusion, we begin by setting forth the relevant legal framework for appealing an order granting summary judgment.

I. Summary Judgment Standards.

A defendant moving for summary judgment has met its burden to show a cause of action lacks merit if the defendant can show the plaintiff cannot establish one or more elements of the cause of action. (Code of Civ. Proc., §437c, subd. (o)(2).) "In such a case, the defendant bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 [107 Cal.Rptr.2d 841, 24 P.3d 493] (*Aguilar*).) If the defendant carries the burden of production, the burden shifts to the plaintiff to make his or her own prima facie showing of the existence of a triable issue of fact. (*Ibid*.) 'There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance

with the applicable standard of proof. [Fn. omitted.]' (Ibid.)" (*McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1103.)

In reviewing an order granting summary judgment in favor of the defendant, we independently examine the record to determine whether there exists any triable issue of material fact. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767.) Thus, like the trial court, we consider all of the evidence set forth in the papers in the light most favorable to the plaintiffs as the losing parties. This review requires us to resolve any evidentiary doubts or ambiguities in the plaintiffs' favor. (*Id.* at p. 768; see also § 437c, subd. (c).) Purely legal issues, of course, are always subject to de novo review on appeal. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1089, fn. 10.)

With these standards in mind, we turn now to the record before us.

II. Is This Lawsuit Barred by Nebraska's Corporate Survival Statute?

The first issue we must address is a purely legal one—to wit, whether plaintiffs' lawsuit is barred by Nebraska's five-year corporate survival statute for dissolved corporations. (Neb. Rev. Stat. 21-20,157.) For reasons that follow, we conclude it is so barred.

The relevant facts are straightforward. SSW was a Nebraska corporation formed in 1976 to acquire Nebraska Boiler, the manufacturer of at least some of the asbestos-containing boilers alleged to have contributed to decedent's death in this case. SSW dissolved in June 2002. As such, under Nebraska law, SSW could only be sued as a corporate entity for injuries arising out of its predissolution activities within five years of its date of dissolution or, until June 2007. (Neb. Rev. Stat. 21-20,157.) This lawsuit, not amended to add SSW as a defendant until February 18, 2009, therefore missed the five-year survivorship period permitted under Nebraska law.

Plaintiffs, however, contend Nebraska law is not controlling here. They reason that, because SSW was licensed to do business in California and is being sued for injuries sustained in California, California's corporate survival statute, Corporations Code section

2010, governs instead of Nebraska's statute.[4] Section 2010, unlike the Nebraska statute, imposes no time limitation on suing dissolved corporate entities for predissolution business-related activities.[5]

In deciding which party has the better argument on this issue, we first turn to section 2010. Under section 2010, subdivision (a), "[a] corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it . . . ." Subdivision (b) is even more direct: "No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof." (§ 2010, subds. (a), (b).)

California appellate courts disagree on whether section 2010, or the law of the state of domicile, applies to a dissolved foreign corporation sued in California such as SSW. In fact, our own appellate district, the First District, has spoken twice on this issue, with different results.

In *Riley v. Fitzgerald* (1986) 178 Cal.App.3d 871 (*Riley*), the Second District Court of Appeal considered the applicability of section 2010 to foreign corporations in a case brought by the shareholders of a dissolved Texas corporation against a number of California parties. Although the parties had previously stipulated Texas law would apply, the court nonetheless held that, even if the parties had not so stipulated, it would apply Texas law because section 2010 does not apply to foreign corporations. The court reasoned that a dissolved foreign corporation has no higher standing or greater capacity

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[4] Unless otherwise stated, all statutory citations herein are to the Corporations Code.

[5] Section 2010 provides in relevant part:
"(a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof.
"(b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof." (§ 2010, subds. (a), (b).)

to maintain an action in California than it would in its state of incorporation. (*Id.* at pp. 875, 878-879.) The court also found persuasive the fact that section 2115 expressly identifies which Corporations Code provisions "apply to foreign corporations to the exclusion of the law of the jurisdiction in which they are incorporated. Conspicuous by its absence is section 2010." (*Id*. at p. 876.)

Shortly after *Riley*, a majority of a panel in Division Three of this district decided *North American Asbestos Corp. v. Superior Court* (1986) 180 Cal.App.3d 902 (*North American II*). Like this case, *North American II* involved a foreign corporation sued in California for asbestos-related injuries. Applying a conflict-of-law analysis, the court decided that California's significant interest in having its law applied to a foreign corporation causing injury to a California resident while transacting business in California trumped the other state's interest in protecting one of its corporations from extended litigation after dissolution. Significantly, in finding a conflict between California law and the law of the state of the foreign corporation's domicile, the court noted that the "keys to interpreting section 2010 lie in article XII, section 15 of the California Constitution [adopted in 1879] and the circumstances of its repeal in 1972 . . . ." (*North American II, supra,* 180 Cal.App.3d at p. 908.) Article XII, section 15, which was in effect when the predecessor to section 2010 was adopted (Civil Code former section 399), forbade any law that would allow a foreign corporation to transact business in California on terms more favorable than a domestic corporation. Although this constitutional provision was later repealed, the record of its repeal indicates that it was a "housekeeping measure" with no substantive effect on California law. According to the *North American II* court, these circumstances proved the term "corporation" in section 2010 was intended to mean foreign and domestic corporations because, to interpret it otherwise would violate the law embodied by article XII, section 15. [6] (*Id*. at pp. 908-909; Cal. Const., art. XII, § 15.)

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[6] Although *Riley* was decided just a few months before *North American II*, the latter court did not mention *Riley* when taking a contrary approach. Moreover, in deciding *North American II*, the court completely reversed its decision in an earlier appeal of the

Finally, we simply note the existence of another First District decision recently depublished pending California Supreme Court review. In this case, the court disagreed with both the analysis and conclusion of *North American II* as inconsistent with the relevant statutory language.[7]

Despite the uncertainty surrounding this area of law, particularly in light of our high court's ongoing review of a recent First District decision, the matter at hand requires us to join our colleagues in considering the applicability of section 2010 to foreign corporations. In doing so, we first note our agreement with *Riley* that the question before us is one of statutory interpretation. (See *Oklahoma Natural Gas Co. v. Oklahoma* (1927) 273 U.S. 257, 259-260 ["corporations exist for specific purposes, and only by legislative act, so that if the life of the corporation is to continue even only for litigating purposes it is necessary that there should be some statutory authority for the prolongation"].) More specifically, we believe the applicability of section 2010 to a dissolved foreign corporation like SSW hinges on whether the Legislature intended the term "corporation" in section 2010 to include all corporations, or just domestic corporations. In answering this question, we turn first to the list of defined terms set forth in division one of the Corporations Code, which is referred to as the "General Corporation Law" and includes section 2010. (§100, subd. (a).) In particular, section 162 defines "corporation" as follows: "Corporation, unless otherwise expressly provided, refers only to a corporation organized under this division or a corporation subject to this division under the provisions of subdivision (a) of Section 102.[8] (§ 162.) Thus, rather

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same case, in which it held, like *Riley*, that section 2010 applies only to domestic corporations. (*North American Asbestos Corp. v. Superior Court* (1982) 128 Cal.App.3d 138 (*North American I*).)

[7] We are aware of the legal rule barring citation to or reliance upon a depublished California case. (Cal. Rules of Court, rule 8.1115.) We nonetheless mention this recently depublished decision in order to accurately describe the current state of law with respect to the scope of section 2010.

[8] "Domestic corporation," in turn, is defined as a corporation formed under the laws of this state (§ 167), while "foreign corporation" is "any corporation other than a

than provide a direct answer, the statutory language presents us with two unresolved issues. First, what is a corporation "organized" under this division, i.e. under division one of the Corporations Code and, second, what corporations are subject to this division under section 102, subdivision (a). We address each of these issues in turn.

A. "Organized" under Division One.

Neither section 162 nor any other section of division one contains a statutory definition of the term "organized," but it is a relatively familiar concept in corporate law. The Ballentine Law Dictionary, for example, defines the term "organization of corporation" in relevant part as: "The process of forming and arranging into suitable disposition the parts of the body to be created and of defining the objects of such body. . . . A process completed when the first meeting has been called, the act of incorporation accepted, officers elected, and bylaws providing for future meetings adopted." (The Ballentine Law Dict., LexisNexis 2010 [italics added].) Consistent with this definition, chapter two of division one, entitled "Organization And Bylaws," contains a series of provisions relating to these exact corporate processes—to wit, filing articles of incorporation, electing officers and adopting bylaws.[9] Section 200, the first provision of chapter two, identifies the most fundamental step of corporate formation: filing the articles of incorporation and thereby triggering the start of a corporation's legal existence. This provision, which expressly mentions both domestic and foreign corporations, states as follows:

"One or more natural persons . . . or *corporations, domestic or foreign,* may form a corporation under this division by executing and filing articles of incorporation. [¶] . . .

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domestic corporation . . ." (§ 171.) No party to this appeal contends SSW is a domestic corporation.

[9] While chapter headings are unofficial and cannot be relied upon to alter the explicit scope, meaning, or intent of a statute (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal. 4th 593, 602), they do shed light on the statute's subject matter and are useful in determining the intended scope of legislation. (*People v. Garfield* (1985) 40 Cal.3d 192, 199-200; see also *In re Bandmann* (1958) 51 Cal.2d 388, 392.)

[¶] The corporate existence begins upon the filing of the articles and continues perpetually. . . ." (§ 200, subd. (a), (c) [italics added].)

The provisions following section 200 address other basic steps in the corporate formation process. For example, there are specific requirements for forming certain types of corporations, including banks, trusts and insurance companies, which must obtain special State-issued certificates of approval. (§§ 201, 201.5.) There are also provisions governing the information required or permitted to be set forth in the articles of incorporation. This information includes, among other things, the corporate name and general purpose, the amount and classes of stock the corporation is authorized to issue, and the names and addresses of the corporation's initial directors and agent for service of process. (Eg., §§ 202, 203, 203.5, 204.) Other provisions in chapter two set forth the basic powers a corporation possesses in carrying out its business activities and describe the evidence required to prove a corporation's existence. (§§ 207-209.)

Section 210, also found in chapter two of division one, expressly references the term "organization," stating: "If initial directors have not been named in the articles, the incorporator or incorporators, until the directors are elected, may do whatever is necessary and proper to *perfect the organization* of the corporation, including the adoption and amendment of bylaws of the corporation and the election of directors and officers." (§ 210 [italics added.])[10] And, consistent with section 210, the last two provisions of chapter two, sections 211 and 212, govern the corporation's right to adopt, amend and repeal bylaws. (§§ 211-212.)

Viewing these provisions collectively and in proper context, we are able to reasonably deduce the meaning of the phrase "organized under this division" for purposes of section 162. First, as reflected in its basic legal definition (p. 9, above), "organizing a corporation" is a term of art relating to a defined set of steps by which a corporation

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[10] The verb "perfect" means to "complete; descriptive of contracts and obligations which can be enforced by law, and of trusts which have been executed. Cf. imperfect obligations and imperfect trust. (2) To take all of the applicable steps required by law, e.g. . . .)" (The Law Dictionary (Anderson Publishing Co., 2002).)

becomes a legal entity. For purposes of California's General Corporation Law, these steps are set forth in chapter two. And, as the first provision of chapter two makes clear, the most basic and significant step in this process is the filing of the articles of incorporation: "The corporate existence begins upon the filing of the articles and continues perpetually . . . ." (§ 200, subd. (c).)

The other steps in the organizational process, in turn, relate mainly to the substance of the articles of incorporation and are set forth in the provisions following section 200. For example, as discussed above, articles of incorporation duly certified by the Secretary of State, must, among other things, set forth certain information regarding the newly formed corporation's capital structure, its initial agent for service of process and initial directors or incorporators. (§§ 202-209.) In addition, the articles may, but need not, set forth certain shareholder and director rights and duties. (§ 204) Finally, the newly formed corporation may, but need not, provide for the adoption and amendment of corporate bylaws and the election of officers. (§§ 207-209.) Through these initial steps a corporation is organized and, thus, ready to begin the actual transaction of business (which is, in turn, the subject of other chapters of division one). (§ 210.)

The question remains, however, whether SSW, the relevant corporation in this case, was organized under division one. Plaintiffs insist SSW was organized under division one because the corporation complied with the "organizational mandates" of chapter 21. (E.g., §§ 2100-2117.1) As plaintiffs correctly note, chapter 21, entitled "Foreign Corporations," governs the business dealings of foreign corporations, like SSW, that "transact intrastate business" in California. However, contrary to plaintiffs' claim, chapter 21 has nothing to do with the more fundamental procedures by which a corporation becomes organized under the General Corporation Law of this state. Rather, chapter 21 regulates foreign corporations organized under the laws of another state that seek to transact a significant portion of their business in California.[11]

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[11] Section 191, subdivision (a) defines "transact intrastate business" for purposes of chapter 21 as "entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce."

In interpreting chapter 21 in this manner, we first point to the legislative committee comment to section 2115, which states: "In general, if a corporation is incorporated in another state it is not required to comply with the General Corporation Law of this state even though all of its shareholders reside in this state and it carries on all of its business within this state. This section requires a foreign corporation with specified minimum contacts in this state to comply with certain provisions of the new law, for the protection of California creditors and shareholders." (See Legis. Com. com., 23E West's Ann. Corp. Code (1990 ed.) foll. § 2115, p. 578.) Consistent with this comment, section 2105 requires foreign corporations with the specified minimum contacts to obtain a certificate of qualification to transact business in California by, among other things, filing a signed statement identifying the foreign corporation's name and "state or place of incorporation or organization" (§ 2105, subd. (a)(1)), as well as a certificate signed by an authorized public official of the state or place of incorporation confirming the foreign corporation is a corporation in good standing in that state. (§ 2105, subd. (b).) If we were to conclude, as plaintiffs request, that a foreign corporation complying with section 2105 is a corporation organized under California law, the requirement in section 2105 that the foreign corporation file a signed statement in California identifying its "state or place of incorporation or organization" and a certificate of corporate good standing in that other state would make no sense. (Compare *The Capital Gold Group, Inc. v. Nortier* (2009) 176 Cal.App.4th 1119, 1132 [" 'The purpose of the certificate of qualification [under § 2105] is to facilitate service of process and to protect against state tax evasion.' [Citation]"].)

Another provision of chapter 21—section 2115—adds support to our conclusion that organizing as a corporation under chapter two and becoming qualified to transact intrastate business under chapter 21 are distinct processes for distinct types of corporations (mainly, newly-formed corporations under chapter two and foreign corporations under chapter 21). As noted in *Riley, supra,* 178 Cal.App.3d at p. 876, section 2115 provides that, with some exceptions not relevant here, foreign corporations meeting certain criteria for doing business in California are subject to specific

enumerated "chapters and sections . . . to the exclusion of the law of the jurisdiction in which they are incorporated." These specific enumerated provisions include neither chapter two in general nor section 2010 in particular. (§ 2115, subd. (b).)

Thus, for the reasons provided, we reject plaintiffs' argument that chapter 21 imposes "organizational mandates" on foreign corporations such that a foreign corporation in compliance with its mandates becomes "organized under division one" within the meaning of section 162. And, more specifically, we reject their argument that SSW was organized under division one because it may have complied with certain requirements under chapter 21 for transacting intrastate business in California. To become organized under division one, SSW would need to file articles of incorporation in California. (§ 200.) We have seen no evidence of that in this case. (§ 209 ["a copy of the articles of a corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation"].)

Moreover, because we conclude SSW is not a corporation "organized under" division one for purposes of section 162, we are left only to decide whether SSW nonetheless falls within the scope of section 162 as "a corporation subject to [division one] under the provisions of subdivision (a) of Section 102." (§ 162.) For reasons that follow, we conclude SSW does not.

B. "Subject to" Division One pursuant to Section 102(a).

Section 102, subdivision (a) provides in relevant part that division one applies to two general categories of corporations: (1) "corporations organized under this division," and (2) "domestic corporations" except those specifically identified in the statute as being excluded from its scope. The statute then adds that, with respect to all other corporations, "this division applies to any other corporation only to the extent expressly included in a particular provision of this division."[12] (§ 102, subd. (a).) As previously stated, no party

[12] Section 102, subdivision (a) provides in full: "Subject to Chapter 23 (commencing with Section 2300) (transition provisions), this division applies to corporations organized under this division and to domestic corporations that are not subject to Division 1.5 (commencing with Section 2500), and to domestic corporations

to this appeal contends SSW is a domestic corporation, nor that section 2010 "expressly include[s]" foreign corporations. (§ 102, subd. (a).) As such, in interpreting the second part of section 162, we are left once again with the statutory language "organized under" division one, which we have just finished examining at length (pp. 9-13, above). Thus, consistent with our earlier analysis, we find no basis under the language of section 162 for reading the term "corporation" in section 2010 to include foreign corporations such as SSW.

Further, having fully analyzed the language of section 162, as well as the language in section 102, subdivision (a) that section 162 references, we are left with the conclusion that SSW, a corporation duly incorporated and dissolved under Nebraska law, does not come within the meaning of "corporation" as that term is defined for purposes of California's General Corporation Law. As such, we further conclude that section 2010 cannot be relied upon by plaintiffs as the legal basis for suing SSW for decedent's asbestos-related injuries. Rather, under the applicable Nebraska statute (Neb. Rev. Stat. 21-20,157), SSW ceased to exist for purposes of maintaining or defending litigation five years after its dissolution in June 2002, rendering this lawsuit untimely.

In reaching this conclusion, we note our agreement with SSW that no choice-of-law analysis is required in this case because no conflict exists between Nebraska law and California law with respect to corporate survivorship. Quite simply, section 2010 does not apply to foreign corporations. Rather, California, like Nebraska, looks to the law of the state of incorporation to determine the rights and duties of dissolved corporations.

Even putting aside the statutory language of section 2010, the aforementioned legal principle finds much support under California law. For example, in *C.M. Record Corp. v. MCA Records, Inc.* (1985) 168 Cal.App.3d 965 (*C.M. Record*), the court

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that are not subject to Division 2 (commencing with Section 5000) or Part 1 (commencing with Section 12000), 2 (commencing with Section 12200), 3 (commencing with Section 13200), or 5 (commencing with Section 14000) of Division 3 on December 31, 1976, and that are not organized or existing under any statute of this state other than this code; this division applies to any other corporation only to the extent expressly included in a particular provision of this division."

considered whether a Missouri corporation with a suspended charter could sue another foreign corporation for breach of contract in California where the parties had mutually agreed California law would govern their contractual relationship. Noting that California law may itself refer to foreign law to decide a particular issue, the court held without further discussion that "California law recognizes that the continuing legal existence of a corporation depends on the law of the state of incorporation. (6 Witkin, Summary of Cal. Law (8th ed. 1974) § 193, pp. 4468-4469.)" (*C.M. Record*, *supra*, 168 Cal.App.3d at p. 967.)

In *The Capital Gold Group, Inc. v. Nortier* (2009) 176 Cal.App.4th 1119 (*Capital Gold*), the court relied on *C.M. Record* in deciding a Nevada corporation could maintain an action in California under the relevant foreign law even though, while the suit was pending, the Nevada corporation converted to a Delaware corporation, changed its name, and obtained a new certificate of qualification to transact intrastate business in California without complying with certain California statutory requirements. In doing so, the court set forth the principle that: "[a] corporation that lacks the capacity to sue in its home state based on a lack of corporate status also lacks capacity to sue in California, because 'it has no greater capacity to sue in California than in its home state.' " (*Capital Gold*, *supra*, 176 Cal.App.4th at p. 1127. See also *MacMillan Petroleum Corp. v. Griffin* (1950) 99 Cal.App.2d 523, 528 [" 'It appears to be settled law that the effect of the dissolution of a corporation . . . depends upon the law of its domicile . . . ' "].)

And, as SSW points out, the Restatement Second of Conflict of Laws likewise follows the rule that "[w]hether the existence of a corporation has been terminated or suspended is determined by the local law of the state of incorporation." In addition, the Restatement notes that "termination or suspension of a corporation's existence by the state of incorporation will be recognized for most purposes by other states." (Rest.2d Conf. of Laws, § 299, subds. (1), (2).) As such, despite some conflict in authority on this issue, we are in good company in holding that dissolved foreign corporations are not subject to section 2010.

Accordingly, we affirm the trial court's grant of summary judgment to SSW on the ground that plaintiffs failed to bring suit against SSW within the governing five-year corporate survival period.[13]

DISPOSITION

The judgment is affirmed. [14] Costs on appeal are awarded to SSW.

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Jenkins, J.

We concur:

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Pollak, Acting P. J.

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Siggins, J.

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[13] In their opening brief, plaintiffs state without any legal analysis whatsoever that, if "this Court [should] find that section 2010 does not apply to foreign corporations doing business in California, Plaintiffs' claims against SSW, Inc. were timely, because under California Code of Civil Procedure section 774, Plaintiffs' 'Doe' claims against SSW, Inc. relate back to November 1, 2006, which was two years prior to the expiration of the Nebraska five-year notice of dissolution period." We reject plaintiffs' belated and deficient argument on forfeiture grounds. (*Locke v. Warner Bros., Inc.* (1997) 57 Cal.App.4th 354, 368; *Tisher v. California Horse Racing Bd*. (1991) 231 Cal.App.3d 349, 361. See also *In re Marriage of Schroeder* (1987) 192 Cal.App.3d 1154, 1164 [where an appellate brief fails to provide a legal argument with citation of authorities on a particular point, the court may treat the point as waived].)

[14] We deny plaintiffs' request for judicial notice filed April 25, 2011, as moot.

Trial Court:	San Francisco County, Superior Court
Trial Judge:	Hon. Harold Khan
Counsel for Appellants Carolyn Robinson, et al.:	Denyse Clancy BARON & BUDD, P.C.
Counsel for Respondent SSW, Inc.:	Michael J. Pietrykowski Don Willenburg Peter J. Turcotte Michael J. Plocki GORDON & REES LLP

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