

(2) IF THE ACT OR TRANSFER SOUGHT TO BE ENJOINED IS BASED ON A CONTRACT TO WHICH THE CORPORATION IS A PARTY AND IF ALL PARTIES TO THE CONTRACT ARE PARTIES TO THE PROCEEDING, THE COURT MAY SET THE CONTRACT ASIDE AND ENJOIN ITS PERFORMANCE.

(3) THE COURT MAY AWARD COMPENSATORY DAMAGES TO ANY PARTY TO THE CONTRACT WHO SUFFERS A LOSS BECAUSE OF THE ACTION OF THE COURT. HOWEVER, THE COURT MAY NOT AWARD COMPENSATORY DAMAGES FOR LOSS OF ANTICIPATED PROFITS TO BE DERIVED FROM PERFORMANCE OF THE CONTRACT.

(C) PROCEEDING BY CORPORATION THROUGH FIDUCIARY OR STOCKHOLDER.

LACK OF CORPORATE POWER OR CAPACITY MAY BE ASSERTED BY THE CORPORATION IN A SUIT BROUGHT IN ITS NAME BY THE CORPORATION OR ITS RECEIVER, TRUSTEE, OTHER LEGAL REPRESENTATIVE, OR IN A REPRESENTATIVE SUIT BROUGHT BY A STOCKHOLDER AGAINST ITS PRESENT OR FORMER OFFICERS OR DIRECTORS.

(D) QUO WARRANTO.

LACK OF CORPORATE POWER OR CAPACITY MAY BE ASSERTED BY THE ATTORNEY GENERAL IN A PROCEEDING FOR THE FORFEITURE OF THE CHARTER OF THE CORPORATION OR TO ENJOIN IT FROM TRANSACTING UNAUTHORIZED BUSINESS.

REVISOR'S NOTE: This section is new language derived without substantive change from Art. 23, §124.

The section, as drafted, clarifies who may plead ultra vires under permissible circumstances. Although the present law appears to allow either party to plead ultra vires, actually only the party bringing the action on behalf of the corporation or the Attorney General may interpose this defense.

In subsection (b) (2) of this section, the more succinct "based on a contract" is substituted for "is being, or is to be, performed or made pursuant to any contract."

The only other changes are in style.

1-404. IMPROPER USE OF CORPORATE INDICATION.

ANY PERSON WHO OWNS, OPERATES, OR DIRECTS AN UNINCORPORATED ORGANIZATION, FIRM, ASSOCIATION, OR OTHER ENTITY WHICH INCLUDES IN ITS NAME THE WORD "CORPORATION," "INCORPORATED," OR "LIMITED" OR AN ABBREVIATION OF ANY OF THESE WORDS OR WHICH HOLDS ITSELF OUT TO THE PUBLIC AS A