



Civil Resolution Tribunal

Date Issued: November 21, 2023

File: CS-2022-006716

Type: Societies and Cooperatives

Civil Resolution Tribunal

Indexed as: *Filipino Seniors Club of British Columbia v. Butcher*, 2023 BCCRT 1006

B E T W E E N :

FILIPINO SENIORS CLUB OF BRITISH COLUMBIA

APPLICANT

A N D :

ANA MARIA BUTCHER and CONCEPCION COLOBONG

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is 1 of 2 linked disputes, which have common issues and facts. This dispute is file number CS-2022-006716. The other dispute is file number CS-2022-008306. I have considered the collective evidence and submissions in both disputes to avoid inconsistent findings. However, I have written 2 separate decisions because the parties are different.

2. The applicant, Filipino Seniors Club of British Columbia (FSCBC), is a registered society. FSCBC says the respondents, Ana Maria Butcher and Concepcion Colobong, misrepresented themselves as current officers and directors of FSCBC. FSCBC seeks orders for the respondents to 1) return all files, documents, property, and assets to FSCBC, and 2) to stop acting as representatives for FSCBC as they lack the authority to do so.
3. Ms. Butcher disagrees. She says that she is an officer and director of FSBSC, and currently serving as its president. She says that FSCBC's representative in this dispute, Marius Alparaque, is not an officer or director. She also says that Mr. Alparaque conducted unauthorized business, such as holding an invalid directors meeting on September 25, 2021, wrongfully denying Ms. Butcher access to FSCBC's BC Registry account, and withdrawing money from FSCBC's bank account. Concepcion Colobong did not file a separate Dispute Response and is in default.
4. In this dispute, Mr. Alparaque represents FSCBC. Ms. Butcher represents herself.
5. For the reasons that follow, I find FSCBC has proven its claims.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over certain society claims under section 129 of the Civil Resolution Tribunal Act (CRTA). CRTA section 2 says the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that

includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.

8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court.
9. Under CRTA section 131, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.

The CRT's April 4, 2023 Preliminary Decision

10. The CRT considered in an April 4, 2023 preliminary decision whether Mr. Alparaque had authority to act for FSCBC in this dispute. Mr. Alparaque says that they are a director and 1 of 2 vice presidents for FSCBC.
11. I find the following relevant. CRTA section 20(5)(a) says that in the case of a party that is a corporation, partnership, or other form of organization or office with capacity to be a party to a court proceeding, the person acting for the party in the CRT proceeding must be a director, officer, or partner of the party. Similarly, CRT rule 1.14(1)(f) says that a party that is a society must act through a director, senior manager, or authorized member or employee.
12. CRT rule 1.14(2) says a person acting for, or representing, an organization must have authority to bind the party at all stages of the CRT process. Section 52 of the Societies Act (SA) says that a society's directors must manage or supervise the management of the activities and internal affairs of the society.
13. In the preliminary decision, the CRT declined to find that Mr. Alparaque had no authority to act for FSCBC. This is because it found that the issue of whether Mr. Alparaque was a director was central to this dispute. It found it would be consistent with the CRT's mandate, which includes resolving disputes in an economical manner, to determine this issue in a final decision.

14. I agree with the reasoning in this decision. I find that the first key issue is whether Mr. Alparaque was and continues to be a director for FSCBC. This is because of the relevant provisions, cited above. I consider the issue of whether Mr. Alparaque is a current director or officer below.

Ms. Butcher's Claims for Remedies

15. Ms. Butcher asked for several remedies in submissions. For example, she asked for orders about the following: 1) that any directors and officers removed at a September 25, 2021 meeting to be reinstated, 2) for a full accounting of FSCBC's funds, 3) for control over FSCBC's website and social media to be returned to the respondents, 4) for the return of certain funds to FSCBC's original bank account, 5) that Ms. Butcher be the designated authorized signatory for FSCBC, 6) for payment of an unpaid fitness instructor invoice, 7) for FSCBC to hold a meeting, and 8) for the new directors of September 2021 to follow the constitution and bylaws in existence at the time.
16. I find these submissions are essentially counterclaims. However, Ms. Butcher did not properly make a counterclaim or pay the fee to do so under CRT rule 3.2. Some of these claims also appear to be about third parties or made on behalf of FSCBC. So, I have not considered these requests in this dispute.

ISSUES

17. The issues in this dispute are as follows:
- a. Are any of the respondents or Mr. Alparaque valid directors or officers of FSCBC?
 - b. Should I order the respondents to return all files, documents, property, and assets to FSCBC and to stop acting as representatives for FSCBC?

BACKGROUND, EVIDENCE AND ANALYSIS

18. In a civil proceeding like this one, FSCBC must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions

and evidence but refer only to the evidence and argument that I find relevant to provide context for my decision.

19. BC registry documents show that FSCBC became incorporated in June 1982. FSCBC's constitution says its purposes include giving Filipino seniors opportunities to socialize during weekends and holidays. FSCBC has bylaws and I find the applicable ones are those filed in December 2019. Both respondents and Mr. Alparaque are undisputedly members of FSCBC.
20. As background, FSCBC held a directors meeting on January 23, 2021. The meeting minutes show the following. The directors nominated and elected Mr. Alparaque as vice president. The "interim president" at the time was Helen Dela Rosa. She is a named respondent in dispute number CS-2022-008306. Ms. Rosa was ill and asked to temporarily step aside from her position while she sought treatment.
21. Ms. Rosa nominated Ms. Butcher as president and the directors elected her to this position. The bylaws, which I cite below, state that positions like the president are elected by directors, rather than all members of FSCBC. The subsequent minutes show that Ms. Rosa still remained a director.
22. The parties dispute whether Ms. Butcher was elected as interim president or president, but I find nothing turns on the title.
23. At the next directors meeting of February 6, 2021, the directors nominated and elected Concepcion Colobong as secretary.
24. The directors held their next meeting on September 18, 2021. The minutes show that Ms. Butcher alleged that on July 11, 2021, Mr. Alparaque inappropriately squeezed her left ankle. She also alleged that Ms. Rosa inappropriately claimed reimbursement of \$400 in expenses for an August 2021 picnic. This is because Ms. Rosa did not provide receipts. Ms. Butcher says, and I accept, that she asked both Mr. Alparaque and Ms. Rosa to resign from the board of directors at the meeting, and they refused.
25. On September 21, 2021, Mr. Alparaque posted a notice for an "extraordinary meeting" to be held on September 25, 2021. Mr. Alparaque posted the notice on FSCBC's

online chat group for directors. Mr. Alparaque did not explain the reason for the meeting at the time. Five directors, including both respondents, disagreed with the need for a meeting in the group chat.

26. On September 25, 2021, Mr. Alparaque held the meeting at FSCBC's office. In total, 7 directors attended. The respondents and 3 other board members, being CN, OG, and JD, did not attend.
27. The bylaws discuss directors' meetings. Bylaw 1 of Part 6 says the directors shall meet at least 10 times a year at such times as the directors may decide.
28. Bylaw 2(f) of Part 6 says that a quorum is necessary to hold a meeting and transact business. A quorum consists of at least 5 present board members. I find that the September 25, 2021 meeting had enough members to be both a quorum and majority of the board, which consisted of 12 members at the time. This is because the minutes show that 7 directors attended.
29. The minutes also show the following. The directors present voted unanimously to remove Ms. Butcher, Concepcion Colobong, and CN from the board of directors. The directors noted that JD had verbally resigned at the September 18, 2021 meeting, so they passed no specific motion about JD. They did not discuss or pass any specific motion about the other absent director, OG.
30. FSCBC says that the directors also passed a resolution to dismiss the entire existing board of directors, but I find that unsupported by the minutes. Instead, the directors removed specific directors individually, as discussed above.
31. The directors also voted unanimously to create a 3-member Selection Committee to choose new directors for the board. The directors then elected a new board of directors based on the Selection Committee's recommendations. These included Ms. Rosa as president and Mr. Alparaque as first vice president. The board also unanimously voted and approved a resolution to remove Ms. Butcher and another individual, CN, as signatories for FSCBC at its 2 banks, and replace them with Ms. Rosa, Mr. Alparaque, and the new treasurer.

32. Ms. Butcher did not accept the September 25, 2021 meeting results. She called a directors meeting for October 3, 2021. The minutes show the following. The 5 directors that refused to attend the September 25 meeting attended the October 3, 2021 meeting. This included JD, which I find suggests that JD did not verbally resign as alleged. They unanimously voted to remove Mr. Alparaque as a director and officer.
33. In summary, there are essentially 2 groups that claimed to be the rightful directors and officers of FSCBC.

Issue #1. Are any of the respondents or Mr. Alparaque valid directors or officers of FSCBC?

34. As noted above, FSCBC says the respondents are misrepresenting themselves as FSCBC officers to others, such as the BC Society Registry. FSCBC says the board removed them as directors and officers at the September 25, 2021 directors meeting.
35. Ms. Butcher says the September 25, 2021 meeting was invalid, so she is still an FSCBC director and its president. She says that in contrast, the October 3, 2021 directors meeting was valid and removed Mr. Alparaque as a director and officer. As stated earlier, Concepcion Colobong did not file a Dispute Response and is in default.
36. I must first decide whether Mr. Alparaque has authority to represent FSCBC as a director or officer of FSCBC. To do so, I must consider 1) the effects of the September 25 meeting, and 2) whether this impacted the validity of the October 3, 2021 meeting that removed Mr. Alparaque as a director.
37. SA section 54(1) says that unless the bylaws of a society provide otherwise, the directors may meet at any location or in an electronic meeting, on any notice and in any manner convenient to the directors (emphasis mine).
38. The bylaws in evidence have no specific requirements about notice for board meetings. Bylaw 2(c) of Part 6 specifically discusses removal of board members but does not impose any particular notice requirements about the process. So, I find the September 25, 2021 meeting did not breach the bylaws.

39. Ms. Butcher says that Mr. Alparaque should have provided more notice about the substance of the meeting. I find she essentially argues that he did not provide sufficient procedural fairness. However, in law, there is no free-standing right to procedural fairness with respect to decisions taken by voluntary associations. See, for example, *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 at paragraph 24 (Highwood). In *Highwood*, the Supreme Court of Canada noted that a court's jurisdiction cannot be established on the sole basis that there was an alleged breach of natural justice or that the complainant has exhausted the organization's internal processes. Jurisdiction depended on the presence of a legal right which a party seeks to have vindicated.
40. I find that the reasoning in *Highwood* applies and is binding. The bylaws have no specific notice requirements for board meetings. They only have minimal requirements for decision-making, such as a quorum, which I find was met at the September 25, 2021 meeting.
41. To the extent that Ms. Butcher says FSCBC's actions were unfairly prejudicial, I find this does not apply as was not a disciplinary hearing or disciplinary proceeding.
42. Although not necessary for my decision, I also put some significance on the fact that the September 25, 2021 meeting was attended by a majority of the directors and not a bare quorum. This is because, as noted below, the bylaws state that the board can approve the removal of member through a 51% vote threshold. So, I find it unlikely that the results of the votes would have been different even if the respondents and other 3 directors had attended.
43. This leaves whether the board could make the decisions they did at the September 2, 2021 meeting. These included removing some board members and electing others.
44. SA section 48(1)(d) says that a director of a society ceases to hold office in certain circumstances. These include when the director is removed from office in accordance with SA section 50(1). SA section 50(1) says that a director may be removed from office by the method, if any, provided for in the bylaws.

45. Bylaw 2(c) of Part 6 says that any member of the board or executive can be removed from office or suspended from office by a written complaint from any member of good standing to any member of the executive committee. The board will then make recommendations and a resolution for removal which can be approved by a 51% vote of board members present at the extraordinary meeting.
46. The bylaws do not define the executive committee or executive. Bylaw 2(a) refers to the board of directors as the “executive” body” of FSCBC. So, I find that the executive committee is the board of directors.
47. I find that under the bylaws, the board could proceed as it did on September 25, 2021, to remove the other board members. There is no dispute that Mr. Alparaque provided a written complaint at the time to the other board members. Certainly, his complaints were documented at length in the minutes. I have not reproduced them here for the sake of brevity. There is also no dispute that he was a member in good standing. Although Ms. Butcher had complained about his behaviour at the previous meeting held in July 2021, there is no indication that his membership was terminated or otherwise affected.
48. This leaves whether the FSCBC could change the composition of the board of directors. SA section 42(2) says that to become a director of a society, other than a first director, an individual must be elected or appointed to that office in accordance with the bylaws.
49. Bylaw 5 of Part 6 says that the officers of the club may elect new directors to the board at a “separate meeting”. I find this simply refers to a directors meeting and not a general meeting of all members. Bylaw 2 of Part 6 says that if there are not enough directors, the Selection Committee can vet candidates for the board.
50. Overall, I find that the members at the board meeting acted within the bylaws. The previous board meeting minutes, such as those for January 23, 2021, show that the board of directors, rather than members in general, elected members to serve as directors and officers. This is consistent with the wording of bylaw 5.

51. The board members present also appointed a Selection Committee. I find the committee was entitled to put forward candidates for election.
52. Given the above, I find the subsequent directors meeting of October 3, 2021, had no effect. This is because it did not have enough board members to reach the required quorum of 5 directors or board members. I find that at most, it had 2 board members, being potentially OG and JD. This was not enough to make any binding decisions on FSCBC. It follows that that the motion to remove Mr. Alparaque as a board member had no effect. Mr. Alparaque is still a board member and has standing to represent FSCBC in this dispute.

Issue #2. Should I order the respondents to return all files documents, property, and assets to FSCBC and to stop acting as representatives for FSCBC?

53. I have found that Mr. Alparaque is a director and officer for FSCBC and can act as its representative. I next consider whether I should order the respondents to 1) return all FSCBC files, documents, property, and assets to FSCBC, and 2) to stop acting as FSCBC representatives.
54. Ms. Butcher main argument was that she was a director and officer for FSCBC, so that she could act as its representative and keep its assets. Concepcion Colobong is in default, so I find that party does not oppose the relief sought.
55. As noted earlier, under CRTA section 131(1), the CRT may order a party to do or refrain from doing something. As I have found the respondents are not directors or officers for FSCBC, I find it appropriate to order them to return FSCBC's files, documents, property, and assets to FSCBC, as requested. FSCBC was not more specific in the requested order, so I have not changed its language.
56. I find that FSCBC's second request is linked to the CRT's jurisdiction to interpret the SA and bylaws under the SA, and an action or decision by the society or its directors in relation to a member. So, I order the respondents to refrain from acting as directors, officers, or representatives for FSCBC, unless and until they are elected or appointed as directors or officers in the future.

CRT FEES AND EXPENSES

57. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule.
58. FSCBC was successful. I therefore order the respondents to reimburse FSCBC for CRT fees of \$225. The parties did not claim any specific dispute-related expenses.

ORDERS

59. I order the respondents to refrain from acting as directors, officers, or representatives for FSCBC, unless and until they are elected or appointed as directors or officers of FSCBC in the future.
60. I order that within 30 days of the date of this decision,
- a. the respondents return to FSCBC all of its files, documents, property, and assets they may have, and
 - b. the respondents pay FSCBC a total of \$225 in CRT fees.
61. FSCBC is entitled to post-judgment interest, as applicable.

62. Under section 57 of the CRTA, a validated copy of the CRT's order can be enforced through the British Columbia Supreme Court. Under section 58 of the CRTA, the order can be enforced through the British Columbia Provincial Court if it is an order for financial compensation or return of personal property under \$35,000. Once filed, a CRT order has the same force and effect as an order of the court that it is filed in.

David Jiang, Tribunal Member