

itty Curtis Van De Veld

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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

ASSOCIATION OF APARTMENT
OWNERS OF VILLA ROSARIO)
CONDOMINIUM, BOARD OF
DIRECTORS, 2010 TO 2011,

CIVIL CASE NO. CV0907-10

Plaintiffs,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

vs.

PREM SINGH, ALBERT SILOS, and)
JOSEPH PALACIOS

Defendants.

INTRODUCTION

This matter came before the Court on August 23, 2010. Plaintiffs have filed a complaint seeking injunctive and declaratory relief, along with a claim for damages. Both the Plaintiffs and Defendants assert the right of corporate governance over the Association of Apartment Owners Villa Rosario Condominiums. Each of the parties claim that they were properly installed as directors of the board by virtue of an election conducted pursuant to the By-laws of the Association of Apartments Owners Villa Rosario Condominium. These competing claims of authority jeopardize the daily operations, maintenance, and welfare of the properties, as well as the safety and well-being of the homeowners and tenants residing in the condominium units. The Court now issues the following findings of fact and conclusions of law on the matters presented.

FINDINGS OF FACT

After hearing all of the evidence and testimony presented in this case the Court finds by a preponderance of the evidence the following facts:

1 1. The Association of Apartment Owners of Villa Rosario Condominium (hereinafter
2 “Association”) is an unincorporated organization formed under “The Horizontal Property Regime
3 (Condominium) Public Report on Villa Rosario Condominium Dededo, Guam Registration No.
4 071” duly authorized by the government of Guam Territorial Land Use Commission and recorded
5 in the Government of Guam, Department of Land Management under Instrument Number
6 445161.
7

8 2. The Association is governed by, and operates under its “By-Laws of the
9 Association of Apartments Owners of Villa Rosario Condominium, Registration No. 071,”
10 (hereinafter referred to as “By-laws”).
11

12 3. The Association has operated continuously under the HPR and By-laws of the
13 Association.
14

15 4. The Board of Directors are elected annually as required by the By-laws.
16

17 5. The board members elected to serve during the period 2009 to 2010 were the last
18 uncontested board.
19

20 6. On March 27, 2010, the annual meeting was held for the election of directors to
21 serve on the 2010-2011 board pursuant to the requirements of the By-laws.
22

23 7. Prem Singh, Albert Silos, Joseph Palacios, Suzanne Perez, and Joanne Del
24 Carmen-Arroyo were elected as members of the Board of Directors on March 27, 2010.
25

26 8. The By-laws required that the board members immediately conduct an
organizational meeting whereby the officers of the Association would be elected.

 9. Some of the directors present convened the organizational meeting and continued
the meeting without electing any officers.

1 10. A dispute arose during the March 27, 2010, meeting calling into question the
2 propriety of the election because of alleged defects in the conduct of the election.
3

4 11. On March 29, 2010, a petition requesting a special meeting to address the alleged
5 deficiencies in the March 27, 2010, election and requesting for a new election was presented to
6 2009-2010 Board Secretary Suzanne Perez. She determined that the petition was supported by
7 32.990% of the homeowners.
8

9 12. By letter dated March 31, 2010, 2009-2010 Board President Laura Dacanay
10 informed the 2010-2011 Board that a majority of the 2009-2010 Board and over 30% of the
11 apartment owners had determined to hold a special meeting of the Apartment Owners to address
12 the defects from the March 27, 2010, meeting and to conduct a new election.
13

14 13. On April 13, 2010, three of the directors elected at the March 27, 2010, meeting
15 held an organizational meeting at which time Defendant Albert Silos was elected President,
16 Defendant Joe Palacios was elected the Vice-President, and Defendant Prem Singh was elected
17 as Secretary.
18

19 14. Plaintiff Joanne Del Carmen-Arroyo and Plaintiff Suzanne Perez were not present
20 at the April 13, 2010 meeting, but were elected as members at large, and no other officers were
21 elected.
22

23 15. On May 1, 2010, at the previously noticed special meeting of the Apartment
24 Owners, Defendants Singh and Silos were removed as Directors of the Apartment Owners' Board
25 of Directors.
26

 16. Joanne Del Carmen-Arroyo, Laura Dacanay, Shane Dawson, and Clyde Lemons
were elected to replace the Defendants as directors on the board.

1 thereto shall automatically become a member of the Association
2 and shall remain a member thereof until such time as his
3 ownership of such apartment ceases for any reason; provided,
4 however, that to such extent and for such purposes, including the
5 exercise of voting rights, as shall be provided by an apartment
6 lease filed with the Board of Directors of the Association, the
7 lessee named in such lease shall be deemed to be the owner of the
8 apartment covered by such lease.

9 Pl.'s Exhibit 2, p.1, Article II, Section 1(emphasis added)

10 In addition, under 21 GCA § 45102(b):

11 Apartment owner means the person owning, or the persons owning jointly or in
12 common, an apartment and the common interest appertaining thereto; provided,
13 that to such extent and for such purposes, including the exercise of voting rights,
14 as shall be provided buy(sic) lease filed with the Board of Directors, a lessee of
15 an apartment shall be deemed to be the owner thereof.

16 21 GCA § 45102(b)(2005)(emphasis added).

17 By failing to file his lease with the Board of Directors of the Association, Mr. Palacios was
18 disqualified from holding office and any of his actions or participation as part of the 2010-2011
19 board are void *ab initio*. 21 GCA § 45102(b)(2005). It is undisputed that all actions taken by the
20 members of the Board elected on March 27, 2010, were taken by vote of Mr. Silos, Mr. Singh,
21 and Mr. Palacios. However, pursuant to the By-laws Article III, Section 10, the Board may only
22 conduct business if a quorum of board members is present. Pl.'s Exhibit 2, p. 6, Article Article
23 III, Section 10.

24 Under this By-law, a quorum is "a majority of the total number of directors established
25 by these By-laws . . .and the acts of a majority of the directors present at any meeting at which a
26 quorum is present shall be the acts of the Board." Id. The By-laws state that the Board of
Directors "shall be composed of five (5) persons" Id. at p. 4, Article III, Section 1. The
disqualification of Mr. Palacios results in the invalidation of the actions of the remaining two

1 board members because of a lack of a majority. This includes the election of officers which
2 occurred on April 13, 2010.

3
4 The court now turns its analysis to the validity of the Plaintiffs' assertion that they are the
5 duly elected board of the Association. The Plaintiffs contend that they were duly elected as
6 members of the Board of Directors of the Association at a special meeting of the Homeowners
7 Association which occurred on May 1, 2010. Defendants contend that the Plaintiffs were installed
8 at an election conducted by the 2009-2010 Board after March 27, 2010, and that such acts were
9 *ultra vires* and void. Defendants further assert that no special meeting could occur absent the
10 president calling for such a meeting upon presentment of the homeowners' petition. Since the
11 2010-2011 Board elected on March 27, 2010, was never presented with a petition, Defendants
12 contend that there could be no valid special meeting.
13

14 The Plaintiffs assert that the homeowners' petition, representing over 30% of the
15 homeowners, was presented to Suzanne Perez, who was the last elected Secretary of the board.
16 Plaintiffs further contend that since the Board elected on March 27, 2010, failed to immediately
17 and properly elect officers at its organizational meeting, the officers of the previous board
18 continued in their offices until such time as a proper election of replacements occurred. Because
19 no new Secretary of the Board had been elected as of March 29, 2010, the Plaintiffs contend that
20 the petition was properly presented to the only known Secretary and that upon presentment of this
21 petition, Suzanne Perez, as the continuing Secretary of the Board, had the authority to call the
22 special meeting under Article II, Sections 5 and 6 of the By-laws.
23
24

25 The By-laws at Article II ,Section 5, provide that a special meeting may be convened at
26 any time upon the call of the President or a petition signed by apartment owners having at least

1 twenty-five percent (25%) of the total vote and presented to the Secretary. Pl.'s Exhibit 2, p. 2,
2 Article Article II, Section 5. The Court agrees that the By-laws empower either the president or
3 the secretary upon presentment of a petition signed by at least 25% of the apartment owners with
4 the authority to convene a special meeting.
5

6 The By-laws at Article IV, Section 2, further provide that the officers of the Association
7 shall serve at the pleasure of the board. Although the Plaintiffs claim that the officers are elected
8 to hold their respective positions for one year or until such time as an election is held for their
9 replacements, this contention is not supported by a close reading of the By-laws. Specifically,
10 the By-law pertaining to officers states, “[t]he officers of the Association shall be elected annually
11 by the Board of Directors at its annual meeting *and shall hold office at the pleasure of the Board.*”
12

13 Pl.'s Exhibit 2, p. 7, Article IV, Section 2 (emphasis added). In comparison, the By-laws
14 regarding the Board of Directors allow the members of the Board of Directors to remain in their
15 elected positions until their successors are elected, stating that the Board of Directors “shall hold
16 office for a period of one (1) year *and* until their respective successor shall have been elected.”
17 Id. at p. 5, Article III, Section 3. The Court notes that the mechanism for the change of officers
18 of the Association does not provide for a one-year term of office, it provides only for annual
19 elections, and it specifically allows the officers to continue in office only as allowed by the Board,
20 not until their replacements are elected. Id. at p.7, Article IV, Section 2. Despite the distinction
21 between these two By-laws, their effect in this case is the same, because the Board elected on
22 March 27, 2010, failed to remove the officers elected in 2009 by vote of a quorum of members
23 of the Board of Directors.
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1 In the present case, the 2009-2010 officers of the Association continued in office until
2 such time as they were removed from those offices by the Board of Directors. It is undisputed
3 that the Board initiated no action to remove the officers from their offices prior to March 29,
4 2010, when Suzanne Perez received the petition to hold a special meeting. It is also undisputed
5 that the election of officers which purportedly occurred on April 13, 2010, was held by the Board
6 elected on March 27, 2010, without establishing a quorum. Accordingly, the April 13, 2010,
7 election was void under the requirements of the By-laws, and no new officers were elected on this
8 date, nor were the previously elected officers removed from their offices. After this date, no
9 other action was taken by a majority of the Board to remove the officers, and Suzanne Perez
10 remained vested with the authority to call and hold a special meeting on May 1, 2010, at which
11 time, a new Board of Directors consisting of Laura Dacanay, Clyde Lemons, Joanne Del Carmen-
12 Arroyo, Suzanne Perez and Shane Dawson were elected or maintained as members of the Board
13 of Directors. Pl.'s Exhibits 14 and 15. These five individuals then elected new officers,
14 consisting of President, Laura Dacanay, Vice-President, Clyde Lemons, Treasurer, Joanne Del
15 Carmen-Arroyo, and Secretary, Suzanne Perez. Id. The aforementioned individuals are the
16 current officers and members of the Board of Directors of the Association.
17
18
19

20 21 CONCLUSION

22 After hearing arguments and considering all of the filings and evidence presented, the
23 court finds that the Plaintiffs are the duly elected Board of Directors of the Association. The
24 members of the Association exercised the powers granted to them within the By-laws to convene
25 the special meeting, and in that special meeting conduct a new election. The requests for
26

1 injunctive and declaratory relief are GRANTED. The defendants are hereby enjoined from further
2 asserting any right to control or conduct the governance of the Association. The Court did not
3 receive, and no evidence was presented, with respect to damages. The record being devoid of any
4 proof of damages the Court awards none. All parties shall bear their own costs and attorney fees.
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6
7 SO ORDERED this AUG 20 2010.

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10 **HONORABLE ARTHUR R. BARCINAS**
11 Judge, Superior Court of Guam

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17 I do hereby certify that the foregoing
18 is a full true and correct copy of the
19 original on file in the office of the
20 clerk of the Superior Court of Guam.

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AUG 20 2010


Deputy Clerk, Superior Court of Guam