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

SAVE CCU,

Plaintiffs,

vs.

COLUMBIA CU & DFI,

Defendants.

)
)
)
) No. 06-2-01688-0
)
)
) PRELIMINARY INJUNCTION
)

COURT'S FINDINGS

BE IT REMEMBERED that on September 18, 2006,
the above-entitled matter came on for hearing before the
HONORABLE PAULA CASEY, Judge of Thurston County Superior
Court.

Reported by: Maria I. Ray
CCR # 2033, RPR, CCR

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APPEARANCES

FOR THE PLAINTIFF:

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1 MR. SCHAFER: No. It's two directors, two
2 duly directed directors, and there were three members of the
3 supervisory committee who were removed. Only one of those
4 three chose to participate in this appeal. One of them is
5 possibly fighting for his life or possibly deceased suddenly.
6 The others --

7 THE COURT: So it's two members of the board
8 of directors and one supervisory committee member.

9 It's somewhat curious that this case is now in Thurston
10 County since I know the parties before me have had much
11 litigation, including a trip to the Court of Appeals and a
12 recent decision. The earlier litigation was in Clark County.
13 We're suddenly here in Thurston County.

14 The business of these credit unions, as well as credit
15 unions generally, is somewhat new to me. I feel compelled to
16 issue a decision on the injunctive relief requested today
17 because of the action that the injunction is requested
18 against is partially intended to commence tomorrow.

19 So I think all of you know that I've had a somewhat brief
20 view of the credit union laws, your own authorities and the
21 facts of this case.

22 The three plaintiffs, individual plaintiffs, all have
23 been removed as members of the credit union for reasons
24 including that their actions or behavior has been inimical to
25 the interest of the credit union, that they have caused the

1 credit union a loss, and it may even have been said, in at
2 least one of the letters, that there was a breach of
3 fiduciary duty.

4 May I begin by saying that members owe no fiduciary duty
5 to the credit union itself, but according to the new rules,
6 which were adopted in August 2006 for a basis for expulsion
7 for membership, acting inimical to the best interest of the
8 credit union can be a reason for expulsion.

9 There is a statutory procedure that has been in place for
10 suspension of a board member or for suspension of a member of
11 a supervisory committee. The law gives bases for those
12 removals and allows for some emergency relief to the credit
13 union itself by allowing a suspension of membership on the
14 board or on the supervisory committee if cause is
15 demonstrated, to be followed by an election or by a vote of
16 the membership on whether ultimate removal should take place.

17 In RCW 31.12.285, the causes for suspension and
18 ultimately -- ultimate removal are indicated: Suspension may
19 occur if there is a demonstrated financial irresponsibility,
20 a breach of fiduciary duty to the credit union or activities,
21 which in the judgment of the board, threaten the safety and
22 soundness of the credit union.

23 Causing the credit union a loss would be something that
24 may threaten the safety and soundness of the credit union or
25 could be at least categorized in that fashion.

1 As I understand the controversy that has been brewing
2 among the majority board members and supervisors and the
3 minority, one issue related to the conversion of the credit
4 union to a mutual savings bank. It appears that the majority
5 would like to move forward without being encumbered by the
6 minority point of view.

7 The minority has been somewhat outspoken in its
8 disagreement about the policies of the majority shareholders.

9 Today it appears to me that there is some question as to
10 whether the plaintiffs themselves participated in one of the
11 actions for which they're criticized, and that was
12 circulating advertisements in the media, requesting new
13 volunteers to be on the board and supervisory committee of
14 the credit union.

15 It seems that the affidavits of the plaintiffs put in
16 dispute whether they in fact were voters within the Save
17 Columbia Credit Union committee which ultimately took action
18 to propound those advertisements in the media.

19 In any case, in response to those advertisements and
20 plaintiffs' participation in the Save Columbia Credit Union
21 committee, the majority of the board amended the bylaws to
22 allow expulsion of members for an additional reason.

23 The expulsion list, previous to the August 2006
24 amendment, indicated a member could be expelled for abusive
25 or threatening conduct to a credit union official or

1 employee; unlawful conduct or activity affecting the credit
2 union; a failure to comply with the member's duties, and
3 those include under the bylaws keeping the credit union
4 informed of the member's address, complying with the law and
5 the bylaws, refraining from damaging credit union property,
6 acting with civility in dealings with corporate officers and
7 employees and carrying out contracts the member entered into
8 with the credit union.

9 Other reasons for expelling a member of a credit union
10 included causing the credit union a loss, failing to maintain
11 the member share balance as required, and failing to increase
12 the share balance, again, as required if there had been a
13 reduction.

14 The new reason for cause that was added to the bylaws was
15 that a member may be expelled for any other reason which in
16 the opinion of the board members voting in favor of expulsion
17 agree is inimical to the best interest of the credit union.

18 Quite unusual language but perhaps and probably within
19 the authority of the board to adopt as a reason for expelling
20 someone from credit union membership.

21 The same day these new expulsions rules were adopted, the
22 plaintiffs were expelled from membership in the credit union.
23 So it seems quite clear that the reasons for adopting the
24 amendments to the bylaws were specifically to expel these
25 members since all of those activities took place

1 contemporaneously.

2 So that in itself gives me cause for concern, that the
3 expulsion rules were adopted with a specific purpose in mind
4 of expelling particular people from membership.

5 What was more concerning to me, however, and why it
6 continues to be concerning to me is that each of the
7 plaintiffs had an official capacity that is controlled by
8 statute. And there are specific statutory procedures for
9 removing the plaintiffs from their positions on the board of
10 directors and from their positions as supervisors.

11 All of the removals from those official positions within
12 the credit union must be done for cause. Cause is not much
13 different than expulsion from membership, really, or at least
14 those relied upon by the board in this instance.

15 And the difference being that the board has absolute
16 authority from expelling people from membership, according to
17 its own bylaws, but for a director or supervisor to be
18 expelled, the board has absolute authority to suspend the
19 member, but by law, there must be a vote of the membership
20 before expulsion from -- or final termination from the
21 position is allowed.

22 That suggests to me that the Credit Union Act itself
23 places some value on the membership's ability to determine
24 who is going to be in leadership in the credit union and does
25 not vest within the board itself a determination of who the

1 leadership will be.

2 By avoiding eliminating the position or suspending the
3 plaintiffs from their positions of authority within the
4 credit union and instead completely expelling them as members
5 of the credit union pursuant to a new bylaw they adopted the
6 same day as they expelled them from the credit union, I
7 believe that the directors of the credit union have violated
8 the spirit and the intent of the credit union law. They
9 adopted a new bylaw to circumvent the statutorily prescribed
10 process for removing someone from the board of directors or
11 supervisory committee.

12 If in fact it is the position of the majority of the
13 board that the plaintiffs have acted or behaved inimical to
14 the interest of the credit union. That would be a breach of
15 their fiduciary duties and a basis for suspending each of the
16 plaintiffs from membership on their board or supervisory
17 committee.

18 If in fact the majority of the board of the credit union
19 believed that the plaintiffs have engaged in activities which
20 threaten the safety and soundness of the credit union through
21 its advertising or whatever it's doing to put the reputation
22 of the credit union in jeopardy, that, again, may be a basis
23 for suspending the plaintiffs from their membership on the
24 board and the supervisory committee.

25 But by following statutory procedure, the plaintiffs

1 would have an opportunity to have their names placed before
2 the membership to see if the membership would agree that they
3 should be expelled from their positions.

4 By way of preliminary injunction, I am going to return
5 the plaintiffs to their prior positions and require that the
6 ballots that will be sent to the membership include
7 Mr. Marbet's name since the only reason for him not appearing
8 on the ballot is that he has been expelled from membership in
9 the credit union by the new bylaw I have discussed.

10 I would expect that by these orders, the board will be
11 suspending the membership of the plaintiffs on their
12 respective boards and supervisory committees, and I notice
13 that there is a way of putting that vote to the membership
14 with respect to the removal of these directors at the same
15 time as putting to the membership the system by which the new
16 directors will be selected or the names of new directors that
17 they be available for office. I would expect those things
18 might happen also.

19 I know I need to address, in making this order, whether I
20 believe that the plaintiffs have demonstrated harm. I
21 believe that the harm that has been demonstrated is the
22 impairment of the rights of the members to select their
23 governing body and circumvention of the law with respect to
24 removal of the plaintiffs from their elected positions.

25 And since the plaintiffs are the members of that

1 governing body who had been elected, it is appropriate for
2 them to bring this issue before the court.

3 I think that more than a nominal bond should be required
4 in this case, since this is quite a convoluted legal issue
5 that may take on different forms before it makes its way at
6 trial or before it makes its way to appeal, and so I would
7 like to allow the defendants to address the amount of the
8 bond that should be required.

9 (End of requested colloquy.)

10 *****

11 (Beginning of requested colloquy.)

12
13 THE COURT: I'm going to set the bond in the
14 amount of \$20,000.

15 MR. NEUPERT: And -- okay.

16 MR. SCHAFER: Thank you, Your Honor.

17 MS. HENNESSY: Your Honor?

18 THE COURT: Yes.

19 MS. HENNESSY: Could I just remind the Court
20 that these are volunteer board members with limited resources
21 and request that that may be cut in half?

22 THE COURT: Today I've set the bond at
23 \$20,000.

24 MS. HENNESSY: Thank you, Your Honor.

25 THE COURT: I think the cost of the bond is

1 not that excessive.

2 MS. HENNESSY: Thank you.

3 THE COURT: And, of course, the parties can
4 always post cash, which is subject to being returned and
5 placed in an interest-bearing account should they chose to do
6 that instead.

7 This matter is concluded for today.

8 (Proceedings concluded.)

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CERTIFICATE OF REPORTER

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STATE OF WASHINGTON)
)
COUNTY OF PIERCE)

I, MARIA I. RAY, Certified Court Reporter in the State of Washington, County of Pierce, do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter, and the transcript is a true and complete record of my stenographic notes.

Dated this day of , 2006.

Maria Ray, CCR # 2033