

IN THE CIRCUIT COURT OF TANEY COUNTY, MISSOURI

FILED  
2009 MAY 14 PM 3:17  
TANEY COUNTY, MISSOURI

GARY BALL,  
Petitioner,  
vs.  
TREASURE LAKE RV RESORT  
CAMPING CLUB, INC.,  
Respondent.

CASE NO. 09AF-CC00155

JUDGMENT

NOW ON THIS 29th day of April, 2009, this case comes on for trial on all issues.

Plaintiff appears in person and by his Attorney RAYMOND M. GROSS. Defendant appears by its President BETTY NICHOLS and by its Attorney MATTHEW F. TROKEY.

Defendant's Motion to Dismiss is overruled by agreement and Defendant's Amended Answer is shown filed.

The parties announce that they are ready to proceed and the matter comes on for trial. Evidence is heard and both parties rest.

After considering all evidence presented in the case, the Court makes the following findings of fact:

In regard to Mr. Ball's removal as Director, the Court finds as follows:

1. The Court finds that the removal of Mr. Ball from the Board of Directors was a removal for cause. The Court finds that Section 355.346 R.S.Mo. is not applicable to the removal of Mr. Ball because that statute sets for the procedure for removal of a member of the Board of Directors without cause.

2. The Court further finds that while the appointment of the Investigation Committee by the President of the Board of Directors may have been in violation of the park's By-laws, such violation does not affect the weight which the Board may give to the committee's report. It is within the discretion of the Board to establish the procedure for receiving evidence concerning these issues so long as the procedure is consistent with the By-laws and state statutes.

3. The Court further finds that the notice of the board meeting where Mr. Ball was removed by the Board was sufficient. The only requirement was that the meeting be properly noticed. Notice of the meeting was properly provided to Mr. Ball. There is nothing in the statutes or the club's By-laws that require notice of the agenda for a board meeting.

4. The Court further finds that the procedure for a hearing regarding the removal of a Director is controlled by state law, if applicable. If state law is not applicable, the By-laws control the procedure. If the By-laws are silent on this procedure, the procedure is left to the sound discretion of the Board of Directors. In this case, the procedure utilized by the Board of Directors is neither arbitrary nor capricious and the Board of Directors did not abuse their discretion in establishing the procedure that was used.

5. The Court further finds that each Board of Director has an implied duty to act ethically and an implied duty not to abuse their power as a Director. Failure to meet either of these duties is a neglect of duty. The Board of Directors received sufficient evidence to determine Mr. Ball had neglected his duty.

6. The Court further finds the Board of Directors has the discretion to receive evidence in the form and manner it feels appropriate for its determination. The Board of Directors did not abuse its discretion in this regard.

7. The Court further finds that no appeals process is provided for in the By-laws for a Director who has been removed for cause. The appeals process afforded to Mr. Ball by the Board of Directors was not required and, therefore, cannot be attacked as inappropriate, inadequate, or improper.

8. The Court further finds that, based upon the evidence presented in this case, it should not substitute its Judgment for the Board's exercise of discretion in this case. The Board did not abuse its discretion regarding the removal of Mr. Ball for cause.

9. The Court further finds that the Board's failure to document executive session action does not make their vote invalid. The Court finds the sworn testimony of both Plaintiff's and Defendant's witnesses established that a vote to remove Mr. Ball was taken in executive session and that it was a 4-1 vote to remove Mr. Ball. It was also a 4-1 vote to suspend Mr. Ball's membership for six (6) months. The Court further finds there were seven members and four out of seven was a majority. There was no evidence to the contrary. Therefore, the Board's failure to record their vote, although that would have been preferable, does not invalidate the vote that happened at the Board Meeting. The vote to remove Mr. Ball and suspend his membership for six (6) months has been clearly established by sworn testimony presented by witnesses for both the Plaintiff and Defendant.

In regard to Mr. Ball's six (6) month suspension as a Member, the Court finds as follows:

1. The Court finds that the By-laws, Article 3, Paragraph 5 sets out the procedure for suspension of Members. The Court specifically finds that the required 30 day certified notice was provided in this case and all other required procedures were complied with.

2. The Court further finds that there was no abuse of discretion on the part of the Board in making the decision to suspend Mr. Ball's membership and, based upon the evidence

presented, the Court will not substitute its Judgment for the Board's Judgment, which was fair and reasonable.

3. The Court further finds that the Board did delay the suspension for thirty (30) days to give Plaintiff an opportunity to be heard as provided in the By-laws.

4. The Court further finds that it is in the Board's sound discretion to establish the procedure for dealing with the suspensions as long as the procedure complies with the By-laws. The Court finds that in this case the procedure followed did comply with the By-laws.

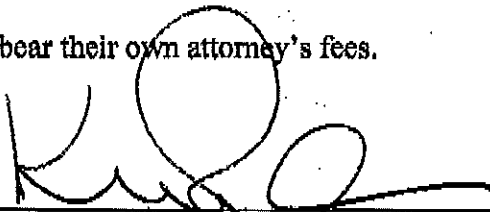
5. The Court further finds that this is not an action by the park to enforce rules against a Member, but an action by a Member seeking Declaratory Judgment and, therefore, Defendant is not entitled to an award of attorney's fees.

6. The Court makes such further findings as are consistent with the following Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by this Court that Plaintiff's Petition for Declaratory Judgment is denied and Judgment is entered in favor of Defendant and against Plaintiff on all issues.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that cost of this action are assessed against Plaintiff and each party shall bear their own attorney's fees.

IT IS SO ORDERED.

  
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THE HONORABLE KELLY PARKER

DATED: 7 May 2009