

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

SAVE COLUMBIA CU COMMITTEE,) Case No.: No. 04-2-00675-2
JOHN BUCKHOLZ, STEVE STRAUB,)
and ROBERT TICE,) RULING ON APPLICATION FOR WRIT
) OF MANDAMUS
)
Plaintiffs,)
)
vs.)
)
OREGON CONSERVANCY FOUNDATION,)
LLOYD MARBET, and CATHRYN)
CHUDY,)
)
Intervenor-Plaintiffs,)
)
vs.)
)
COLUMBIA COMMUNITY CREDIT)
UNION, KAREN MARTEL, EDWIN C.)
BELL, DALE MAGERS, WILLIAM F.)
BYRD III, ROBERT M. BYRD,)
DENNIS McLACHLAN, MARK L. AIL,)
CONNIE JONES, BRUCE DAVIDSON,)
CLARENCE DYKMAN, DEEANN MILLER,)
JAN STOCKTON, DAVID E. DOSS,)
and PAUL F. HODGE, each such)
individual in their capacity as)
a credit union official,)
)
)
Defendants.)
)

1 I. HISTORY

2 On November 3, 2003 the Board of Directors of Columbia
3 Community Credit Union held a special membership meeting to
4 allow members of the credit union to vote on a Plan of
5 Conversion, which, if approved, would convert the credit union
6 to a Washington State chartered mutual bank, under RCW Title 32.
7 At that meeting, votes were received, in person or by mail,
8 indicating a 52.2 percent vote in favor of the Plan of
9 Conversion. 9,228 votes were cast, out of a total of
10 approximately 59,000 members.

11 Opponents of the conversion plan prepared and circulated a
12 petition to call another special membership meeting, for the
13 purpose of voting on (1) a rescission of the Plan of Conversion,
14 (2) removal of the nine members of the Board of Directors, as it
15 was constituted at the end of 2003, and (3) election of interim
16 directors to replace those, if any, removed at the proposed
17 special meeting. 3593 signatures were obtained on the petition,
18 and a request for a special membership meeting was submitted to
19 the secretary of the credit union's Board of Directors on
20 January 14, 2004.

21 On January 22, 2004, the Washington Department of Financial
22 Institutions, Division of Credit Unions (DFI), issued an opinion
23 letter, indicating that the petition was in proper form, and was
24 sufficient to invoke the credit union's duty under statute and
25 bylaws, to hold the requested special membership meeting. DFI

1 thereafter, in lieu of enforcement action, entered into a
2 settlement agreement with Columbia Community Credit Union, which
3 did not require CCCU to schedule and hold the requested special
4 membership meeting.

5 On January 29, 2004, the National Credit Union
6 Administration (NCUA) issued a letter rejecting the Plan of
7 Conversion, based upon its assessment of deficiencies in the
8 November 3, 2003 vote. CCCU has, by judicial admission in open
9 court, represented that it has abandoned any right to seek
10 review of the NCUA's decision. CCCU has declined to schedule
11 and hold the requested special meeting.

12 On February 11, 2004, Plaintiffs applied for a Writ of
13 Mandamus to compel CCCU to schedule, give notice and conduct the
14 requested special membership meeting. Argument was held on
15 February 25, 2004, with participation by Plaintiffs, Save
16 Columbia Community Credit Union Committee, John Bucholtz, Steve
17 Straub, and Robert Tice, represented by Douglas A. Schafer,
18 Attorney at Law; Intervenors Oregon Conservancy Foundation,
19 Lloyd Marbet, and Cathryn Chudy, represented by Peggy Hennessey,
20 Attorney at Law; and Defendants CCCU, Karen Martel, Edwin C.
21 Bell, Dale Magers, William F. Byrd III, Robert M. Byrd, Dennis
22 McLachlan, Mark L. Ail, Connie Jones, Bruce Davidson, Clarence
23 Dykman, DeeAnn Miller, Jan Stockton, David E. Doss, and Paul F.
24 Hodge, represented by John Neupert and Steven E. Turner,
25 Attorneys at Law.

1 II. PURPOSE OF MANDAMUS

2 A. The Remedy

3 The Common Law Writ of Mandamus, now codified in RCW 7.16:

4 "May be issued . . . to any . . . corporation,
5 board or person, to compel the performance of an act
6 which the law especially enjoins as a duty resulting
7 from an office, trust or situation or to compel the
8 admission of a party to the use and enjoyment of a
9 right . . . to which the party is entitled, and from
10 which the party is unlawfully precluded by such . . .
11 corporation, board or person."

9 B. The Duty and Right Claimed by Plaintiffs

10 Plaintiffs claim two bases for their demand for a special
11 membership meeting, (1) RCW 31.12.195 and (2) Article III,
12 Section 4 of the amended and restated bylaws of CCCU, adopted
13 November 20, 2001.

14 The differences between those provisions are insignificant.
15 The statute calls for the secretary of the credit union to
16 designate a time and place for the meeting, and to give notice
17 thereof to the members. The bylaws direct the Board to
18 designate the time and place. Since the secretary is an officer
19 of the Board of Directors (Article VIII, section 5 of the
20 bylaws) the secretary would act at the Direction of the Board.
21

22 The significant difference between the statute and bylaws
23 is the insertion in the bylaws of the qualifier: "acceptable".
24 The statute states: "upon receipt of a request for a special
25 membership meeting, the secretary of the credit union shall

1 designate the time and place at which the special membership
2 meeting will be held." RCW 31.12.195(3).

3 The bylaw provides: "Upon receiving an acceptable request
4 for a special membership meeting the board shall designate the
5 time and place for the special membership meeting."

6 Counsel for Defendants argues that the term "acceptable"
7 creates a "gatekeeper" function in the Board, allowing it to
8 review the request for compliance with some unstated criteria.
9 Neither standards, criteria, nor even a definition of
10 "acceptable" is set out in the bylaws.

11 Corporate bylaws of a credit union cannot conflict with
12 provisions of RCW Chapter 31.12 on the same subject. RCW
13 31.12.065(1)(m). Nothing in RCW 31.12.195 purports to allow the
14 Board to delay or deny the request on the Board's determination
15 as to what is acceptable, or unacceptable, except for an implied
16 power to review the form of the petition under RCW 31.12.195(1),
17 which requires a written application of at least 2000 members or
18 10% of the membership, whichever is less, and (2) which requires
19 that the request be in writing, stating the purpose or purposes
20 of the meeting, and the name of any director sought to be
21 removed.

22 In order to construe the bylaw in a manner consistent with
23 the statutory scheme, then, the term "acceptable" must be
24 capable of objective application with reference to articulable
25 standards. Those standards are found in RCW 31.12.195(1) and

1 (2). I construe the term "acceptable" to mean that the request
2 must be in the form so designated by those statutes. Therefore,
3 I hold that the limited gatekeeper function permissible by law
4 can be exercised only as to the statutory requirements of RCW
5 31.12.195(1) and (2).

6 CCCU has represented to DFI that, in determining whether or
7 not to honor the request, it intended to verify and seek an
8 audit of the 3593 petition signatures. This function arguably
9 comes within the limited gatekeeper function outlined above.
10 CCCU has presented no evidence, nor made the claim, however,
11 that at least 1953 of the signatures are invalid, or not
12 eligible for consideration. Also, the statute and bylaws permit
13 a ten day period to elapse between the submission of the request
14 and the giving of notice of the special membership meeting by
15 the secretary. This ten day period could well be used to review
16 the propriety of the signatures, and if a determination was made
17 that there were less than 2000 valid signatures, the Board
18 secretary would be within its rights to deny the request.

19 III. DISENFRANCHISEMENT

20 Defendants argue that Plaintiffs' failure to propose a list
21 of candidates for the positions of interim members of the Board
22 of Directors, in the event of removal of any Director at the
23 special membership meeting deprives the majority of the
24 membership of the ability to vote by mail. Plaintiffs do not
25

1 deny this, but argue that in the limited context of the election
2 of interim Directors, there is no right to vote by mail.

3 Article IV of the bylaws provide a procedure for nomination
4 and election of Board Members and Supervisory Committee Members.
5 Section 3 provides that "Elections shall be conducted by using a
6 mail ballot . . ." and Section 5 provides: "all elections shall
7 be conducted by a secret ballot." This article, however,
8 addresses election at the annual meeting, as opposed to special
9 meetings.

10 Section 8 of Article III, does apply to voting at a special
11 membership meeting, and provides that "members may vote through
12 the use of mail ballots as permitted by the credit unions Board
13 of Directors." This provision is consistent with RCW
14 31.12.386(2): "Members may vote, as prescribed by the credit
15 union's bylaws, by mail ballot, absentee ballot, or other
16 method." Therefore, I conclude that in general, the members do
17 have a right to vote by mail. This is an important right, in
18 light of the difficulty of having up to 59,000 members appear at
19 a special membership meeting to cast votes in person.

20 Plaintiffs cite to RCW 31.12.285:

21 "The board may suspend for cause a member of the board
22 or a member of the supervisory committee until a membership
23 meeting is held. The membership meeting must be held
24 within thirty days after the suspension. The members
25 attending the meeting shall vote whether to remove a
suspended party. For purposes of this section, "cause"
includes demonstrated financial irresponsibility, a breach
of fiduciary duty to the credit union, or activities which,
in the judgment of the board, threaten the safety and
soundness of the credit union."

1
2
3 And RCW 31.12.345

4 "(1)The supervisory committee may, by unanimous vote,
5 for cause, suspend a member of the board, until a
6 membership meeting is held. The membership meeting must be
7 held within thirty days after the suspension. The members
8 attending that meeting shall vote whether to remove the
9 suspended party or parties. The supervisory committee may,
10 by unanimous vote, for cause, suspend members of other
11 committees until a membership meeting is held. The meeting
12 must be held within thirty days after the suspension. The
13 members attending that meeting shall vote whether to remove
14 the suspended party or parties. (2) For purposes of this
15 section, "cause" includes demonstrated financial
16 irresponsibility, a breach of fiduciary duty to the credit
17 union, or activities which, in the judgment of the
18 supervisory committee, threaten the safety and soundness of
19 the credit union."

20 These statutes address procedure at a membership meeting
21 following suspension of a member or members of the Board of
22 Directors, supervisory committee, or other committees. The
23 statutes do not specifically apply to removal of a non-suspended
24 member, and further, the statutes require a showing of "cause".
25 They limit the voting to members "attending the meeting". These
26 statutes, which do not appear to permit voting by mail, are an
27 exception to the general right of members to vote in this
28 manner.

29 The more specific statute applicable to the present case is
30 RCW 31.12.246:

31 "The members of a credit union may remove a director
32 of the credit union at a special membership meeting held in
33 accordance with RCW 31.12.195 and called for that purpose.

1 If the members remove a director, the members may at the
2 same special membership meeting elect an interim director
3 to complete the remainder of the former director's term of
4 office or authorize the board to appoint an interim
5 director as provided in RCW 31.12.225."

6 This statute allows members of a credit union to remove a
7 Director without a requirement of cause. Further, it
8 contemplates replacement of a removed Director at the same
9 special membership meeting.

10 My interpretation of the rights and duties created by RCW
11 31.12.246, read in conjunction with RCW 31.121.95(2), is that
12 the legislature specifically required that names of Directors
13 where removal is proposed must be included in the written
14 application for a special membership meeting, and therefore, no
15 valid reason to dispense with vote by mail exists, due to the
16 legal mandate of identification of said Directors.

17 Since the legislature first imposed a duty to identify the
18 at risk directors whose removal is sought, and then declined to
19 impose a duty to name proposed replacement Directors, my
20 conclusion is that the legislature either rejected the concept
21 of such a requirement, or neglected to consider the advisability
22 of it. In either case, the result is the same. If failure to
23 name proposed replacement Directors is inconsistent with the
24 ability to exercise the right to vote by mail, then the election
25 of replacement Directors may be done without a vote by mail.

The legislature knew of the right to vote by mail, and failed to enact a requirement that would require such right to

1 be honored. Plaintiffs were not required by statute to propose
2 interim Directors in the application. As pointed out above, the
3 concept of allowing only members present at a special meeting to
4 select interim Directors or Supervisory Committee Members is not
5 alien to the legislature.

6 Defendants' argument that the Plaintiffs should have
7 identified potential replacement Directors in the application is
8 supported by common sense, but not by any specific direction in
9 the statute. While Defendants' suggestion is a good idea, the
10 court cannot, in the guise of a judicial ruling, impose
11 requirements which the legislature has omitted. I note that no
12 party has argued that the statutes authorizing the special
13 meeting process are unconstitutional, and therefore, the court
14 is bound to interpret, rather than disregard those statutes.

15 My conclusion, therefore, is that the Defendants have a
16 clear legal duty to honor the request, and grant a special
17 membership meeting, for the purpose of seeking a rescission of
18 the conversion vote; for seeking the removal of the listed
19 Directors, which vote can accommodate voting by mail, and
20 appointment of interim Directors, which cannot be accomplished
21 by mail.

22 IV. PROPRIETY OF MANDAMUS

23 The next issue is whether or not the court will enforce
24 that duty.

1 While it is axiomatic that where there is a duty, there is
2 a corresponding right to enforce that duty, there are cases
3 where the court may withhold granting of a remedy.

4 Defendants cite two bases for the court to withhold
5 granting relief: (1)The issue of rescission of the conversion
6 vote is moot; and (2) the ability to insist on performance of
7 the duty to hold a special membership meeting is statutorily
8 pre-empted in favor of the Department of Financial Institution.

9 A. Moot Question

10 On the first issue, I agree. The Writ of Mandamus is
11 referred to as an "extraordinary writ", and the courts are
12 required to exercise constraint in its issuance. The nature of
13 the remedy is to compel a party to act, and is an invasion by
14 the courts into other's affairs. The court should act only when
15 necessary, in the interest of justice.

16 It is not necessary for the court to address rescission of
17 the conversion vote, as it is, at this time, a nullity. The
18 NCUA has declared it so, and Defendants have, by representation
19 to the court, judicially estopped themselves from seeking review
20 of that decision.

21 While Plaintiffs may seek a symbolic victory by having the
22 vote Plan of Conversion repudiated, the court's equity power
23 must be reserved for justiciable, that is, actual, real, and
24 ripe controversies. Where the ultimate purpose of the
25 application has been accomplished by other means, Mandamus is

1 not appropriate. See Democratic Party of Washington v.
2 Spellman, 101 Wash.2d 94, 675, P.2d 1222 (1984); State ex rel
3 Bremerton v. YaKay, 68 Wash. 284, 123 P.13 (1912); State ex rel:
4 Oudin and Bergman Fire Clay Min. & Mfg. Co. v. Superior Court,
5 37. Wash.30, 79 P.483 (1905).

6 Repudiation of the vote of conversion is a moot issue, and
7 a special membership meeting therefore is not necessary for that
8 purpose. As for the other two purposes, those issues remain
9 viable, and are not addressed by the settlement agreement
10 reached between DFI and CCCU. They are properly the subject of
11 a Mandamus action.

12 B. Statutory Pre-emption

13 On the issue of statutory pre-emption, Defendants argue
14 that the only entity which can seek enforcement, where a request
15 for a special membership meeting is denied is DFI. That
16 agency's power is derived from RCW 31.12.516:

17 "(1) the powers of supervision and examination of
18 credit unions and other persons subject to this chapter and
19 chapter 31.13 RCW are vested in the director. The director
20 shall require each credit union to conduct business in
21 compliance with this chapter and may require each credit
22 union to conduct business in compliance with other state
and federal laws that apply to credit unions. The director
has the power to commence and prosecute actions and
proceedings, to enjoin violations, and to collect sums due
the state of Washington from a credit union."

23 This statute is the grant of authority to the agency,
24 however, no provision is cited which purports to vest exclusive
25 jurisdiction in DFI. In State ex rel Wicks v. Puget Sound

1 Savings and Loan Association, 8 Wash.2d 599, 113 P.2d 70 (1941),
2 shareholders in a savings and loan association sought a Writ of
3 Mandamus to compel the association to permit inspection by the
4 shareholders of the records of the corporation. The Superior
5 Court denied the application. The Supreme Court affirmed,
6 holding that no statutory right existed to demand such
7 inspection. The court noted that the supervisor of savings and
8 loan was expressly required to inspect such books and records at
9 least once a year, and that a provision allowing shareholders a
10 similar right had been vetoed from the applicable legislation,
11 and the veto was not overridden by the legislature.

12 This situation is in stark contrast to that in the CCCU
13 case, where the right to demand a special membership meeting is
14 expressly created in favor of members. Therefore, the
15 Plaintiffs have a right to request a special membership meeting
16 and a remedy for denial of that right.

17 V. CONCLUSION

18 Plaintiffs' application for a Writ of Mandamus is granted,
19 in part, and denied in part.

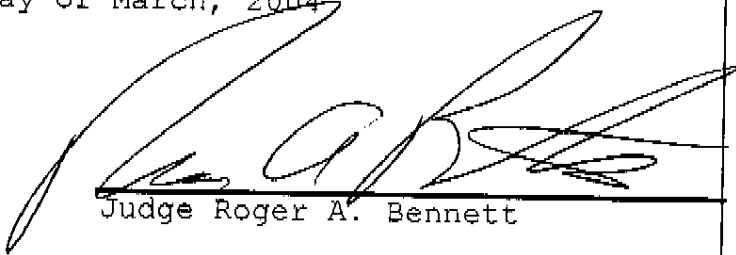
20 Defendants are compelled to give notice and schedule a
21 special membership meeting, consistent with statutory
22 requirements, at which special membership meeting a vote will be
23 held on whether or not to remove the designated members of the
24 Board of Directors still holding office. The notice of said
25 meeting shall accommodate and permit vote by mail.

1 In addition, the notice shall advise that members attending
2 the special membership meeting shall be permitted to vote on
3 replacement of deposed Directors, if any, with interim
4 Directors, or per statute, to vote to allow the remaining
5 members of the Board to appoint interim Directors, as allowed by
6 RCW 31.12.225.

7 No vote shall be permitted on rescission of the Plan of
8 Conversion of November 3, 1003.

9 Entry of an appropriate form of Writ shall occur at 11:00
10 AM, March 8, 2004, at which time the court shall hear argument
11 concerning prompt implementation of this court's ruling.

12 Dated this 1 day of March, 2004

13
14
15
16 
17 Judge Roger A. Bennett
18
19
20
21
22
23
24
25