

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE**

JOHN KELLUM, et al.,)	
)	
Plaintiffs,)	Case No. 1716-CV11589
)	
vs.)	Division 2
)	
FAIRLANE HOMES ASSOCIATION, et al.,)	
)	
Defendants.)	

AMENDED DECLARATORY JUDGMENT

Comes now the Court on Defendants’ Motion to Amend Judgment, filed herein January 9, 2019, and, after review of the Motion, and seeing no objections or responses filed, the Court hereby enters an Amended Judgment on Plaintiffs John Kellum, Ann Bowman, Katie Woods, Wanda Caldwell and Diane Huff’s Petition for Injunction and Declaratory Judgment (“the Petition”), filed herein May 22, 2017, and Plaintiffs’/Intervenors’ Motion for Reconsideration and Rescission of Order Appointing Receiver, filed herein February 26, 2018.

On August 9, 2018, the Court called this matter for hearing. Plaintiffs/Intervenors John Kellum, Ann Bowman, Katie Woods, Wanda Caldwell and Diane Huff, appear by Kelly Charles Tobin. The Fairlane Homes Association (“Fairlane”), appears by John Timothy Coghlan, Jane Ann Landrum,¹ and also by Frank Coulter Devries as Receiver appointed by the Honorable Jennifer M. Phillips, having entered his appearance for Fairlane on August 9, 2018. Defendants Lisa Crawford, Michael Radabaugh, Bea Clodfelter, and Candy Gray, appear by counsel Jane Ann Landrum. The Court dismissed Shane Dunn and Estelle Jenkins at hearing for lack of service. Further, Plaintiffs/Intervenors dismissed Count I of their Petition at the August 9, 2018 hearing. Additionally, on December 10, 2018, all parties appeared, at which time Ms. Landrum presented

¹ Mr. Coghlan entered on behalf of Fairlane for the purpose of the Petition for appointment of receiver and Ms. Landrum filed her answer on November 9, 2018 for Fairlane for Plaintiffs’ Petition.

additional argument on behalf of Fairlane. After both hearings, the Court took the matter under advisement and now finds as follows:

Analysis

Fairlane is a Missouri property owners' association organized under Articles of Agreement entered into pursuant to Mo. Rev. Stat. §§ 352.010 to 352.240, and dated July 20, 1955. On August 1, 1955, Fairlane adopted certain By-Laws of Fairlane Homes Association ("Bylaws") for its government, support, and the management of its property.

The Board of Directors ("the Board") manages the property, business, and affairs of Fairlane.² The Officers of Fairlane are a President, Vice President, Secretary, and Treasurer.³ The procedure for electing Directors is articulated in Article IV, Section 10 of the Bylaws. At the annual meeting of the members of Fairlane, three members are nominated and elected as Directors for a term of three years.⁴ Article IV, Section 11 of the Bylaws further sets forth the procedure for nominating and voting for Directors. Nominations for Directors may be made by petition filed with the Secretary not less than twenty (20) days prior to the date of any annual meeting of the members of Fairlane.⁵ Each petition must also be signed by not less than fifteen (15) duly qualified members and no member may sign more than one petition.⁶ Alternatively, nominations for Directors may be made from the floor at any annual meeting of the members of Fairlane.⁷ Voting for Directors must be by written ballot and the three persons receiving the highest number of votes cast at the annual meeting of the members of Fairlane are declared elected as Directors.⁸ When a vacancy exists of any member or officer, the Directors, despite less than a quorum, may choose a successor to hold office for the remainder of the unexpired term in which such vacancy occurred.⁹

² Ex. C, Art. IV, Sec. 1.

³ Ex. C, Art. V, Sec. 1.

⁴ Ex. C, Art. IV, Sec. 10.

⁵ Ex. C, Art. IV, Sec. 11.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Ex. C., Art. VI, Sec. 1.

Said vacancy must be filled by a majority vote.¹⁰ Pursuant to Article V, Section 1 of the Bylaws, the Board, at its annual meeting, elects by ballot from their own number a President, a Vice President, a Secretary, and a Treasurer.¹¹ A majority of the whole number of Directors is necessary for the election of officers. Additionally, the President, or, in his absence, the Vice President, calls all meetings of Fairlane to order and acts as Chairman of such meetings.¹²

Lawrence Dixon, Katie Woods, and Bea Clodfelter were re-elected to the Board at the annual meeting of the members of Fairlane held on March 2, 2015. According to the meeting minutes, a motion was made and seconded to retain the present Board members Lawrence Dixon, Katie Woods, and Bea Clodfelter. The motion was carried. At that same meeting on March 2, 2015, the minutes then indicate Diane Huff volunteered to become a Board member; however no formal motion or vote to approve her Board membership was taken. Diane Huff testified she was not elected to the Board by the general members of the Association, but was appointed by the Board to fill a vacancy.

On December 7, 2015, Michael Radabaugh was elected to the Board and agreed to fill the vacancy of Secretary. The annual meeting of the members of Fairlane, held on March 14, 2016, was called to order and chaired by then-President Shane Dunn. Lisa Crawford, Candy Gray, and Estella Jenkins were elected to the Board by the Fairlane membership at this annual meeting. Also at the March 14, 2016 annual meeting of the Fairlane Board, the following individuals were additionally elected Officers of Fairlane: Shane Dunn as President, Lisa Crawford as Vice President, Estella Jenkins as Treasurer, and Michael Radabaugh as Secretary. Lawrence Dixon declined nomination to return to the Board on that date. There were no notices sent out and no annual meeting of the members of Fairlane in March, 2017.

On May 10, 2017, due to conflicts amongst the membership of Fairlane, the elected Board met at a properly-noticed special meeting and agreed to engage and instruct Lathrop & Gage LLP

¹⁰ *Id.*

¹¹ Ex. C, Art. V, Sec. 1.

¹² Ex. C, Art. II, Sec. 4.

to utilize the necessary legal means to petition the Court to place Fairlane into a receivership, such that the Court and its appointed receiver may resolve all issues pertaining to the identity of the Board and to ultimately dissolve Fairlane.

On May 22, 2017, John Kellum, Ann Bowman, Katie Woods, Wanda Caldwell, and Diane Huff, each individually filed suit against Fairlane, Shane Dunn, Lisa Crawford, Estella Jenkins, Michael Radabaugh, Bea Clodfelter, and Candy Gray in the above-styled and numbered cause in the Circuit Court of Jackson County, Missouri at Independence. Plaintiffs allege in the Petition, *inter alia*, that Kellum and Huff were wrongfully removed from the Fairlane Board and all actions taken thereafter in the name of the Board were therefore illegal, void, and without effect.

On May 31, 2017, Fairlane filed suit for the appointment of receiver and dissolution in Jackson County cause number 1716-CV12398. On August 29, 2017, the Honorable Jennifer M. Phillips appointed F. Coulter deVries as Receiver of Fairlane's property ("the Receiver"). On or about September 27, 2017, counsel for Plaintiffs/Intervenors Kellum, Bowman, Woods, Caldwell and Huff, then filed a Motion to Consolidate the receiver and dissolution action with the instant, companion lawsuit, alleging that the actions taken in the name of the Board were illegal and void. Seeing no objections or responses, Judge Phillips consolidated the receiver and dissolution case with cause number 1716-CV11589 and transferred the receivership and dissolution to this Court.

The Court held multiple hearings on the receivership; however, those hearings ultimately resulted in a fundamental question now before the Court: whether the Board even had the authority to hire Lathrop & Gage LLP to utilize the necessary legal means to petition the Court to place Fairlane into receivership and dissolve the association.¹³ The Court held a hearing on August 9, 2018, to address issues surrounding this question. After an evidentiary hearing and argument from counsel, the Court finds the following:

¹³ The Court considers this issue analogous to the criminal law concept of the fruit of the poisonous tree doctrine. Should the formation of the Board be determined to be invalid, any action taken with an improperly elected Board would therefore be invalid.

Authority of the Board and Lisa Crawford's Ownership Status

The May 28, 2017, resolution of unanimous consent of the Board instructing Lathrop & Gage LLP to petition the Court to place Fairlane into a receivership and dissolve the association was void and, therefore, without effect. The resolution was signed by Lisa Crawford, Estella Jenkins, Michael Radabaugh, Bea Clodfelter, and Candy Gray.¹⁴ However, Ms. Crawford was not a valid member of the board of directors as she was not a property owner on the date of her election to the Board of Directors. Therefore, based upon testimony and review of Fairlane's bylaws, the Board of Directors did not have the authority to hire an outside law firm to place Fairlane into a receivership and dissolve the association.¹⁵

Corporate articles and bylaws are to be construed according to general rules governing contracts. *Boatmen's First Nat'l Bank v. Southern Mo. Dist. Council of the Assemblies of God*, 806 S.W.2d 706, 714 (Mo. App. S.D. 1991). Contract language is ambiguous when there is uncertainty as to its meaning and it is fairly susceptible to more than one meaning, so that reasonable persons may fairly and honestly differ on construction of its terms. *Clampit v. Cambridge Phase II Corp.*, 884 S.W.2d 340, 345 (Mo. App. E.D. 1994).

Pursuant to the Bylaws, at each annual meeting...three (3) members shall be nominated and elected as Directors for a term of three (3) years each.¹⁶ Further, at all meetings of the Board, the presence of five (5) Directors shall be necessary and sufficient to constitute a quorum for the transaction of business.¹⁷

Under the Bylaws, the term "unit" or "unit of improved property" is to be construed to mean and to consist of a single dwelling house or residence.¹⁸ The term "improved property owner" or "owner of improved property" is to be construed to mean the owner of a unit or units

¹⁴ Ex. 3A.

¹⁵ Further, the Court did not hear any credible evidence that any member of the Board, other than Lisa Crawford, was improperly elected or situated on the Board, and therefore only considers Lisa Crawford's status.

¹⁶ Ex. C, Art. IV, Sec. 10.

¹⁷ Ex. C, Art. IV, Sec. 9.

¹⁸ Ex. C, Art. III, Sec. 2.

of improved property.¹⁹ Any person who may hereafter at any time or times acquire and be and become the *owner or owners* of any unit or units of improved property . . . shall upon acquisition of such *ownership* ipso facto, be and become a member or members of this Association.²⁰

Plaintiffs/Intervenors Kellum, Bowman, Woods, Caldwell, and Huff argue that the persons who authorized the association to file the current action did not have the authority to do so. Plaintiffs' central argument is that Lisa Crawford was not an owner of property in the subdivision entitling her to membership, therefore her position as an elected member of the Board was improper. As such, Plaintiffs argue that any action the Board took with Crawford was void. Additionally, Plaintiffs/Intervenors argue that the removals of John Kellum and Diane Huff are void and of no effect.

Fairlane counters that Crawford was a valid member of the Board and a valid vote took place in favor of the subject resolution. Fairlane argues that Crawford entered into an oral agreement to purchase the house she was renting prior to her election to the Board and, as such, was a holder of equitable title of the property which conveyed an ownership interest, as required by the Bylaws.

Here, Crawford was elected to the Board at the annual meeting of the members of Fairlane, held on March 14, 2016, and Crawford was ultimately elected Vice President at that same meeting. However, Crawford did not obtain the initial Contract for Deed on her residence, which gave her ownership in that residence, until March 15, 2016.²¹ Therefore, because she was not a Fairlane property owner on March 14, 2016, Crawford was not a member of Fairlane on March 14, 2016. As a result of her non-member status in Fairlane, Crawford could not be nominated or elected to the Board prior to her acquiring an ownership interest in her residence. While it is undisputed Crawford was renting a residence in Fairlane, she cannot be classified as a member because of her lack of ownership interest before March 15, 2016, notwithstanding Fairlane's arguments that

¹⁹ Ex. C, Art. III, Sec. 4.

²⁰ Ex. C, Art. III, Sec. 5.

²¹ Ex. 1A.

Crawford had an equitable ownership interest in the property. The Bylaws clearly state that ownership is a prerequisite to Fairlane membership and do not provide for an equitable ownership interest as fulfilling that prerequisite.²² Inasmuch, Crawford was not an owner within the meaning of Fairlane's Bylaws at the time of the election and could not, then, be validly elected to the Board prior to acquiring an ownership interest in her residence. Accordingly, any actions taken by the Board following Crawford's appointment were void and without effect because of her improper election.²³ In this way, the May 28, 2017 resolution in question was signed by only four valid board members: Jenkins, Radabaugh, Clodfelter, and Gray. Thus, because pursuant to Article IV, Section 9 of the Bylaws those four valid board members were an insufficient quorum to transact Fairlane business, the May 28, 2017 resolution purporting to hire outside legal counsel was null and void *ab initio*.

Diane Huff's Removal from the Board of Directors

Diane Huff alleges she was wrongfully removed from the Board at the October 3, 2016 meeting. Much like Crawford, though, Huff was not wrongfully removed from the Board because Huff was not properly voted onto the Board as a member. The March 2, 2015 meeting minutes reflect that Huff volunteered to join the Board. The meeting minutes do not reflect, however, that a vote was taken to approve her membership or fill the Board vacancy pursuant to the procedure outlined in the Bylaws. Further, the Court notes Plaintiffs do not file a response or opposition to Defendants' Motion to Amend Judgment as to this point regarding Huff's Board status and removal.²⁴ Therefore, because Huff was never properly voted onto the Board pursuant to the Fairlane Bylaws, she was not wrongfully removed from the Board.

²² Ex. C, Art. III, Sec. 5.

²³ Plaintiff Kellum was properly removed by the board at a special meeting of the Board on August 24, 2015, prior to the election of Lisa Crawford to the board. Ex. E.

²⁴ The Court additionally notes that Plaintiffs do not file a response to *any* point made in Defendants Motion to Amend Judgment, filed January 9, 2019.

Authority of Lisa Crawford to File for a Receivership or Dissolution in her Capacity as Vice-President

Alternatively, counsel for Fairlane raises an argument that Crawford had the authority to hire outside counsel to place Fairlane into a receivership and dissolve the association pursuant to Article V, Section 7 of Fairlane's Bylaws.²⁵ That section provides that the President shall be the chief executive officer of the Association and shall discharge the duties normally incumbent on such officer. The Vice President, in the absence or inability of the President, shall perform the duties of the President, pursuant to Article V, Section 8. Counsel for Fairlane argues that, as a result of Shane Dunn's resignation from the Board effective October 3, 2016, Crawford stepped into Dunn's shoes as President under Article V, Section 8, and had the authority to perform duties of the President including, but not limited to, hiring outside legal counsel. Fairlane additionally argues that, under the Bylaws, Crawford did not need to be a member of the association to hold the Vice President office.

However, pursuant to Fairlane's Bylaws, the Board of Directors shall elect by ballot, "from their own number," a President, Vice President, Secretary and Treasurer.²⁶ It is erroneous to suggest the phrase, "from your own number," would have any meaning other than that the Board of Directors shall elect officers from their own membership.²⁷ As such, being a member of Fairlane is a condition precedent not only to becoming a member of its Board, but also to being elected by ballot to an officer position. *See* Ex. C, Art. V, Sec. 2.

Further, Fairlane, compares the actions of its Association's President to a corporate CEO, and contends a corporate CEO has the authority to not only hire an outside law firm, but to hire

²⁵ While Fairlane briefly raised this argument during hearing, it did not address the issue in its post-hearing brief filed with the Court.

²⁶ Ex. C, Art. V, Sec. 2.

²⁷ *See State ex rel. O'Brien v. Petry*, 397 S.W.2d 1, 6 (Mo. App. Stl.D. 1965) (where membership in a Guild was a condition precedent to election to the Board of Directors of the Guild).

that law firm with the express purpose to place the corporation into a receivership and dissolve that corporation. However, to the Court, while it would seem logical for a CEO to have the ability to hire an outside law firm, it is illogical for a CEO to unilaterally place a corporation into a receivership and dissolve that corporation without any board approval, specifically a board who initially placed that CEO into his or her position.

IT IS THEREFORE ORDERED that Defendants' Motion to Amend Judgment is **GRANTED in part** and **DENIED in part**.

IT IS FURTHER ORDERED that Plaintiffs/Intervenors John Kellum, Katie Woods, Wanda Caldwell and Diane Huff's Motion for Reconsideration and Rescission of Order Appointing Receiver is **GRANTED**.

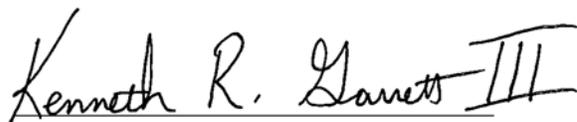
IT IS FURTHER ORDERED that Count II of Plaintiffs/Intervenors John Kellum, Katie Woods, Wanda Caldwell and Diane Huff's Petition for Declaratory Judgment is **DENIED**.

IT IS FURTHER ORDERED that the actions taken by the Board in hiring Lathrop & Gage LLP to utilize the necessary legal means to petition the Court to place Fairlane into receivership and dissolving the association are null and void and of no force and effect.

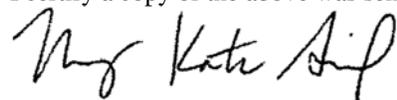
IT IS FURTHER ORDERED that a new election shall be performed by Fairlane within sixty (60) days to elect an eligible member to its Board.

IT IS SO ORDERED.

February 22, 2019
Date


Judge Kenneth R. Garrett, III

I certify a copy of the above was sent this day to all parties of record via the e-Filing system:



Mary Kate Bird, Law Clerk, The Honorable Kenneth R. Garrett, III, Division 2