

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Bandel v. Shalom Branch #178 Building Society,***
2007 BCSC 780

Date: 20070511
Docket: S073166
Registry: Vancouver

Between:

Gabriel Bandel

Petitioner

And

Shalom Branch #178 Building Society

Respondent

Before: The Honourable Madam Justice MacKenzie

Oral Reasons for Judgment

In Chambers
May 11, 2007

Counsel for the Petitioner:

R. Josephson

Counsel for the Respondent:

H.A. Mickelson
and J.L. Gartner

Place of Trial/Hearing:

Vancouver, B.C.

[1] **THE COURT:** The annual general meeting of the respondent building society is scheduled to occur on Monday, May 14, 2007. The petitioner applies for an interim injunction to

enjoin the board of directors of the building society from conducting the annual general meeting, and in particular from conditions the election of directors on the basis of votes of the members who have been approved by a majority of the board of directors. The petitioner calls this the "impugned list of members".

[2] The petitioner asks this court to order that the annual general meeting proceed such that any votes taken, including the election of directors, include the March 2007 applicants for membership. The petitioner wants this court to also order that the votes taken on all matters, including the election of directors, be tabulated by an independent scrutineer and the results filed with the court by 4:00 p.m. on May 16, 2007, and the outcome of any votes taken at the annual general meeting, including the election of directors, and tabulated, await the outcome of the hearing of the petition.

[3] Under the petition, not being heard today, the petitioner seeks an order pursuant to s. 85 of the **Society Act** RSBC 1996 Chapter 433, setting aside the decision of the board of directors made April 16, 2007 and April 23, 2007 the effect of which was to restrict membership of the Shalom Branch #178 Building Society to those individuals set out in a document entitled "2007 Members Eligible to Vote at the AGM" and an order under s. 85 that the individuals who applied for membership in the building society before April 16, 2007 are eligible to vote at the AGM on May 14 in the normal course.

[4] It is of interest that in both his notice of motion seeking the interim injunction today and in the petition to be heard another day, the petitioner seeks relief under s. 85 of the **Society Act**.

[5] It is unnecessary to delve into detailed facts today. The evidence in the affidavit material is highly conflicted. At the hearing of the petition, the respondent will seek that the petition be converted into an action, in part at least because of the serious conflicts in the evidence.

[6] The problem very briefly is that the minority directors are unhappy with the majority and particularly with the president, Mr. Weinstein. The unhappy minority wants to establish a majority of votes at the AGM to elect the board of directors.

[7] In March, the minority recruited some 118 to 120 applicants for new membership in the society. However, the board of directors, alarmed at the inundation of new applicants for membership (which would have increased the membership by 50 percent), sought legal advice about whether the board had the capacity to set a procedure and criteria for membership.

[8] The board's legal counsel advised that under the bylaw, the board had such capacity. Therefore the board met in April and a majority decided to implement the new criteria for membership in the society and required an interview for membership.

[9] The interviews were held. Apparently 25 to 28 applicants were interviewed because the petitioner says the process was squeezed into only three days, far too short a time. The petitioner also complains that the majority of directors did not follow their own procedure or their own new criteria.

[10] The majority of the directors now have an approved list of members and intend that only those members will vote at the AGM. Hence the petitioners seek the interim injunction.

[11] The respondent says the majority of the board were perfectly entitled under the bylaw to establish new criteria and an interview process for new applicants for membership. The respondent submits the majority of the board democratically resolved to implement the new procedure and criteria in order to test the commitment of the new applicants to the society and its purposes.

[12] The board wanted to ensure, says the respondent, that new members did not merely want to stack the vote at the AGM so as to oust the current directors or president, so as to stack the board in their favour.

Jurisdiction

[13] I agree with the respondent there is a jurisdiction issue to address before determining whether the petitioner has established the three-stage test for an interim injunction set out in ***RJR MacDonald v. Canada (A.G.)***, [1994] S.C.J. No. 17. The petitioner agrees that on this application for an interim injunction, this court has no jurisdiction under s. 85 of the ***Society Act*** to impose a remedy. Nothing has occurred yet that can be remedied under that Act as the petition has not been heard.

[14] Counsel for the petitioner later sought to rely on ***Garcha v. Khalsa Diwan Society - New Westminster***, [2006] B.C.J. No. 617, 2006 BCCA 140 as standing for the proposition that this court routinely grants the injunction sought here. But ***Garcha*** is distinguishable because the remedy there was granted under s. 85 of the ***Society Act*** after the hearing of the petition where the petition was, in fact, allowed. In the order, the remedy of cancelling the original membership list was granted.

[15] Here, the petition has not been heard, let alone allowed, and the remedies sought by the petitioner could only be granted under s. 85 of the ***Society Act***. But that activates the court's position explained in ***Garcha***, adopting the comments of Justice Low, (as he then was), in ***Sargit Singh Gill v. Khalsa Diwan Society***, (citations omitted), in ***Garcha*** at paragraph 9:

The court must find irregularities or errors before it has jurisdiction under s. 85. In my opinion, there must be some connection between any irregularity proven and the relief sought. The authority under the section is to correct the problem and make necessary ancillary or consequential directions. The scope of the section is not very broad and the court's discretion is not unfettered.

The court is always reluctant to interfere in the internal affairs of any corporate body. The respondent society should be left to govern itself in a democratic fashion and make its own decisions, including what may be seen by some of its members to be mistakes. The court should not presume that those in executive charge of the society will conduct themselves contrary to the interests of the society or that they will breach the rules of natural justice to the extent those rules apply to the business at hand.

[16] So this court must first find irregularities or errors before it has jurisdiction under s. 85. I cannot find them at this point, and have not done so because the petition is not before me for hearing on the merits. Only after the court finds a violation of the bylaw or ***Society Act*** will it impose a remedy under s. 85.

[17] The remedy sought by the petitioner today is in the nature of those imposed under s. 85 for the sort of conduct described there, including breaches of the bylaw and the ***Society Act***.

[18] That leaves the issue of inherent jurisdiction to impose the remedy sought as part of an injunction. But I find there is no justification for the injunction sought because first, there is no connection between the alleged misconduct of Mr. Weinstein, that is his alleged financial and other improprieties as described at paragraphs 8 and on in the affidavit of the petitioner, (especially at paragraph 17), and the remedies sought on this application.

[19] The alleged wrongdoing on Mr. Weinstein's part cannot justify or generate the remedy sought of having 118 to 120 people attend the May 14 AGM and vote against what appears at this point to have been the democratic procedures established by the board.

[20] That leaves as the only basis for the injunction being an apparently democratically determined membership criteria established by the board. Yet it is, apparently at this point, within the board's competence under the bylaw to establish such criteria for membership.

[21] To order injunctive relief, the court must find there is a legal right to be protected. The right here arises under the society's bylaws and is not a legal right at common law. It is not, as that term is used in the context of a cause of action known to law. There is no cause of action at law of which I am aware for "unreasonable or unfair membership requirements" in a society. For that reason, any remedy for such a complaint is captured under s. 85 of the **Society Act** where there is no jurisdiction in this court as discussed earlier.

[22] At this point the petitioner has not referred me to any case where the remedy of the nature sought here was granted before the hearing on the merits; in this case, before a hearing of the petition. Counsel for the respondent is unaware of any authority. This can be explained on the reasoning in **Garcha v. Khalsa Diwan Society**.

[23] The three stages to be established before an interim injunction can be granted are set out **RJR MacDonald v. Canada (A.G.)**. They are: one, a *prima facie* case; two, irreparable harm, (this refers to the nature of the harm and not its magnitude); and three, the balance of convenience favours the granting of the injunction.

[24] I find that even if the petitioner had overcome the jurisdictional hurdle or had been able to persuade me to grant the relief sought in order to protect a legal right at common law, the petitioner is unable to establish that irreparable harm would occur if I did not grant the injunction. I have read all the affidavits and all the material with care, particularly the petitioner's and the allegations of wrongdoing against Mr. Weinstein, even the management report relied upon the petitioner despite the warning caveat of the auditors.

[25] Nothing in the affidavit of the petitioner or the other material put forward by the petitioner establishes that irreparable harm would occur if I did not grant the remedy sought and the AGM proceeded as currently planned on May 14.

[26] A remedy under s. 85 of the **Society Act** may be granted if the determination on the merits of the case favours the petitioner. The AGM may be set aside and another ordered on a different list, but it does not follow that such a remedy would be granted even if a determination on the merits of the petition favoured the petitioner.

[27] Also, regardless of Mr. Weinstein's alleged misconduct, it certainly does not follow that the other seven majority members of the board are not committed to act in the best interests of the society in maintaining its asset, the Maple Crest apartment building. There is no evidence of any imminent cutting off of funding because of Mr. Weinstein's alleged misconduct.

[28] It certainly cannot be assumed that the other board members are not intelligent people who will respond appropriately to any misconduct by Mr. Weinstein.

[29] In conclusion, despite the forceful submissions of counsel for the petitioner, the application for an injunction is dismissed.

[30] Furthermore, there is no basis for this court to order an adjournment of the AGM set for the last day that is statutorily available, May 14.

"The Honourable Madam Justice MacKenzie"