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Superior Court of Washington for Clark County

Save Columbia CU Committee, John Bucholtz, Steve Straub, and Robert Tice,
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, and Bruce Davidson, Defendants.

No. 04-2-01341-4

Motion for Summary Judgment on Term-Limited Directors Issue

I. Relief Requested and Introduction

Plaintiff Save Columbia CU Committee (“**Save CCU Committee**”) and the other above-named plaintiffs on March 16, 2004, filed a Complaint for Declaratory Judgment and for Injunction seeking the adjudication of several important issues concerning the internal affairs and membership governance of Columbia Community Credit Union (“**CCCU**”).

Plaintiffs now move for summary judgment on first issue raised in the Complaint—that five of CCCU’s present directors are no longer eligible to serve as directors by reason of the maximum service limitation set forth in Article V, Section 2 of CCCU’s bylaws. Those five directors are Defendants Connie Jones, Dennis McLachlan, Robert M. Byrd, William F. Byrd III, and Mark L. Ail (“**Term-Limited Directors**”).

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II. Statement of Facts

The Bylaws of CCCU, at Article V, Section 2, in effect since November 1999 limit its directors to nine (9) consecutive years of service as a director, by providing as follows:

Section 2. Term of Office. Each Director, upon election, may serve a maximum of three (3) consecutive, three (3) year terms, unless the Director resigns, dies, or is removed under this Article. A mandatory absence from the Board of two (2) years is required before a Director can be re-elected to serve another term of office. Each Board member's term of office shall be staggered, with an equal number of Directors elected each year, as far as possible.

RCW 31.12.235(3) provides as follows:

(3) A director must meet any qualification requirements set forth in the credit union's bylaws. If a director fails to meet these requirements, the director shall no longer serve as a director.

Defendant **Connie Jones** became a director of CCCU in 1984 and has served as such for 20 consecutive years, having been most recently re-elected without opposition at CCCU's annual meeting in March 2002. Ms. Jones is presently one of the three members of CCCU's nominating committee.

Defendant **Dennis McLachlan** became a director of CCCU in 1992 and has served as such for 12 consecutive years, having been most recently re-elected without opposition at CCCU's annual meeting in March 2001. He recently has been nominated by the board's nominating committee for re-election at CCCU's annual meeting in 2004.

Defendant **Robert M. Byrd** became a director of CCCU in 1992 and has served as such for 12 consecutive years, having been most recently re-elected without opposition at CCCU's annual meeting in March 2003. Mr. Robert M. Byrd is presently one of the three members of CCCU's nominating committee.

Defendant **William F. Byrd III** became a director of CCCU in 1994 and has served as such for more than 9 consecutive years, having been most recently re-elected without opposition at CCCU's annual meeting in March 2001. He recently has been nominated by the board's nominating committee for re-election at CCCU's annual meeting in 2004.

Defendant **Mark L. Ail** became a director of CCCU in 1994 and has served as such for more than 9 consecutive years, having been most recently re-elected without opposition at CCCU's annual meeting in March 2003. Prior to that period he served for 6 years as a director

1 of Columbian Newspaper Federal Credit Union that merged into CCCU in November 1994. Mr.
2 Ail is presently one of the three members of CCCU's nominating committee.

3 4 **III. Statement of the Issue**

5 Based upon the material facts and applicable law, are the Term-Limited Directors
6 required to vacate their positions on the board of directors of CCCU, and are they all ineligible
7 for re-election at the 2004 annual meeting of CCCU?

8 **IV. Evidence Relied Upon**

9 This motion is based upon the Declaration of Doug Schafer in Support of
10 Motion for Summary Judgment on Term-Limited Directors Issue ("**Supporting Declaration**"),
11 filed concurrently with this motion.

12 **V. Legal Authority and Argument**

13 RCW 31.12.235(3) requires a credit union director to vacate the office if her or she ever
14 fails to meet "any qualification requirements set forth in the credit union's bylaws." CCCU's
15 Bylaws, at Article V, Section 2, sets forth as a director qualification requirement a maximum
16 uninterrupted period in office of nine (9) years, stating plainly that "[e]ach Director... may serve
17 a maximum of three (3) consecutive, three (3) year terms," and "[a] mandatory absence from the
18 Board of two (2) years is required before a Director can be re-elected to serve another term of
19 office."

20 It is firmly established in the common law that a corporation's bylaws are regarded, and
21 are interpreted and applied as, a contract among the constituents of a corporation, binding upon
22 its stockholders/members and its directors/trustees. The Utah Supreme Court recognized that in
23 *Turner v. Hi-country Homeowners Ass'n*, 910 P.2d 1223 (Utah 1996), surveying the law of many
24 states and saying, at 1225:

24 "It is well established precedent that the bylaws of a corporation, together with
25 the articles of incorporation, the statute under which it was incorporated, and the
26 member's application, constitute a contract between the member and the
27 corporation." *Appeal of Two Crow Ranch, Inc.*, 159 Mont. 16, 494 P.2d 915, 919
(1972); *see also Rowland v. Union Hills Country Club*, 157 Ariz. 301, 757 P.2d
105, 108 (Ct.App. 1988) (an organization's articles of incorporation and bylaws

1 constitute a contract between the organization and its members); *Jorgensen*
2 *Realty, Inc. v. Box*, 701 P.2d 1256, 1257 (Colo.Ct.App. 1985) (“The relationship
3 between a voluntary association and its members is a contractual one. . . .”); *First*
4 *Fed. Sav. & Loan v. East End Mut. Elec. Co.*, 112 Idaho 762, 735 P.2d 1073,
5 1075 (Ct.App. 1987) (bylaws are binding as a contract among members of
6 cooperative).

7 Only a few weeks ago, Judge Dean Morgan and his colleagues at the Washington Court
8 of Appeals, Div. II, applied the rule that a nonprofit corporation’s bylaws constitute a contract
9 binding upon its members. In *Lake Limerick Country Club v. Hunt Mfg. Homes, Inc.*, (Docket
10 No. 29774-4-II, filed 2-18-2004), the court held a member personally liable for dues specified in
11 the corporation’s bylaws, saying:

12 The next issue is whether the trial court erred by holding Hunt personally liable
13 for dues accruing during its ownership of Lot 53. In *Rodruck [Rodruck v. Sand*
14 *Point Maint. Comm’n*, 48 Wn.2d 565, 577, 295 P.2d 714 (1956)], the Washington
15 Supreme Court held that **the bylaws** of a homeowners’ association, ‘in effect,
16 **constitute a contract between the [association] and its members.**’

17 Accordingly, it concluded that the dues and assessments in issue were ‘binding
18 obligations as against appellants and the property to which they hold title in the
19 Sand Point district.’ [Emphasis added, internal citations omitted.]

20 It is also a firmly established rule of law that directors, officers, and shareholders of a
21 corporation are charged with knowledge of the provisions of its articles of incorporation and its
22 bylaws. In *Hudson v. Alaska Airlines*, 43 Wn.2d 71, 260 P.2d 321 (1953), the Washington State
23 Supreme Court held a corporate bylaw provision trumped a vice president’s enforcement of a
24 compensation agreement he had made with the corporation’s president, Wooten, saying at 74:

25 The by-laws of the corporation conclusively show Wooten’s lack of
26 authority. As an officer of the corporation, appellant was charged with notice of
27 the by-laws which vested exclusive authority in the board of directors to fix his
28 salary as vice-president.

29 **“Members, officers, and directors are generally conclusively**
30 **presumed to know the corporate by-laws.”** 18 C.J.S. 590, § 180. *See, also*, 8
31 *Fletcher Cyclopedic Corporations* (Perm. ed.) 751, § 4197. [Emphasis added.]

32 Similarly, in *State ex Rel. Carriger v. Campbell Food Markets, Inc.*, 60 Wn.2d 478, 374
33 P.2d 435 (1962), the Washington State Supreme Court applied the rule that all the stockholders
34 of a corporation are charged with knowledge of its bylaws, saying at 482:

35 Campbell and its **stockholders are charged with knowledge of the contents of**
36 **the corporation’s bylaws.** In this regard, such knowledge is evidenced by the

1 provisions of the Campbell-Arden agreement. The bylaws did not require that
2 Carriger inform the corporation of his intention to exercise his option; hence, he
had no duty to do so. [Emphasis added.]

3 Given that each of the 60,000 or so members of CCCU is deemed to know—charged with
4 knowledge of—the contents of CCCU’s bylaws, then it appears reasonable that the most they
5 could be charged with knowing is the language within the four corners of the bylaws document
6 itself, certainly when that language is plain and clear. The term limits restriction upon CCCU’s
7 directors appearing in Article V, Section 2, is plain and clear—providing that “Each Director,
upon election, may serve a maximum of three (3) consecutive, three (3) year terms.”

8 Plaintiff’s counsel has been advised by Defendants’ counsel that they contend the term
9 limits bylaws provision was *intended* not to apply to the prior board service of the directors who
10 adopted that provision in November of 1999. But no such “grandfathering” was written into the
11 bylaw provision, so no such subjective but unexpressed intention ought to be recognized as
12 modifying the plain language of the bylaws term limits provision. In *In the Marriage of*
13 *Schweitzer*, 132 Wn.2d 318, 937 P.2d 1062 (1997), the court said, at 326:

14 In *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222 (1990), this court held
15 extrinsic evidence is generally admissible to ascertain the intent of the parties to a
16 contract. However, we made it clear in *Berg* that this rule, known as the “context
17 rule,” authorizes the use of extrinsic evidence only to elucidate the meaning of the
18 words of a contract, and “not for the purpose of showing intention independent of
19 the instrument.” *Berg*, 115 Wn.2d at 669 (quoting *J. W. Seavey Hop Corp. v.*
Pollock, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944)). We emphasized, “[i]t is
20 **the duty of the court to declare the meaning of what is written, and not what**
21 **was intended to be written.”** *Berg*, 115 Wn.2d at 669 (quoting *Pollock*, 20
22 Wn.2d at 348-49). We accordingly held in *Berg* that parol evidence cannot be
23 used to “add[] to, modify[], or contradict[] the terms of a written contract, in the
24 absence of fraud, accident, or mistake.” *Berg*, 115 Wn.2d at 669 (quoting *Pollock*,
25 20 Wn.2d at 348-49); *see also U.S. Life Credit Life Ins. Co. v. Williams*, 129
Wn.2d 565, 570, 919 P.2d 594 (1996) (“**[u]nilateral or subjective purposes**
and intentions about the meanings of what is written do not constitute
evidence of the parties’ intentions’.”) (quoting *Lynott v. National Union Fire*
Ins. Co., 123 Wn.2d 678, 684, 871 P.2d 146 (1994)). The Court of Appeals
therefore correctly applied the *Berg* doctrine when it held **extrinsic evidence of**
the parties intent is generally not admissible to contradict the terms of a
written agreement. [Emphasis added.]

26 An additional compelling reason why secret intentions of CCCU’s board of directors
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1 hidden in their meeting minutes when they amend bylaws ought not be part of the contract—the
2 bylaws—between CCCU and its members is because that board historically has taken the position
3 that its members may not read board meeting minutes. By letter of December 20, 2004, to
4 CCCU’s CEO, David Doss, CCCU member Robert Tice made the following request:

5 Please forward typed copies of the minutes of the Board of Director’s meeting at
6 which the initial discussion that referenced a change of the Columbian
7 Community Credit Union into a mutual bank, and copies of the minutes of each of
8 the Board’s subsequent meetings, to the current date.

9 The reply by letter of January 13, 2004 from CCCU’s lawyer, Brian R. Witt of Farleigh Wada &
10 Witt PC, (Exhibit A to the Supporting Declaration) asserted that members are *not permitted*
11 *access to the minutes of CCCU’s board of directors meetings*, stating the following in reply to
12 Mr. Tice’s request, on page 3:

13 Board Approval. The Board first discussed the advantages and disadvantages of
14 converting to a mutual savings bank in October 2002. The Board studied the
15 conversion process for nearly nine (9) months and on April 15, 2003 approved the
16 conversion proposal to be put to a vote of the entire membership of the Credit
17 Union. The Credit Union members approved the proposal on November 3, 2003.
18 **The minutes of the Credit Union Board Meetings are confidential.** [Emphasis
19 added.]

20 It is ludicrous for CCCU to contend that passages in minutes of meetings at which its
21 board of directors amend its bylaws constitute an integral part of those bylaws—that its members
22 are *deemed to know* under Washington law—when CCCU refuses its members access to those
23 confidential board minutes. If the Defendants’ concept of corporate democracy is to assert that
24 CCCU’s members are bound by *secret* bylaw provision, then perhaps they should rename CCCU
25 to *Kafka Credit Union*.

26 Even when officials of CCCU are were asked for specific information about the obvious
27 inconsistency between the term-limit bylaws provision and the long tenure in office of the
28 incumbent directors, they replied evasively through their new attorney, John Neupert, without
29 providing any documents upon which they claim to be “grandfathered.” See Mr. Neupert’s letter
30 of February 23, 2004 to Plaintiffs’ counsel, Doug Schafer (Exhibit B to the Supporting
31 Declaration).

32 The enforcement of CCCU’s term-limits bylaws provision exactly as it was plainly

1 written, and exactly as each member of CCCU reading its bylaws would readily understand it, is
2 supported by the public declaration by the Chair of CCCU's board of directors, Ms. Karen
3 Martel, that CCCU had adopted director term limits in 1999 to ensure an ever-changing and
4 appropriately representative board of directors. She wrote a guest editorial published in *The*
5 *Columbian* newspaper on Sunday, February 29, 2004, that emphasized the board's term limits in
6 the following passage:

7 "Detractors have tried to rally support by saying that Columbia's board denied the
8 petition to preserve their positions indefinitely. In actuality, Columbia's board
9 adopted term limits in 1999 to ensure appropriate representation of the
10 ever-changing face of Columbia's membership."

11 **VII. Conclusion.**

12 The Term-Limited Directors are no longer eligible to serve as directors of CCCU by
13 reason of the maximum service limitation set forth in Article V, Section 2 of CCCU's bylaws.
14 The Court should order Defendants Connie Jones, Dennis McLachlan, Robert M. Byrd, and
15 Mark L. Ail to vacate their director positions, and should order that nominated Defendants
16 Dennis McLachlan and William F. Byrd III are ineligible for re-election to board positions at
17 CCCU's 2004 annual meeting.

18 Date: April 1, 2004

19 _____
20 Douglas A. Schafer, WSBA No. 8652, Plaintiffs' Counsel