

**United Mindoro Intl., Inc. v Philippine Independence
Day Council Inc.**

2019 NY Slip Op 30301(U)

February 7, 2019

Supreme Court, New York County

Docket Number: 656917/2017

Judge: Barbara Jaffe

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

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UNITED MINDORO INTERNATIONAL, INC.,
et al.,

Petitioners,

- v -

INDEX NO. 656917/2017

MOTION DATE _____

MOTION SEQ. NO. 003

PHILIPPINE INDEPENDENCE DAY COUNCIL
INC., *et al.*,

Respondents.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 61, 62, 63, 65, 66, 67, 68, 69, 70

were read on this motion for renewal.

By notice of motion, petitioners move pursuant to CPLR 2221 granting them leave to renew and reargue a prior decision and judgment in this matter and implicitly, to amend their petition. Defendants oppose.

I. BACKGROUND

By petition dated November 14, 2017, petitioners, alleged members of respondent Philippine Independence Day Council, Inc. (PIDCI), sought an order and judgment:

(1) compelling the production of PIDCI's membership lists, books and records, and various other documents; (2) directing PIDCI to produce and file a tax return; (3) finding that PIDCI's board acted with gross negligence; (4) declaring an October 2017 election null and void; and (5) awarding them reasonable attorney fees, costs, and disbursements. (NYSCEF 1).

By so-ordered stipulation, the parties resolved the aspects of the petition related to the membership lists and books and records. (NYSCEF 42). On May 29, 2018, I issued a decision

and judgment denying the petition and dismissing the proceeding as petitioners had not demonstrated that they exhausted their internal administrative remedies for resolving grievances as set forth in PIDCI's by-laws. (NYSCEF 52).

In their proposed amended petition, petitioners add to the original petition the following subparagraphs:

24.1. At the request of respondent Lim and in an attempt to exhaust PIDCI internal remedies, [Olivia] David, with and on behalf of the petitioners, wrote two (2) letters dated October 10, 2017 and October 25, 2017 indicating their demand to inspect the proxies, the membership and corporate records which Lim and Estrellado thwarted and refused to allow during the membership meeting and elections held on October 7, 2017.

24.2. As indicated in the minutes of the PIDCI Board meeting held on October 12, 2017 subsequently provided by the respondents in compliance with the So Ordered Stipulation dated January 10, 2018, Ms. David's letter was in fact received by respondent PIDCI but did nothing further. Attached herewith as Annex "H" and forming an integral part hereof, is the affidavit of Ms. Olivia David detailing [] efforts before, during and after the annual membership meeting and elections held on October 7, 2017 to resolve the matter internally by respondent PIDCI but respondents and PIDCI counsel Manuel Quintal have themselves thwarted such efforts.

(NYSCEF 65).

In an affidavit June 25, 2018, Olivia David states, as pertinent here, that she was a member of PIDCI's board of directors from 2012 to 2016, and that during that time, the board "did not discuss, much less approve by way of a board resolution, any appointment to the Grievance Dispute and Resolution Committee (Committee)." (emphasis omitted). She denies that there is a PIDCI procedure for the handling of complaints and grievances by the Committee and attests that "most if not all issues" were handled by PIDCI's legal counsel. David attributes her failure to raise these issues in the original petition and earlier motion practice to "both recuperating and traveling outside of the United States due to the strain and stress" caused by respondents as well as having previously-made travel plans. She offers in support proof that she

left the United States on October 26, 2017; the copy of her passport reflects that she arrived in India on January 19, 2018, but not when she returned to the United States. (*Id.*).

David observes that attached to the original petition are affidavits from others indicating that petitioners had attempted to exhaust internal grievance procedures, including an affidavit of Juliet Payabyab which references David's October letters to PIDCI. She also states that only after the petition was orally argued did she receive a copy of the board minutes reflecting that the board received her letter, but apparently took no action on it – “[i]f there was indeed a [] Committee, the minutes would have indicated that the matter was referred to it.” (*Id.*).

David sets forth other instances whereby petitioners attempted to exhaust internal remedies, and otherwise argues that the Committee does not exist, and that questions of fact exist as to whether there is a Committee and/or whether petitioners exhausted their remedies. (*Id.*).

II. CONTENTIONS

In opposition, respondents assert that petitioners offer no new facts that would change the prior determination as required by CPLR 2221(e)(2), as they had not denied receipt of David's October letters. Rather, they argue that the letters were not submitted in compliance with the by-laws, and that thus, it is irrelevant whether petitioners received the board minutes after the petition was argued. They also argue that there is no reasonable justification for David's failure to submit her affidavit earlier, observing that she had been aware that the petition would be filed before her trip, and that petitioners had submitted a “post-argument memorandum” on January 30, 2018, after David had allegedly returned, but did not submit the affidavit then or mention in their memorandum any attempt to exhaust their remedies. Respondents deny that attempts to exhaust were made or that such attempts, if made, were done properly and as required by the by-laws. (NYSCEF 69).

Petitioners, in reply, argue that respondents do not show that the Committee exists, and otherwise reiterate the arguments made in their proposed amended petition. (NYSCEF 70).

III. ANALYSIS

Pursuant to CPLR 2221(e), a motion for leave to renew must contain new facts not offered on the prior motion that would change the prior determination and reasonable justification for failing to offer such facts earlier.

Here, petitioners fail to explain why they were unable to include in their original petition allegations related to their alleged exhaustion of internal remedies, regardless of whether David was outside the United States, or why they were unable to obtain David's affidavit before she left for her trip, despite knowing that the petition would be filed sometime between October and November 2017. Moreover, David offers no documentation substantiating her "recuperation," nor does she establish that she returned to the United States after the petition was argued. It is also undisputed that she had returned by the time petitioners filed their post-argument memorandum, by which point they were aware that respondents had argued that there had been a failure to exhaust internal remedies. Petitioners thus do not establish reasonable justification for failing to argue previously that they had exhausted their remedies or to submit an affidavit from David.

Moreover, that respondents did not act on David's October 2017 letters is neither a new fact, nor would it have changed the prior determination, inasmuch as respondents had argued that the letters did not constitute a proper request under the by-laws.

In light of this result, there is no need to consider petitioners' implicit request for leave to amend their petition to add the purported new facts.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that petitioners' motion is denied in its entirety.


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2/8/2019
 DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	