

MICHAEL YEE, SHUN CHUNG, THOMAS
YEE, NORMAN LEW, ZI PING LIANG, AND
MADISON CHUN

NO. 08-CA-814

FIFTH CIRCUIT

VERSUS

COURT OF APPEAL

KWOK KIT WOND, DARRYL E. TOY, ON
LEONG CHINESE MERCHANTS
ASSOCIATION, PAUL LOUIE, TANG
CHING LEE, CHIN HENG TONG, M. K.
WONG, KING CHAN, CHINESE
MERCHANTS ASSOCIATION, A/K/A
NATIONAL ON LEONG CHINESE
MERCHANTS ASSOCIATION, KIN P.
("KENNY") NG, AND RICKY MOY

STATE OF LOUISIANA

**COURT OF APPEAL,
FIFTH CIRCUIT**

FILED MAR 24 2009



ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 651-139, DIVISION "P"
HONORABLE MELVIN C. ZENO, JUDGE PRESIDING

MARCH 24, 2009

**WALTER J. ROTHSCHILD
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr., Clarence E. McManus,
and Walter J. Rothschild

BURTON G. KLEIN
JOSEPH E. DUGAS, III
Attorneys at Law
3421 N. Causeway Boulevard
Suite 104
Metairie, Louisiana 70002

And

FRANK A. MILANESE
Attorney at Law
650 Poydras Street
Suite 2617
New Orleans, Louisiana 70130
COUNSEL FOR PLAINTIFFS/APPELLANTS

KENNETH C. FONTE

Attorney at Law

One Galleria Boulevard

Suite 1822

Metairie, Louisiana 70001

COUNSEL FOR DEFENDANT-APPELLEES

AFFIRMED

WDR
EAD
CEM

Plaintiffs, certain members of the board of directors of the On Leong Chinese Merchants Association, (“the Louisiana Association”), filed this Petition for Writ of Quo Warranto and Mandamus against defendants, who were other members of the Louisiana Association as well as certain members of the National On Leong Chinese Merchants Association (“the National Association”). In this petition, plaintiffs alleged they were improperly removed from their membership and elected positions in the Louisiana Association and replaced by defendants, and they sought reinstatement of their positions within the Association as well as removal of defendants. Following a bench trial, the trial court ruled in favor of defendants, finding that plaintiffs had failed to exhaust all remedies available to them through the National Association’s By-laws. Plaintiffs now appeal on the basis that the trial court judgment dismissing their petition is in error. Finding no error in the trial court’s ruling in this matter, we affirm.

Facts and Procedural History

The testimony and evidence submitted at trial reveals as follows:

In September of 2006, plaintiffs Shun Chung, Michael Yee, Thomas Yee, Norman Lew, and Zi Ping Liang were members and/or directors of the On Leong Chinese Merchants Association, a non profit Louisiana corporation with its principal place of business in Jefferson Parish. At that time, Michael Yee held the office of president, Shun Chung was the English secretary, and Thomas Yee was “bon ban” (inspector) of the Association.

On November 7, 2006, several members of the National Association met in New Orleans with plaintiff Thomas Yee and four unnamed members of the Louisiana Association. There is no dispute that no meeting was called this night for the membership or board of directors of the Louisiana Association. After this meeting, members of the National Association presented Thomas Yee with two letters addressed to Michael Yee and Shun Chung informing them that the regularly scheduled elections for the Louisiana Association were suspended “pending an investigation into the mismanagement malfeasance and breach of fiduciary duties of the current officers.” This letter was signed by Kin Ng, the president of the National Association.

On November 8, 2006, the National Association sent a letter addressed to all members of the Louisiana Association informing them of the suspension of the Association’s officers in accordance with the Association’s by-laws. This letter was also signed by Kin Ng, and stated that Darryl E. Toy was appointed as English Secretary of “the New Orleans chapter” in accordance the National Association’s By-laws.

The record in this matter also contains a properly certified copy of the annual report of the Louisiana Association dated November 17, 2006 indicating

changes in the officers of the corporation. Michael Yee's name was deleted and replaced with Kit Wong as president and Shun Chung's name was deleted and replaced with Darryl Toy as secretary. Further, the record contains a Resolution of the Board of Directors of the Louisiana Association dated March 12, 2007 wherein the participants ratified the suspensions of plaintiffs and the selection of their replacements.

By letter dated May 1, 2007, the National Association summoned plaintiffs to appear at the Annual National Meeting on May 15, 2007 to be held in Boston Massachusetts. Plaintiffs were informed in this letter that they would be adjudicated and punished in accordance with certain sections of the National Association By-Laws citing specifically enumerated activities. The parties stipulated at trial that the By-Laws of the National Association were binding on the Louisiana Association.

Based on their involvement in the present lawsuit and for various other reasons, plaintiffs did not attend this meeting. By letter dated May 16, 2007, plaintiffs Thomas Yee, Michael Yee and Shun Chung were informed that their membership in the National and Louisiana Associations were terminated for life. The record also contains a resolution from the Annual Meeting indicating that the remaining plaintiffs were indefinitely suspended from the National and Louisiana Associations. These suspensions and terminations were subsequently ratified by directors of the Louisiana Association on June 7, 2007 and by the full membership of the Louisiana Association on August 21, 2007.

Discussion

The proper procedure to contest title to an office in a private corporation is a writ of quo warranto, which is defined by La. C.C.P. art. 3901, et seq:

Art. 3901. Definition

Quo warranto is a writ directing an individual to show by what authority he claims or holds public office, or office in a corporation, or directing a corporation to show by what authority it exercises certain powers. Its purpose is to prevent usurpation of office or of powers.

Art. 3902. Judgment

When the court finds that a person is holding or claiming office without authority, the judgment shall forbid him to do so. It may declare who is entitled to the office and may direct an election when necessary.

A writ of quo warranto or mandamus may be tried summarily. La. C.C.P.

art. 3781. The writ of quo warranto is narrow in scope and is to be given only a limited use. State v. Banta, 03-200 (La. App. 1 Cir. 2/23/04), 872 So.2d 1110, 1112.

Mandamus is a writ directing a public officer or a corporation or an officer thereof to perform any of the duties set forth in Articles 3863 and 3864. La. C.C.P. art. 3861. La. C.C.P. art. 3864 provides:

A writ of mandamus may be directed to a corporation or an officer thereof to compel:

- (1) The holding of an election or the performance of other duties required by the corporate charter or bylaws or prescribed by law; or
- (2) The recognition of the rights of its members or shareholders.

By this appeal, plaintiffs contend that the illicit takeover of the Louisiana Association and a suspension of the meetings, elections and officeholders in the Louisiana Association is in violation of Louisiana law on corporations. Plaintiffs argue that Louisiana nonprofit corporation law does not allow summary dismissal or termination of members, directors or officers, particularly by strangers to the corporation.

However, the record in this case indicates that the Louisiana Association was bound by the By-Laws of the National Association which specifically provide that rights and membership of a member shall not be repealed without first an adjudication by the National Presidents and then an adjudication by an Annual Convention and an Emergency Meeting. Further, the By-Laws contain a Code of Punishment for Officers which includes a provision for the calling of an emergency meeting for adjudication and punishment of members who are alleged to violate terms of the By-Laws.

The record shows that plaintiffs were notified of the alleged violations and were also notified of the adjudication proceedings, but they chose not to attend or to present a defense to the allegations against them. Plaintiffs failed to avail themselves of the opportunity to appeal from the November 7, 2006 decision of the National Association to suspend the elections although such proceedings were provided for in the By-Laws. A review of the record before us fails to show that the National Association acted illegally or improperly in its actions against plaintiffs in this case. Rather, the record shows that the Associations' By-Laws were followed and complied with, and plaintiffs have failed to show that there was any "illicit takeover" of the Louisiana Association by the national group. The Board of Directions and the members of the Louisiana Association both adopted resolutions ratifying the removal of plaintiffs from membership and their official duties in the organization.

Accordingly, we find that defendants met their burden to prove that the By-Laws which are applicable to both the Louisiana Association and to the National Association were complied with and that defendants satisfied the court that their actions are supported by the provisions of the By-Laws. We also agree with

the trial court that plaintiffs failed to avail themselves of the remedies provided for in the Association By-laws, and they thus have no judicial redress.

For the reasons stated herein, the judgment of the trial court dismissing plaintiffs' demands is hereby affirmed.

AFFIRMED

EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. McMANUS
WALTER J. ROTHSCHILD
FREDERICKA H. WICKER

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

PETER J. FITZGERALD, JR.
CLERK OF COURT

GENEVIEVE L. VERRETTE
CHIEF DEPUTY CLERK

MARY E. LEGNON
FIRST DEPUTY CLERK

TROY A. BROUSSARD
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

**NOTICE OF JUDGMENT AND
CERTIFICATE OF MAILING**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED ON OR DELIVERED THIS DAY MARCH 24, 2009 TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in black ink, appearing to read "Fitzgerald, Jr.", written over a horizontal line.

PETER J. FITZGERALD, JR.
CLERK OF COURT

08-CA-814

FRANK A. MILANESE
ATTORNEY AT LAW
650 POYDRAS STREET
SUITE 2617
NEW ORLEANS, LA 70130

KENNETH C. FONTE
ATTORNEY AT LAW
ONE GALLERIA BOULEVARD
SUITE 1822
METAIRIE, LA 70001

BURTON G. KLEIN
JOSEPH E. DUGAS, III
ATTORNEYS AT LAW
3421 NORTH CAUSEWAY BOULEVARD
SUITE 104
METAIRIE, LA 70002