

- EXPEDITE
- No hearing is set.
- Hearing is set.

Date: November 17, 2006

Time: 11:00 am Motion Calendar

Judge/Calendar: J. Casey

Superior Court of Washington for Thurston County

Save Columbia CU Committee, Cathryn Chudy, Kathryn Edgecomb, Lloyd Marbet, and Robert Tice, Plaintiffs,

vs.

Columbia Community Credit Union and State of Washington Department of Financial Institutions, Defendants.

Case No. 06-2-01688-0

Plaintiffs' Response to Motion for Partial Summary Judgment.

1. Defendant's Third Attempt to Argue Its Rejected Point of Law Must Fail. In Plaintiffs' Motion for Injunction and Memorandum in Support Thereof, filed 9/8/06, SaveCCU argued that Columbia's 5-member board majority could not lawfully remove their fellow board and supervisory committee members because of their disagreements on governance matters by amending the bylaws and summarily expelling them as members of Columbia. Instead, SaveCCU asserted, removal of such elected officials of a credit union on the facts of this case required following the special membership meeting process prescribed in RCW 30.12.285.

First Attempt. Defendant Columbia's Opposition to Motion for Injunction, filed 9/14/06, argued that as a matter of law its 5-member board majority could circumvent RCW 30.12.285, asserting at page 6:23:

"Given the Board's plenary authority over membership and the fact that membership is a precondition to board and supervisory committee service, there is no reason to require the Board first to suspend someone for "cause" if that same Board believes that the member should also be expelled because once expelled, the person is ineligible to serve in any capacity and the issue is not for membership consideration."

1 SaveCCU's Reply to Opposition to Motion for Injunction, filed 9/18/06, argued that
2 Columbia's interpretation of law rendered RCW 31.12.285 meaningless, for no credit union
3 board would employ the special membership meeting and vote required by that statute if they
4 could achieve their desired removal of dissenting elected officials simply by their board
5 majority's action. That Reply also argued, with case law, that the actions of Columbia's 5-
6 member board majority to expel the duly elected Plaintiffs wrongfully thwarted democratic
7 governance by Columbia's members as mandated by RCW Ch. 30.12, and their actions were not
8 covered by the business judgment rule.

9 After a lengthy hearing on 9/18/06, the Court rejected Columbia's asserted point of law
10 as applied to the facts of this case, ruling orally then, and in the Court's Order Granting
11 Preliminary Injunction entered on 10/5/06, as follows (Conclusion of Law #3):

12 3. Columbia's board, by avoiding suspending Chudy, Edgecomb, and Marbet
13 from their positions of authority within Columbia and instead completely
14 expelling them as members of Columbia pursuant to a new bylaw the board
15 adopted the same day as they expelled them from Columbia, appears to have
16 violated the spirit and the intent of the credit union law, RCW 31.12.285. It
17 appears that they adopted a new bylaw to circumvent the statutorily prescribed
18 process (RCW 31.12.285) for removing someone from the board of directors or
19 supervisory committee.

20 **Second Attempt.** On 10/5/06, Columbia filed a Motion for Reconsideration and Partial
21 Summary Judgment and a Memorandum in Support of those motions. In that Memorandum,
22 Columbia essentially repeated its prior rejected arguments (Memorandum at 8:22 to 9:2):

23 "Columbia is a 'cooperative society' in which membership is voluntary and in
24 which the board, by bylaw, establishes the criteria for entry as a member and the
25 'cause' for expulsion. ... It is the board's decision alone as to whether a member
26 remains fit to continue to belong as a member."

27 SaveCCU's Response to Motion for Reconsideration, filed 10/17/06, urged the Court to
re-read its previously filed arguments against Columbia's claim that its 5-member board majority
had exclusive authority to expel, for any so-called "cause" that they alleged, the duly elected
board and supervisory members with whom they disagreed about governance matters. That

1 Response demonstrated that member loan defaults were the only “cause” for which Columbia
2 historically had expelled members (by authority that the board had delegated to a Loan Review
3 Committee comprised solely of employees) prior to 8/15/06 when Columbia’s board majority
4 expelled Plaintiffs. The Response also demonstrated that directors Edgecomb and Chudy had
5 been elected by 62.0% and 51.4% of the 5,819 ballots cast by Columbia’s members in the vote-
6 by-mail election preceding Columbia’s annual meeting on 6/29/05.

7 After a hearing on 10/19/06, the Court entered an Order denying Columbia’s Motion for
8 Reconsideration, rejecting for the second time Columbia’s asserted point of law as applied to the
9 facts of this case.

10 **Third Attempt.** By Columbia’s Motion for Reconsideration and Partial Summary
11 Judgment, filed 10/5/06, and its noting on 10/13/06 of its partial summary judgment motion for
12 hearing on 11/17/06, Columbia now makes its third attempt to assert its twice-rejected point of
13 law. Because Columbia’s pleadings comprising its third attempt are the very same pleadings
14 that comprised its second attempt, it amounts to a motion for reconsideration of a denied motion
15 for reconsideration! It should be summarily denied by the Court.

16 **2. Columbia’s Asserted Point of Law is Wrong.** Columbia repeatedly asks the Court
17 to conclude as a matter of law that Columbia’s “Board of Directors (‘Board’) possesses statutory
18 authority [under RCW 31.12.255(1)(d)] to expel members of Columbia’s Board or Supervisory
19 Committee for ‘cause’ as established by the Board and need not follow the separate statutory
20 procedure [of RCW 31.12.285] for suspension and removal from office of a member of the board
21 of directors or supervisory committee prior to expulsion.” Motion at 1:25 to 2:4.

22 RCW 31.12.285 provides *specifically* for removing of elected officials as follows:

23 “The board may suspend for cause a member of the board or a member of the
24 supervisory committee until a membership meeting is held. The membership
25 meeting must be held within thirty days after the suspension. The members
26 attending the meeting shall vote whether to remove a suspended party. For
27 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 And as a *general* matter, RCW 31.12.255 titled “Board of directors—Powers and duties,”
2 provides at subsection (1)(d) that a credit union’s board shall “[e]stablish the conditions under
3 which a member may be expelled for cause.”

4 It logically cannot be denied that if Columbia’s point of law is correct—that a credit
5 union board’s majority has plenary power under RCW 31.12.255(1)(d) to summarily expel any
6 elected board or supervisory committee member for anything they allege as “cause”—that RCW
7 31.12.285 is meaningless statutory “deadwood.” But Washington courts consistently apply rules
8 of statutory construction which seek to give meaning and effect to all legislative enactments. In
9 *Miller v. Pasco*, 50 Wn.2d 229, 310 P.2d 863 (1957), the court declared those rules, at 233-34:

10 Two rules of statutory construction, to which we have uniformly adhered,
11 apply to the issue presented by this proceeding: (1) that each and every section of
12 a legislative enactment must be given meaning, and (2) where general powers are
13 granted with specific powers enumerated, the general powers are modified,
14 limited, and restricted to the extent of the specific enumeration. *Groves v. Meyers*,
15 35 Wn.2d 403, 213 P.2d 483 (1950); *State v. Thompson*, 38 Wn.2d 774, 232 P.2d
16 87 (1951); *Public Hospital Dist. No. 2 of Okanogan County v. Taxpayers of*
17 *Public Hospital Dist. No. 2 of Okanogan County*, 44 Wn.2d 623, 269 P.2d 594
18 (1954); 50 Am.Jur. 244, § 249; 82 C.J.S. 658, § 332.

19 If, as appellant contends, cities of the third class, by RCW 35.24.300,
20 *supra*, have *general power* to lease, sublease, convey or otherwise dispose of their
21 real estate, then the remainder of the quoted portion of the section, which
22 authorizes specific types of leases, is surplusage and meaningless.

23 Similarly, in *In re Estate of Black*, 153 Wn.2d 152, 102 P.3d 796 (2004), the court stated at 164:

24 At the outset, we must determine which statutes apply to this case. ... Statutes
25 relating to the same subject are construed together and, in “ascertaining
26 legislative purpose . . . are to be read together as constituting a unified whole, to
27 the end that a harmonious, total statutory scheme evolves.” *Hallauer v. Spectrum*
Props., Inc., 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (quoting *State v. Wright*, 84
Wn.2d 645, 650, 529 P.2d 453 (1974)). When more than one statute applies, the
specific statute will supersede the general statute. *See Hallauer*, 143 Wn.2d at 146
(stating that when statutes conflict, the specific statute supersedes the general
statute); *Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm’n*, 123 Wn.2d
621, 630, 869 P.2d 1034 (1994).

And in determining when a more *general* statute is superceded by a more *specific* statute, the

1 court in *State v. Shriner*, 101 Wn.2d 576, 681 P.2d 237 (1984), stated the test at 580:

2 It is a well established rule of statutory construction that “where a special statute
3 punishes the same conduct which is punished under a general statute, the special
4 statute applies and the accused can be charged only under that statute.” *State v.*
5 *Cann*, 92 Wn.2d 193, 197, 595 P.2d 912 (1979). It is not relevant that the special
6 statute may contain additional elements not contained in the general statute; *i.e.*,
7 notice. The determining factor is that the statutes are concurrent in the sense that
8 the general statute will be violated in each instance where the special statute has
9 been violated.

10 As applied to the facts of this case, if every act of “cause” under RCW 31.12.285 justifying
11 suspension and membership removal of an elected credit union official is also an act of “cause”
12 justifying immediate expulsion from credit union membership (and consequently from elective
13 office) under RCW 31.12.255(1)(d), then the more specific statute’s procedure must be followed
14 in any disciplinary proceeding for acts of alleged “cause” under RCW 31.12.285 by a credit
15 union’s elected officials.

16 The necessary employment of the board-suspension-membership-removal procedure of
17 RCW 31.12.285 is further compelled in this case because the alleged “cause” for which the
18 Chudy, Edgecomb, and Marbet were removed was their allegedly violating a fiduciary duty of
19 loyalty that only arose by virtue of their elective offices. Mere members of a credit union owe no
20 fiduciary duty of loyalty. Compare expulsion notices of elected officials Chudy, Edgecomb, and
21 Marbet with that of non-elected-official member Tice. Complaint Appendix Exhibits 26 - 29.

22 **3. Columbia’s Claims of Plenary Board Authority to Expel Members Are Wrong.**

23 In Columbia’s Memorandum of Law supporting its motions, it asserts that its board majority has
24 absolute, unqualified power to decide who is “fit” to be, or to remain, a member of Columbia.
25 But case law demonstrates the error of such a claim. A credit union board made that error in
26 *Galbraith v. Tapco Credit Union*, 88 Wn. App. 939, 946 P.2d 1242 (1997), when it expelled a
27 credit union member. The appellate court reinstated the member’s claim for wrongful expulsion
from membership, though the credit union’s board had alleged a litany of alleged causes, when
the actual facts showed that the board’s primary reason for the member’s expulsion was his

1 exercise of clearly lawful rights. It should be obvious that it would be unlawful for a credit
2 union board to determine that all individuals of a particular race, religion, sexual orientation,
3 ethnicity, or other protected class are “unfit” to be, or remain, members of their credit union.

4 The logic of Columbia’s claim of plenary board expulsion authority would permit a credit
5 union board to expel substantially all its members so they then could voluntarily liquidate (as
6 RCW 31.12.474 permits) the institution and divide its net worth (presently about \$80 million)
7 among only themselves and their favored remaining members. Obviously, a court should and
8 would prevent such an inequitable and unconscionable event. Thus, the actual facts showing the
9 motive underlying a credit union board’s banishment of credit union members or elected officials
10 are material to the lawfulness of its actions.

11 **4. Discovery Will Elicit the Material Facts and Motives of Columbia’s 5-Member**
12 **Board Majority.** As discussed above, the actual facts and motives underlying a credit union
13 board’s purported expulsion of a member are material and relevant to a determination of its
14 lawfulness. Because Columbia’s 5-member board majority, after the Court preliminarily
15 enjoined its expulsion of Chudy, Edgecomb, and Marbet, initiated on 10/16/06 the suspension
16 and removal-by-membership-vote process of RCW 31.12.285, Plaintiffs have not yet
17 commenced discovery to probe the facts and motives underlying their expulsions of those elected
18 officials on 8/15/06. Depending upon the outcome of a special membership meeting and
19 removal vote on 11/15/06, and the subsequent long-delayed 2006 election to fill the open
20 positions on Columbia’s board and supervisory committee, this case may get resolved without
21 the need for burdensome and costly discovery.

22 Civil Rule 56(f) provides:

23 Should it appear from the affidavits of a party opposing the motion that he cannot,
24 for reasons stated, present by affidavit facts essential to justify his opposition, the
25 court may refuse the application for judgment or may order a continuance to
26 permit affidavits to be obtained or depositions to be taken or discovery to be had
27 or may make such other order as is just.

If the Court believes that the facts and motives underlying Columbia’s 5-member board

1 majority's expulsions of Chudy, Edgecomb, and Marbet are material and relevant to resolving
2 Columbia's pending motion for partial summary judgment, Plaintiffs request a continuance to
3 permit discovery to be had in order to present those facts and motives. A Declaration of Schafer
4 re: Discovery, in support of this contingent continuance request, is being filed with this
5 Response.

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7 Respectfully submitted this 6th day of November, 2006.

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11 Plaintiffs.