

**DONNA MURPHY et al., Plaintiffs and Respondents,**

**v.**

**ANAHEIM HILLS PLANNED COMMUNITY ASSOCIATION et al., Defendants and Appellants.**

**G050817**

**G050912**

**COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION THREE**

**January 14, 2016**

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

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(Super. Ct. No. 30-2014-00697361)

OPINION

Appeal from a judgment and postjudgment order of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

Slaughter, Reagan & Cole, Barry J. Reagan, Gabriele M. Lashly; Gordon & Rees, Jeffrey A. Swedo and Nathaniel J. Tarvin for Defendants and Appellants.

Nordberg|Denichilo and Daniel A. Nordberg for Plaintiffs and Respondents.

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Defendant Anaheim Hills Planned Community Association (the Association) is notable for its unwieldy size, with over 2,200 members (i.e., "owner[s] of a separate

interest" in the Association). (Civ. Code, § 4160.) These members do not participate directly in the election of the Association's directors. Instead, as provided by the Association's governing documents (Civ. Code, § 4150), the Association is divided into delegate districts. Each delegate district elects a delegate, who then controls the voting power of the delegate district's members at Association elections.

The Association held an election to seat four of its seven directors in April 2013. Controversy emerged over the legitimacy of the election. Plaintiffs Donna Murphy and Pete Bos (members of the Association) sued the Association and the individual defendants (who were seemingly elected to the board of directors in April 2013),<sup>1</sup> seeking a declaration under Corporations Code section 7616<sup>2</sup> that the April 2013 election was void. Among other things, plaintiffs contended a quorum of delegates was not present at the election because many of the individuals voting at the election had not actually been elected as delegates by their delegate districts. The trial court agreed and entered judgment voiding the election. The court also awarded attorney fees to plaintiffs. We affirm the judgment and postjudgment order.

FACTS

*The Delegate System*

As set forth in its master declaration (Civ. Code, §§ 4135, 4250) of covenants, conditions, and restrictions (CC&R's), the Association is composed of delegate districts, all 36 of which are now organized as formal sub-associations with their own declarations of CC&R's. A delegate district "shall mean a geographical area . . . in which all of the Members . . . located in such geographical area shall elect a single Delegate to represent their collective voting power." A delegate "shall mean a person selected by the Owners within any [delegate district] to represent all

of the Owners within such [delegate district] to vote on their behalf . . . ."

The master declaration describes the voting power of delegates. "Each Delegate will be entitled to cast . . . one vote for each [single-family residential lot or condominium] . . . located in the Delegate District represented by such Delegate and with respect to multi-Family Residential Lots developed as rental apartments, one vote for each three (3) apartment units . . . located [within] in his Delegate District."

The master declaration does not discuss particular matters on which the delegates might be called upon to vote. The sole exception is a provision authorizing the delegates to amend certain aspects of the master declaration. For guidance as to board elections, one must look to the Association's bylaws. The bylaws also state that some acts of the board of directors must be consented to by a majority of the delegates, including (1) entering into contracts (other than utility and insurance contracts) with a term of one year or longer; and (2) borrowing money.

#### *The Election of Directors*

As set forth in its bylaws, the Association "shall be governed by a Board of Directors composed of seven (7) persons . . . ." The board "has the powers and duties necessary for the administration of the affairs of the" Association. "The term of office of each seat on the Board of Directors shall be two (2) years. The terms shall be staggered such that three Directors shall be elected in even years and four Directors shall be elected in odd years." "Any person serving as a Director may be re-elected, and there shall be no limitation on the number of terms during which he or she may serve."

"The annual meeting of Delegates shall be held on or about the anniversary date of the first annual meeting." "[A]t each annual meeting of the Delegates, *new Directors shall*

*be elected* by written ballot *by a majority of Delegates* as provided in these By-Laws. (Italics added.) Thus, the bylaws require a quorum of 51 percent of the voting power of delegates to be present at a board of directors election.<sup>3</sup>

"Each Delegate may accumulate his votes for the election and removal of Directors . . . . At any election of the Board, each Delegate may give one or more candidate for Director a number of votes equal to the share of the voting power as set forth in the Master Declaration, multiplied by the number of Directors to be elected."

#### *The April 2013 Annual Meeting of Delegates*

An annual meeting convened on April 23, 2013. The minutes from the meeting listed as present 21 delegates from 21 separate delegate districts. **~(1CT, 241)~** The 21 delegate districts represented at the meeting possessed 1,409 votes out of a total possible 2,334 member votes. The Association president announced there was "a quorum . . . present with more than 51% of the voting power of the Association represented at the meeting . . . ."

There were seven candidates for four open board positions. The minutes tallied up the results and indicated the top four vote recipients were elected: defendants Fabian, Greer, Wain, and Blumberg (subsequently replaced by Jester).

#### *Petitions Seeking Removal of Directors*

Almost immediately, certain members of the Association objected to the policy decisions of the newly installed board of directors. Allegations of wasteful and improper spending were raised.

The bylaws establish procedures for the removal of directors. "It shall be the duty of the President to call a special meeting of the Delegates . . . upon a petition having been

presented to the Secretary, signed by Delegates representing at least fifteen percent (15%) of the voting power of the Master Association." "At any regular or special meeting of the Delegates duly called, any one or more of the Directors may be removed prior to the expiration of such Director's term of office with or without cause by a majority of Delegates and a successor may then and there be elected to fill the vacancy thus created."

Several petitions were circulated to hold a special meeting to recall the board and elect a new board. Ten individuals purporting to represent 10 different delegate districts signed the operative, September 2013 petition. Five of these individuals were also listed as delegates in the minutes from the April 2013 annual meeting.

A special meeting was set for December 3, 2013. Meanwhile, however, an investigation into the qualifications of the delegates had commenced.

On November 13, 2013, a form letter was issued (addressed, "Dear Delegates"), informing the recipients that the special meeting was cancelled because the petition was "defective." "The Board of Directors retained legal counsel to assist the Board in preparing for the December 3, 2013 Special Meeting . . . . In the process of preparing for the Special Meeting, a due diligence review of the petition was performed. During this process, it was discovered that nine of the ten 'Delegates' who signed the petition were not qualified to execute the petition when they signed it, as they were not Delegates properly elected pursuant to the terms and conditions of the Association's Bylaws and CC&R's. [¶] The Association's Bylaws require a petition for a Special Meeting to be signed by 15% of the voting power of the Association."<sup>4</sup>

#### *Plaintiffs' Complaint*

On January 8, 2014, plaintiffs filed a complaint seeking, among other things, a declaration that the April 2013 election was null and void. Referencing the November 2013 letter, plaintiffs alleged defendants "have now admitted and . . . cannot deny that delegates who were counted to achieve quorum and who voted in the April 23, 2013 [election] were not qualified to serve as delegates; their presence should not have been counted for quorum purposes and their votes should not have been counted in the April 23, 2013 election of directors." In other words, plaintiffs claimed defendants had been hoisted with their own petard.<sup>5</sup>

The court held an evidentiary hearing in March 2014. The primary factual dispute was whether there was a quorum of delegates at the April 2013 election. The primary legal dispute was, assuming a quorum was not present, the appropriate consequences under the Association's governing documents, given that the lack of a quorum of delegates was discovered after an election had occurred and the board of directors had been in place for nearly nine months.

#### *Election of Delegates by Members of Delegate Districts*

The master declaration sets forth basic rules for electing delegates. "Each Delegate District shall elect one (1) Delegate to the Master Association to exercise the voting power of all of the Members in such Delegate District." For delegate districts in the "Developed Area" (as of 1977), "a Delegate shall be selected in the same manner as a member of the Board of Directors of such Sub-Association . . . ." For delegate districts outside of the "Developed Area," "[t]he election of a Delegate . . . shall be accomplished in the manner specified in the Additional Declaration creating such Sub-Association; or, if no such manner is specified, then the Delegate shall be elected in the manner provided in the Additional Declaration for the election of a member of

the Board of Directors of the Sub-Association."

Defendants initially contested the factual question of whether a quorum of elected delegates attended the April 2013 election. The court summarized the evidence on this question: "We had a bunch of people testify. It's clear that with one exception there was never an election of them as a delegate by the members of their subassociation. It was somewhere between a vote of the sub-association board or [someone wanting] to be the volunteer." After the presentation of evidence, the parties were in agreement that if the unelected individuals were subtracted from the count of delegates at the April 2013 election, there was not a quorum of delegates present. Defendants admitted "Plaintiffs have met their burden to show a technical defect in regards to the quorum at the April 2013 meeting."

The master declaration also prescribes a means for delegate districts to certify the qualifications of delegates. "The Chairman of any meeting at which a Delegate is elected shall certify in writing to the Board the name and address of the Delegate elected, the time and place of the meeting at which the election occurred and the Delegate District which the Delegate represents."

Certificates had been submitted by the delegate districts for 20 of the 21 individuals identified as delegates at the April 2013 election. These preprinted forms, provided to the delegate districts by the Association, included blank lines for the names of the authorized delegate representative. But the forms for this certification did not include a space to certify "the time and place of the meeting at which the election occurred," and this information was not provided on the forms by the delegate districts

*Effect of Declaration Provision Pertaining to Voting of Delegates*

Notwithstanding the admitted shortcomings of the various delegate district elections and certifications, defendants contended the master declaration allowed the April 2013 election to stand. Defendants referred to a single sentence in a lengthy subsection of the master declaration pertaining to voting by delegates. We quote a small portion of this subsection to provide some context for the italicized sentence, deemed a "savings clause" by defendants.<sup>6</sup>

"Whenever a matter is presented to the Delegates by the Board for approval. *It will be conclusively presumed for all purposes of Master Association business that any Delegate casting votes on behalf of the Members . . . in his Delegate District will have acted with the authority and consent of all such Members.* All agreements and determinations lawfully made by the Master Association in accordance with the voting procedures established herein, and in the By-Laws, shall be deemed to be binding on all Members, Owners and their respective successors and assigns." (Italics added.)

#### *Judgment and Aftermath*

The court initially ruled in favor of defendants, reasoning that the purpose of the so-called "savings clause" was "if, essentially, you have an election, as you had here, and no one raised the point before the election, that the intent is not to be able to go back and undo the election if it turns out, as it did here, that they may not have been properly certified." But the court reversed course in response to a motion to vacate the judgment, observing that "a full reading of the applicable provision shows it essentially means a resident cannot challenge the vote of a duly elected candidate."

The court entered judgment on August 1, 2014, declaring the April 2013 election of directors to be null and void. The court declined the parties' request to provide further directions in the judgment regarding

the consequences of declaring the election to be null and void. The court subsequently awarded attorney fees to plaintiffs of \$147,595. Additional factual material pertaining to the attorney fee motion will be discussed below in the section reviewing the attorney fee order.

## DISCUSSION

### *The Court Properly Interpreted Governing Documents*

With regard to the judgment, defendants' sole contention on appeal is that the court erred in its interpretation of the "savings clause." Governing documents are interpreted in the same manner as contracts. (See *Fourth La Costa Condominium Owners Assn. v. Seith* (2008) 159 Cal.App.4th 563, 575.) The court did not rely on extrinsic evidence to interpret the governing documents. Thus, our review of this issue is de novo, applying the ordinary rules of contract interpretation.

"The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ. Code, § 1638.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.)

The language at issue is as follows: "It will be conclusively presumed for all purposes of Master Association business that any Delegate casting votes on behalf of the Members . . . in his Delegate District will have acted with the authority and consent of all such Members." Defendants assert the April 2013 election results should be accepted because it is "conclusively presumed" there was a quorum of delegates "with the authority and consent" of their delegate district's members at the April 2013 annual meeting.

In isolation, this sentence is ambiguous. Defendants' interpretation of the

presumption is reasonable. But even in isolation, it is not clear the presumption was intended to apply to the votes of individuals who are not actually delegates. The conclusive presumption applies to "any Delegate casting votes . . ." The sentence does not state any person casting votes on behalf of the delegate district is a delegate for purposes of establishing a quorum. Pursuant to the governing documents, "delegates" are elected by their delegate districts. As defendants recognized when they blocked petitions attempting to remove directors from office, a party who is appointed or volunteers to serve as a delegate is not actually a "delegate" as defined in the master declaration. Delegates must be elected as specified in the sub-association declaration or in the same manner as the directors of the sub-association are elected.

The actual meaning of the contested sentence is apparent once it is placed in context with the remainder of the paragraph from which it is drawn.<sup>7</sup> This paragraph begins by indicating that matters may periodically be presented to the delegates "for approval . . ." At first blush, the use of the word "approval" would seem to refer to master declaration amendments and other governance matters for which delegate approval is required (i.e., contracts for more than one year, incurring debts). It would not seem to refer to elections; the delegates do not approve or disapprove of directors selected by the board.

The paragraph continues by requiring the delegates to confer with the members of their respective delegate districts when a matter is submitted for their approval. A delegate's duties differ depending on whether the members of the delegate district decide to provide explicit voting guidance to their delegate. A delegate might be obligated to exercise his or her voting power in accordance with the proportional wishes of the members he or she represents. Or, if the matter is left to his or her discretion, he or she would be



required to allocate his or her voting power as a unit, rather than splitting his or her voting power between yea and nay on the same "proposition."

It is at this point that the contested language appears. "It will be conclusively presumed for all purposes of Master Association business that any Delegate casting votes on behalf of the Members . . . in his Delegate District will have acted with the authority and consent of all such Members." A natural reading of the entire paragraph suggests that the conclusive presumption pertains to "Master Association business" for which the board of directors seeks approval from the delegates. Members cannot undo the result of a delegate vote by claiming their delegate was not actually authorized to vote as he or she did. It is somewhat unnatural to apply the contested language to board election votes — indeed, the master declaration says nothing about board elections. But even if the contested language applies to votes taken in board elections, it is unreasonable to apply the conclusive presumption to the evaluation of whether the individual casting the vote is actually a delegate for purposes of establishing a quorum. In context, the most reasonable interpretation of the conclusive presumption is that it applies to a delegate's authority for a particular vote, not the delegate's underlying legitimacy to represent a delegate district.

Objecting to this reading of the "savings clause," defendants marched a parade of horrors through the courtroom. Imagine the effort and expense required to ensure each delegate district properly elects its delegate. What would happen if the members of sub-associations refused to cooperate with the master association or to participate in adequate numbers to elect a delegate? Havoc would be wreaked by disgruntled members, challenging the qualifications of delegates at every meeting.<sup>8</sup>

We empathize with the logistical demands the Association faces in abiding by its 60-page master declaration (plus exhibits) and 20 pages of bylaws. And we are well aware of the challenges common interest developments sometimes face from litigious members. With that said, defendants' concerns cannot change the outcome of this case. The trial court was asked to determine if the April 2013 election was void. The court rightly determined it was void based on the lack of a quorum of delegates at the election.

The Association can minimize the likelihood of such an event occurring again by informing the delegate districts of their obligations and requiring the submission of complete certifications (indicating the delegates were actually elected by the members of the delegate district on a specific date in accordance with the procedures specified in the sub-association's governing documents). The Association can also take solace in the fact that, as discussed below, an unsuccessful claim brought by a member against the Association to enforce the governing documents will usually result in an attorney fee award in favor of the Association.

#### *Attorney Fees*

Plaintiffs moved for an award of attorney fees in the amount of \$208,382.50, citing 438.7 hours of work performed at \$475 per hour. The court granted the motion in part, allowing 421.7 hours at a reduced hourly rate of \$350 per hour. The court awarded \$147,595 in attorney fees to plaintiffs.

Defendants claim the attorney fee award is unjustified on four distinct grounds. "We review a determination of the legal basis for an award of attorney fees de novo as a question of law." (*Pueblo Radiology Medical Group, Inc. v. Gerlach* (2008) 163 Cal.App.4th 826, 828.) If there is a legal basis for an award of attorney fees, we review the decision to award fees and the amount of the award for an abuse of discretion. (*Maughan*

*v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249.)

1. *There Is Statutory Authorization for an Award of Attorney Fees*

Plaintiffs brought suit under the corporate election contest procedures of Corporations Code section 7616. Defendants posit the court erred by awarding attorney fees because there is no authority for such an award in the relevant sections of the Corporations Code.

Fundamentally, however, this was an action to enforce the governing documents of the Association by voiding the election. "In an action to enforce the governing documents, the prevailing party shall be awarded reasonable attorney's fees and costs." (Civ. Code, § 5975, subd. (c).) The only basis for voiding the April 2013 election was the contents of the Association's declaration and bylaws. Defendants conceded this point at the trial court in a memorandum they filed when they thought they would be the prevailing party ("Plaintiffs' lawsuit was in fact an action to enforce the Governing Documents and CC&R's regarding delegation selection, quorum, and Master Association elections").

Corporations Code section 7616 was merely the "procedural vehicle" by which plaintiffs challenged the election. (*Kaplan v. Fairway Oaks Homeowners Assn.* (2002) 98 Cal.App.4th 715, 719 (*Kaplan*).) In *Kaplan*, "[t]he gist of the action . . . was to enforce the members' proxy and cumulative voting rights under the bylaws." (*Id.* at p. 720.) *Kaplan* held that an award of attorney fees was appropriate following a challenge to an association election brought under Corporations Code section 7616. (*Kaplan*, at p.

717.) Similarly, plaintiffs in this case sought to enforce the governing documents; plaintiffs' substantive rights did not arise under the Corporations Code.

Defendants attempt to distinguish *Kaplan* by reference to its procedural history, which differed from the instant case. The *Kaplan* plaintiffs did not initially file the lawsuit under Corporations Code section 7616, but only did so following the filing of a demurrer by the *Kaplan* defendants.<sup>9</sup> (*Kaplan, supra*, 98 Cal.App.4th at p. 717.) The proposed distinction is unconvincing. The salient point from *Kaplan* is that attorney fees are recoverable in an action to enforce a common interest development's governing documents under Corporations Code section 7616.

2. *Plaintiffs Obtained Sufficient Success to be Deemed Prevailing Parties*

In their prayer for relief, plaintiffs sought additional categories of relief beyond voiding the April 2013 election. Basically, plaintiffs wanted the court to spell out the consequences of voiding the April 2013 election (i.e., order a special meeting and election, remove individual defendants from officer positions, restore prior directors to old positions pending special election) and to retain jurisdiction to manage the implementation of these consequences.

By limiting its relief to voiding the April 2013 election and not, for instance, ordering a new election to occur (see Corp. Code, § 7616, subd. (d)), the court left open the question of how the vacancies on the Association's board should be filled.

Plaintiffs claimed the immediate legal effect of voiding the April 2013 election was to reinstate the directors who had held office until April 2013. As stated in the Association's bylaws, "[e]ach Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence." By plaintiffs' reasoning, voiding the April 2013 election meant the prior directors had never been replaced. Plaintiffs also claimed new elections should be held as soon as possible to

fill the remaining time on the terms that began in April 2013. "The term of office of each Director elected to fill a vacancy created by the resignation, death or removal of his predecessor shall be the balance of the unserved term of his predecessor."

On the other hand, defendants asserted the remaining members of the board were obligated to appoint additional members to complete the terms of the members whose positions were lost as a result of the judgment. As stated in the bylaws, "[v]acancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Delegates of the Master Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Delegates fail to elect the number of authorized Directors at any meeting at which such election is to take place."

After the April 2013 election was voided, the remaining board members (including Jester, as defendants interpreted the judgment) appointed defendants Greer, Wain, Fabian to complete the terms they had (in practical terms) begun. Apparently, the board did not take any steps to hold a special election.

The issue of whether the board's conduct was legally proper is not strictly before us, as it has not been adjudicated below. Instead, the question before us is whether this outcome necessarily means plaintiffs did not actually prevail because they did not achieve any practical result from the trial. (See, e.g., *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1574 [courts should determine "which party . . . prevailed on a practical level"].) In appropriate circumstances, courts may determine neither party prevailed. (*Ibid.*)

Certainly, it is open to dispute whether plaintiffs achieved anything of consequence in this litigation. But it is clear the court did not abuse its discretion by characterizing plaintiffs as the prevailing party. The fundamental question in this case was the legitimacy of the April 2013 election. Defendants contested this issue to the bitter end. The additional remedies requested by plaintiffs were all dependent on whether the April 2013 election was void. As the court recognized, the parties may resort to additional litigation to address whether defendants complied with their obligations under the governing documents following the judgment. We reject the notion that defendants can defeat a prevailing party determination as a matter of law by engaging in postjudgment conduct designed to deny plaintiffs (at least for the time being) the practical benefit they sought (i.e., the removal of the individual defendants from the board of directors).

### 3. *The Court Exercised its Discretion Under Civil Code Section 5960*

As noted above, members and associations are required to pursue alternative dispute resolution prior to filing actions like the instant one. (Civ. Code, § 5930.) "In an enforcement action in which attorney's fees and costs may be awarded, the court, in determining the amount of the award, may consider whether a party's refusal to participate in alternative dispute resolution before commencement of the action was reasonable." (Civ. Code, § 5960.)

Defendants contend the court erred by failing to reduce plaintiffs' attorney fee award because plaintiffs did not pursue alternative dispute resolution before filing their action. The court noted its encouragement of the parties to resolve the case. The court "did not sense that either side wanted to do anything but get a court decision on this which is fine. But in terms of the idea that this thing essentially went through litigation because . . .



defendants wanted [alternative dispute resolution] and the plaintiffs didn't is factually . . . incorrect."

The court also referenced Civil Code section 5950, subdivision (b), which states that a failure to certify pretrial compliance with alternative dispute resolution requirements subjects the complaint to a demurrer or motion to strike. Defendants did not demur to or move to strike the complaint on the grounds that plaintiffs had not complied with alternative dispute resolution requirements.

The court clearly considered Civil Code section 5960, and rejected the argument that the lack of alternative dispute resolution should affect plaintiffs' attorney fee award. Defendants do not cite any authority suggesting the court's ruling was an abuse of discretion. In our view, the court acted reasonably under the circumstances. The parties had diametrically opposed views on an issue of governance. A compromise solution to the dispute is not readily apparent. It may have been for the best that alternative dispute resolution did not occur; "when attorney fees and costs expended in prelitigation [alternative dispute resolution] satisfy the other criteria of reasonableness, those fees and costs may be recovered in an action to enforce the governing documents of a common interest development." (*Grossman v. Park Fort Washington Assn.* (2012) 212 Cal.App.4th 1128, 1134.)

#### 4. *The Court Did Not Abuse Its Discretion in Approving Hours Spent by Plaintiffs' Counsel*

Finally, defendants contend the court erred by approving 421.7 hours of attorney work at \$350 per hour for a total award of \$147,595. Corporations Code section 7616, subdivision (c), calls for a hearing "within five days unless for good cause shown a later date is fixed . . . ." The hearing here was delayed several months for good cause, but the

evidentiary hearing only took a single day. In short, defendants argue it was an abuse of discretion to award such a large amount of fees for a case utilizing what was designed to be a speedy, inexpensive procedure.

We disagree. The court followed the traditional lodestar approach (see *PLCM Group, Inc., v. Drexler* (2000) 22 Cal.4th 1084, 1095), reducing the hourly rate to what it considered reasonable. Plaintiffs submitted lengthy moving papers and evidence to support findings that it completed the work for which it sought an attorney fee award. Defendants do not challenge the evidence presented, but rest their argument on the ipse dixit that "421 hours are patently unreasonable in the conte[x]t of an action that, by law, is to be concluded within 120 hours of the filing of the complaint."

Defendants' refusal to concede the factual dispute between the parties as to the qualifications of the delegates led to the delay in setting the hearing and a substantial portion of the attorney work performed by plaintiffs' counsel. And defendants' initial success in advancing the ultimately unmeritorious "savings clause" argument necessitated additional briefing and argument. Moreover, defendants moved for reconsideration once the court had changed its ruling to favor plaintiffs, triggering further proceedings. Regardless of the purpose of Corporations Code section 7616, the reality of this case is that the parties aggressively litigated the issues. In this type of hard fought action, 421 hours of attorney time and \$147,595 of attorney fees are not so facially absurd that the award must be reversed on appeal. "The "experienced trial judge is the best judge of the value of professional services rendered in his court . . . ." (*PLCM Group, Inc. v. Drexler, supra*, 22 Cal.4th at p. 1095.)

#### DISPOSITION

The judgment and postjudgment order awarding attorney fees are affirmed. Plaintiffs shall recover costs incurred on appeal.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

THOMPSON, J.

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Footnotes:

1. The individual defendants are Mark Greer, David Wain, Nicole Fabian, Michael Blumberg, and Walter Jester. Jester was appointed by the board to replace Blumberg, who resigned from the board before the lawsuit was filed. Blumberg is the only defendant who is not an appellant.

2. "Upon the filing of an action therefor . . . , the superior court of the proper county shall determine the validity of any election or appointment of any director of any corporation." (Corp. Code, § 7616, subd. (a).) "An action challenging the validity of any election . . . of a director or directors must be commenced within nine months after the election . . . . If no such action is commenced, in the absence of fraud, any election . . . of a director is conclusively presumed valid nine months thereafter." (Corp. Code, § 7527.) Plaintiffs' action was timely.

3. "[T]he term 'majority of Delegates' shall mean those Delegates holding at least fifty-one percent (51%) of the voting power of the membership in the Master Association. Notwithstanding the foregoing, unless otherwise expressly provided in these By-Laws or the Master Declaration, any action which may be taken by the Master Association may be taken by a majority of a quorum of the Delegates of the Master Association." "Except as otherwise provided in these By-Laws, the presence in person or

by proxy of the Delegates holding at least fifty-one percent (51%) of the voting power of the Master Association shall constitute a quorum of the membership. The Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Delegates to leave less than a quorum."

4. The author of the letter later insisted in her declaration that she did not actually mean that nine of 10 putative delegates were in fact unqualified, but only that the Association "could not verify that the" nine individuals had "authority to act as Delegates . . . ."

5. "Shakespeare's phrase, uttered by his melancholy Dane, is 'hoist with his own petard.' A petard — from Middle French — was a mine or small bomb and, if the engineer's timing was off as he set the charge, he might be 'hoist' — raised up in the explosion of his own device." (*R-Boc Representatives, Inc. v. Minemyer* (N.D.Ill. Sep. 18, 2014, No. 11C8433) 2014 U.S. Dist. Lexis 130788.)

6. The subsection is quoted in greater detail in footnote 7, *post*, in connection with the discussion of the interpretation of so-called savings clause.

7. "Whenever a matter is presented to the Delegates by the Board for approval, written notice to the substance of the matter shall be given to the Delegates . . . . During the thirty (30) day period . . . , the Delegates shall call and attend special meetings of the Owners within their respective Delegate Districts to consider the substance of the matter with their constituents. . . . Each Delegate shall cast the votes which he represents in such manner as he may, in his sole discretion, deem appropriate, acting on behalf of all the Members . . . in his Delegate District; provided, however, that in the event that at least a majority of the . . . Members in any Delegate District shall determine at any duly constituted meeting of the Members in such

Delegate District to instruct their Delegate as to the manner in which he is to vote on any issue to be voted on by the Delegates, then the Delegate representing such Delegate District shall cast all of the voting power in such Delegate District in the same proportion, as nearly as possible without counting fractional votes, as all of the voting Members in such Delegate District shall have voted 'for' and 'against' such issue in person or by proxy. When a Delegate is voting in his own discretion, . . . then such Delegate shall cast all of the votes which he represents as a unit and may not apportion some of such votes in favor of a given proposition and some of such votes in opposition to such proposition. *It will be conclusively presumed for all purposes of Master Association business that any Delegate casting votes on behalf of the Members . . . in his Delegate District will have acted with the authority and consent of all such Members.* All agreements and determinations lawfully made by the Master Association in accordance with the voting procedures established herein, and in the By-Laws, shall be deemed to be binding on all Members, Owners and their respective successors and assigns." (Italics added.)

8. Of course, defendants' position is somewhat galling. They conducted an investigation into the credentials of self-identified delegates and thereby prevented a vote to *remove* directors, but now claim it is unreasonable to impose any sort of duty to ascertain that legitimate delegates are participating in the *election* of directors.

9. The demurrer was based on the *Kaplan* plaintiffs' failure to attach "a certificate stating they had pursued alternative dispute resolution as required by" the predecessor statute to Civil Code section 5950. (*Kaplan, supra*, 98 Cal.App.4th at p. 717.) Here too, there is no indication plaintiffs complied with alternative dispute resolution requirements under the Civil Code. But defendants' remedy for this failure was a demurrer or motion to strike pursuant to Civil

Code section 5950, subdivision (b). Nothing in *Kaplan* suggests that a failure to comply with pre-filing alternative dispute resolution requirements forecloses a recovery of attorney fees. Indeed, quite the contrary is suggested by the holding in *Kaplan*.

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