

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS AND CONSUMER DOCKET  
Location: Portland  
Docket No. BCD-WB-CV-08-041

The Friends of Great Diamond Island, LLC, et al.,

Plaintiffs

v.

**DECISION AND JUDGMENT**  
(Phase II)

The Inn at Diamond Cove, LLC, et al.,

Defendants

This matter was heard on December 1 - 3, 2010, on Counts I and IV of Plaintiffs' Third Amended Complaint.<sup>1</sup> Following the trial, the parties submitted written argument. The Court received the final submissions on February 4, 2011.

After consideration of the evidence and the parties' arguments, the Court makes the following findings:

**Findings of Fact**

1. Diamond Cove is a planned unit development located on Great Diamond Island. The development consists primarily of single-family residences, townhouse residences, and some limited commercial structures, including a store and a restaurant.

2. The development, which was created in 1989, was originally governed by a General Declaration of Covenants and Restrictions, which Declaration was dated September 27, 1989.

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<sup>1</sup> The Court previously conducted a hearing and issued a decision on Counts VI and VII, the other two remaining counts of Plaintiffs' Third Amended Complaint. In the interest of judicial economy and with the agreement of the parties, conducted a separate trial on Counts VI and VII.

3. The Declaration as modified continues to govern the operation of the development. The operative Declaration is the Amended and Restated General Declaration of Covenants and Restrictions dated December 23, 1993 (the Declaration).

4. At all times pertinent hereto, Defendant Diamond Cove Homeowner's Association (the Association) was responsible for the management of the development in Diamond Cove.

5. As a general rule, when a person purchased a unit within the area governed by the Association, the person received a notebook that included the Declaration as well as other governing documents. The unit owners could not negotiate, and were bound by the terms of the Declaration and other governing documents.

6. The Declaration contains two articles that relate to amendments to the Declaration: Article 12 and Article 13.1. Article 12 requires a vote of the owners of 67% of the lots to pass an amendment; Article 13.1 requires a vote of the owners of 80% of the lots to pass an amendment.

7. In 2007, Defendant Inn at Diamond Cove, LLC, submitted a proposal to the Association to redevelop two buildings located in Diamond Cove, which buildings were known as the Double Barracks and the Hospital. The proposal would require an amendment to the Declaration.

8. The Association sent notice to the unit owners that there would be a special meeting on June 30, 2007, to vote on the proposal to amend the Declaration to permit the proposed development to proceed (the Amendment).

9. The June 30, 2007, vote was to be conducted by proxy.

10. Section 7 of the Association's by-laws permits the use of proxies for Association votes provided that "the authority given by a member to another person to represent such member at

meetings of the Association shall be in writing, signed by such member or if a lot is jointly owned then by all joint owners.”

11. The proxy form, which the Association forwarded to each of the unit owners before June 30, 2007, provided the unit owners with three alternative ways to vote. Option 1 permitted the unit owner to designate a person to vote on the unit owner’s behalf; option 2 attached an actual ballot to the proxy form; option 3 was in essence an absentee ballot.

12. The proxy form stated in bold print, “[i]f your Lot is jointly owned, then this Proxy must be signed by all joint owners.”

13. When the Association forwarded the proxy form to the unit owners, it also provided the unit owners with a copy of the proposed amendment. At the same time, the Association informed the unit owners that 67% of the eligible voters must vote in favor of the amendment in order to secure passage, in accordance with the Association’s past usage of the 67% threshold for amendments to the Declaration.

14. On June 30, 2007, the vote was conducted by, and the actual votes were maintained and counted by, Dirigo Management (Dirigo), the Association’s contract management company.

15. At the meeting, none of the attendees challenged the voting process, or the fact that passage of the amendment would be governed by the 67% standard of Article 12.

16. Dirigo recorded 135 votes: 100 votes in favor of the amendment, and 35 votes against the Amendment. In addition, 10 lot owners did not vote. The 100 votes in favor of the amendment represent 68.97% of the 145 eligible voters. At trial, the Association produced only 130 proxy forms.

17. As with previous Association votes, not all of the proxy forms were completed in accordance with the by-laws, or the instructions that accompanied the forms. Six proxies were

only signed by one of the joint lot owners. Of those six, three votes were in favor of the Amendment, but the remaining three do not specify their vote in favor or against the Amendment.

18. Two votes were cast on behalf of Unit 16C.

19. Although the Association recorded the amendment on August 28, 2007, the Association did not send notice of the recording to the Association members in accordance with Article 12(B)(6) of the Declaration.

20. Plaintiffs commenced this action with the filing of their Complaint on August 26, 2008. On August 27, 2008, Plaintiffs filed a First Amended Complaint; in September 2008, Plaintiffs filed a Second Amended Complaint; and in December 2008, Plaintiffs filed a Third Amended Complaint.

### **Discussion**

In this action, Plaintiffs challenge the process by which the Association approved the proposed development. More specifically, Plaintiffs contend that the Amendment to the Declaration that was necessary for the development to proceed was not approved by the requisite number of lot owners. In support of their argument, Plaintiffs maintain that the process by which the vote was conducted was flawed, and also cite various irregularities in the votes that were cast in favor of the Amendment.

Defendants argue that under the terms of the Declaration, Plaintiffs' challenge is time-barred. In addition, Defendants assert that because the process by which the votes were cast and tabulated is consistent with the past practices of the Association, Plaintiffs' arguments are unavailing.

1. Whether Article 12 or Article 13.1 Governs the Vote<sup>2</sup>

Plaintiffs first argue that Article 13.1, which requires an 80% vote in order to change certain covenants and restrictions of the Declaration, applies to the subject of the Amendment, and because only 68.9% of the lot owners voted in favor of the Amendment, the Association did not properly approve the Amendment. Defendants maintain that Article 12, which requires a 67% affirmative vote for the adoption of amendments to the Declaration, governs the vote on the Amendment.

The Declaration is a contract,<sup>3</sup> and “[i]t is a well established principle that a contract is to be interpreted to give effect to the intention of the parties as reflected in the written instrument, construed in respect to the subject matter, motive and purpose of making the agreement, and the object to be accomplished.” *Estate of Barrows*, 2006 ME 143, ¶ 13, 913 A.2d 608, 611 (quotation marks omitted).

Although the interpretation urged by Plaintiffs is not without merit, based on the evidence, the Court is convinced that the Article 12 applies to the vote. Throughout the history of the Association, the 67% threshold has been used for amendments to the Declaration. Indeed, Plaintiffs have failed to cite one Association vote to which the 80% standard applied. This is consistent with the testimony of Joseph Delafield, the principal drafter of the Declaration, as to the purpose of the standard set forth in Article 13.1. According to Mr. Delafield, Article 13.1 was intended to provide the Association with a mechanism to terminate the Declaration, and all of its covenants and restrictions. In other words, the Declaration did not mandate that the covenants and restrictions were to continue in perpetuity. Under this construction, Article 12

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<sup>2</sup> At summary judgment, the Court determined that the Declaration was ambiguous as to whether Article 12 or Article 13.1 governed the vote. The Court, therefore, considered extrinsic evidence at trial as to the intent of the two provisions.

<sup>3</sup> The Law Court has recognized that the by-laws of a private association constitute an enforceable contract between the association and its members. *Morison v. Wilson Lake Country Club*, 2005 ME 71, ¶ 20, 874 A.2d 885, 888.

governs proposed changes, including additions, to the Declaration, and Article 13.1 applies to the Association's decision to terminate the Declaration in its entirety. In this way, Article 12 and Article 13.1 are consistent with and work in concert with each other. This interpretation is logical, and gives meaning to each provision of the Declaration.<sup>4</sup>

2. Whether Plaintiffs' Challenge is Time-barred

As part of their argument that Article 12 governs the vote on the Amendment, Defendants contend that Plaintiffs' challenge to the vote is time-barred by Article 12(B)(6), which provides in relevant part:

No action to challenge the validity of an amendment to this Declaration adopted by the Association pursuant to this Article 12 may be brought more than one year after such amendment is recorded. After each amendment to this Declaration adopted pursuant to this Article 12 has been recorded, notice thereof shall be sent to all owners ..., but failure to send such notices shall not affect the validity of such amendment.

Defendants assert that because Plaintiffs filed their Third Amended Complaint, in which they assert their challenge to the vote, more than one year after the recording of the Amendment, Plaintiffs are foreclosed from challenging the vote on the Amendment. Plaintiffs counter that because Defendants did not send notice of the recording to the owners as required by Article 12, Defendants cannot rely upon the Article's limitation period. While they acknowledge that the Association did not send notice of the recording, Defendants argue that the one-year limitation period runs from the date of recording, and, therefore, their failure to provide notice is of no consequence.

Contrary to Defendants' argument, the one-year limitation period of Article 12(B)(6) must be considered within the context of the entire provision. *See Coastal Ventures v. Alsham*

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<sup>4</sup> The Court's conclusion is also consistent with the reluctance of courts to intervene in a private association's interpretation of its by-laws and governing documents. *See Juarez v. Texas Ass'n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274 (Tex. App. 2005). As explained below, however, the Court's reticence to intervene in a private association's affairs is not limitless.

*Plaza, LLC*, 2010 ME 63, ¶ 27, 1 A.3d 416, ---. Although the one-year limitation period begins to run at the time of recording, the Article also requires that notice be sent to all of the owners. In the absence of the notice of the recording, a potential challenger to the amendment might be unaware that an amendment had been passed and recorded. Under the interpretation urged by Defendants, therefore, the Association could pass and record an amendment, delay or fail to provide notice, and thereby effectively limit any challenge to the adoption of the amendment to those who were present at the passage of the amendment. Such a result would not only be contrary to sound policy, but it would be inconsistent with the plain language of Article 12.

Under the terms of Article 12(B)(6), the failure to provide notice of the recording of an amendment does not render the amendment ineffective or a nullity. If an amendment was otherwise adopted properly, the Association's failure to notify its members of the recording of the amendment does not mean that the amendment is invalid. Although Article 12(B)(6) specifically states that the failure to provide notice does not invalidate an amendment, the Article does not contain similar language regarding the effect of the lack of notice on the limitation period. Not insignificantly, Article 12(B)(6) does not state that the one-year limitation period runs from the date of recording regardless of whether notice of the recording is provided to Association members. Given that one of the purposes of the notice requirement is to afford members who might not be aware of the amendment an opportunity to challenge the amendment if the member so desires, common sense suggests that the limitation period does not begin to run upon recording if notice of the recording is not provided. Otherwise, some members might not be aware of the Association's action, and thus unaware that the relatively brief one-year limitation period has commenced. Indeed, if the limitation period begins to run upon recording regardless of whether notice of the recording is provided in accordance with Article 12, the

Association would have no incentive to provide notice, and the notice requirement would essentially become meaningless.

Accordingly, consistent with a common sense reading of the language of Article 12(B)(6), the Court determines that the one-year limitation period of the Article commences with the Association's notice of the recording of an amendment to the members of the Association.<sup>5</sup> In this case, because the Association did not provide the required notice, the one-year limitation period set forth in Article 12(B)(6) does not bar Plaintiffs' challenge to the vote on the Amendment.

In the alternative, Plaintiffs argue that even if the Court determined that the limitation period began to run upon the recording of the Amendment regardless of whether the Association provided notice of the recording, they met the one-year limitation when they challenged the vote in their original Complaint and First Amended Complaint. Defendants counter that Plaintiffs are precluded from challenging the vote because they did not assert their objections to specific votes until the Third Amended Complaint, which was filed more than one year after the recording of the Amendment. The Court concludes that the Plaintiffs challenge is timely on these alternative grounds as well. M.R. Civ. P. 15(c)(2) provides that "[a]n amendment of a pleading relates back to the date of the original pleading when . . . the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading . . ." In this case, the "conduct, transaction, or occurrence" of the original Complaint is the process by which the Amendment was approved. In addition, in the

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<sup>5</sup> The Court's conclusion is also consistent with the way in which the law construes contractually established one-year limitation periods. While it is not contrary to public policy for parties to contract to shorten a limitations period proscribed by statute, provided that the fixed time is not unreasonable, and although a one-year limitation period is generally reasonable, it is not favored and will be strictly construed against the party invoking it. 3-9 Corbin on Contracts § 9-9; *accord In re Penn Cent. Transp. Co.*, 391 F. Supp. 1404, 1407 (E.D. Penn. 1975); *Stanley R. Benjamin, Inc. v. Fidelity & Casualty Co. of N.Y.*, 340 N.Y.S.2d 578, 580 (N.Y. Sup. Ct. 1972).



First Amended Complaint, Plaintiffs allege that “[t]he Inn’s proposal actually failed because the valid affirmative votes did not meet or exceed the 67% threshold . . .” (First Amended Complaint ¶ 28.) Under these circumstances, Plaintiffs’ Third Amended Complaint relates back to the original Complaint and the First Amended Complaint. Plaintiffs’ Third Amended Complaint is not, therefore, barred by the limitation period set forth in Article 12.

3. Plaintiffs’ Challenge to the Vote

Finally, Plaintiffs argue that the Association did not approve the Amendment, even at the 67% threshold. In support of their argument, Plaintiffs cite irregularities in several votes that the Association included in the vote in favor of the Amendment. Plaintiffs assert that without these challenged votes, the Amendment does not meet the 67% threshold necessary for passage. Defendants contend that although all of the ballots and proxies by which the votes were cast might not have strictly complied with the Association’s by-laws, because the voting deficiencies are technical in nature, and because the votes were cast in accordance with the Association’s past practices, the votes are valid.

In their written argument, Defendants note that courts are traditionally reluctant to intervene in the affairs of non-profit organizations, *see Hottentot v. Mid-Maine Med. Ctr.*, 549 A.2d 365, 368 (Me. 1988), and describe Plaintiffs’ challenges to and any problems with the votes and voting process as technical. While courts might be reluctant to intervene in the operation of organizations such as the Association, courts will and should intervene particularly when the organization fails to follow its own procedures, and the organization’s rules do not provide for an internal challenge to the process by which a fundamental change in the agreement between the members and the organization was achieved.

The absence of a process within the Association to challenge the vote distinguishes this case from some of the authority upon which Defendants rely. That is, unlike the organizations in *Juarez v. Texas Ass'n of Sporting Officials El Paso Chapter*, 172 S.W.3d 274 (Tex. App. 2005), *Danese v. Ginisi*, 654 A.2d 479 (N.J. Super. Ct. App. Div. 1995), and *Putka v. First Catholic Slovak Union*, 600 N.E.2d 797 (Ohio Ct. App. 1991), the Association's by-laws do not provide an internal procedure that Plaintiffs could have invoked to challenge the Amendment. To the contrary, by establishing the one-year limitation period discussed above, Article 12 contemplates a court action in the event of a challenge to an amendment.

The substantive issue in this case also militates in favor of intervention. In support of their argument for judicial restraint, Defendants cite cases in which the principal issue involved who could become a member of the private association. Here, the issue directly involves the process by which the agreement between the Association and its members was modified, and therefore, the process by which the property rights of Association members were potentially altered. In this way, the case is more similar to *McMahon v. Chicago Mercantile Exchange*, 582 N.E.2d 1313 (Ill. App. 1991), where the court fully adjudicated the parties' rights and obligations through an examination and interpretation of the constitution and rules of the defendant association, and *Owens Entertainment Club v. Owens Community Improvement Club*, 466 S.W.2d 70 (Tex. Civ. App. 1971), where the court invalidated the vote of a private association to convey real estate because the vote did not conform to the procedure mandated by the association's constitution. The Court believes, therefore, that an examination of the Association's vote on the Amendment is appropriate.

Before addressing the Plaintiffs' challenges to specific votes, the Court will discuss its concerns about the count of the vote on the Amendment. As noted, although the Association

reported that 135 votes had been cast, the Association produced only 130 proxies.<sup>6</sup> According to Peter Brewitt of Dirigo Management, a proxy should have accompanied each vote. The discrepancy between the number of proxies and the number of votes suggests either an error in the vote count, or that not all of the votes were cast properly. Particularly given the narrow margin of the vote, regardless of the reason, the discrepancy generates legitimate and serious questions about the integrity of the vote, including whether 100 votes were in fact cast in favor of the Amendment.

If one assumes that the Association counted 100 votes in favor of the Amendment, if three of the affirmative votes are invalid, the Amendment falls short of the 67% requirement.<sup>7</sup> The record establishes that two votes were counted for Unit 16C. Neither the by-laws, nor any other authority supports or justifies counting more than one vote for a lot. Because the Association improperly counted two votes for one lot, and because the Court cannot discern whether the two votes were consistent with each other, both votes must be invalidated. Not only is it appropriate to invalidate the votes, but the fact that two votes were recorded for one unit raises additional questions about the overall integrity of the vote.

Plaintiffs next challenge the manner in which various proxy votes were cast. Section 7 of the Association's by-laws permits the use of proxies provided that "the authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a lot is jointly owned then by all joint owners." Consistent with Section 7, the proxy form used for the vote on the Amendment stated in bold print, "[i]f

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<sup>6</sup> The Association determined that 35 lot owners voted against the Amendment, and 10 lot owners did not vote. Because the Declaration requires an affirmative vote of 67% of the lot owners for the passage of an amendment, in accordance with the Declaration, a vote that is not cast is counted as a "no" vote. Therefore, the final count on the vote was 100 in favor and 45 against adoption of the Amendment.

<sup>7</sup> If three votes were to be invalidated, the number of affirmative votes would total 97, which represents 66.89% of the 145 lot owners and eligible voters.

your Lot is jointly owned, then this Proxy must be signed by all joint owners.” The proxies for at least three of the votes cast in favor of the Amendment were signed by only one of the joint owners of the lots for which the votes were cast.<sup>8</sup>

The requirement that all joint owners sign the proxy is not only required by the by-laws and clear on the face of the proxy form, but it also represents a sound policy. Without the requirement, one owner of a jointly owned lot could cast a vote that might be contrary to the intent of the other owners of the lot thereby disenfranchising one or more of the lot’s owners. Presumably, the Association included the requirement among the by-laws to prevent such a result, and to assure that each vote cast by proxy reflected the intent of all of the owners of a particular lot. For lot owners, the ability to vote on matters central to the management of Diamond Cove is undoubtedly an important aspect of their membership in the Association. The Association’s failure to ensure that each vote complies with the reasonable process proscribed by its own by-laws, therefore, cannot be dismissed as a technical oversight.

Defendants nevertheless argue that the votes were properly counted partly because the Association has in the past permitted proxies that were signed by less than all of the lot owners. In other words, Defendants appear to contend that the contract between the Association and its members (i.e., the by-laws) was effectively modified through a course of dealing.

As explained above, the Law Court has recognized that the by-laws of a private association constitute an enforceable contract between the association and its members. *Morison v. Wilson Lake Country Club*, 2005 ME 71, ¶ 20, 874 A.2d 885, 888. As Defendants argue, the parties’ course of performance or dealing can be used to interpret an ambiguous contract. *See*

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<sup>8</sup> The evidence established that only one of the joint owners of three additional lots signed the proxies. However, on this record, the Court could not determine whether the three other proxies signed by only one of the joint owners of the lots for which the votes were cast resulted in votes there were in favor or against the Amendment. It is conceivable, therefore, that as many as six affirmative votes were cast through proxies that did not comply with the Association’s by-laws.

Restatement (Second) of Contracts § 203 cmt. a (1981). However, “express terms are given greater weight than course of performance, course of dealing, and usage of trade.” Restatement (Second) of Contracts § 203(b). Here, the Court does not find any ambiguity in the by-laws governing proxy votes and the express terms govern.

Even if the Court were to conclude the by-laws are ambiguous, and consider the Association’s past practice of accepting votes cast by proxies that were signed by fewer than all of the lot owners, Defendants’ argument fails. There is no reliable evidence to establish that the Plaintiffs or any of the other parties to the contract (i.e., the other lot owners) explicitly or implicitly agreed to modify Section 7 of the by-laws. In fact, in this case, the evidence established that the Association provides all new lot owners with a copy of the by-laws without any suggestion that the governing documents have been amended through some course of dealing between the Association and its members. At a minimum, the lot owners who were not members of the Association at the time of the purported course of dealing did not assent to a modification of the Declaration and by-laws.<sup>9</sup> Thus, even if the Court considers the alleged course of dealing between the Association and its members, the Court finds no persuasive evidence on the record of the existence of an unwritten modification of the by-laws.<sup>10</sup> Consequently, in accordance with the plain language of Section 7 of the by-laws, and the clear

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<sup>9</sup> For an association that regularly has relatively new members the ability to argue successfully that the parties’ contract has been amended through the parties’ course of conduct will likely be difficult, if not impossible, even if a court concludes that the by-laws are ambiguous.

<sup>10</sup> Defendants also argue that 13-C M.R.S. § 725(2)(E) (2010) (part of the Maine Business Corporation Act) authorizes a corporation to accept a proxy signed by one of the co-owners of shares if the person who signs the proxy appears to be acting on behalf of all of the co-owners. Even if the Court determined that this Act applies to the Association, a non-profit organization, section 1701(3) of the Act provides that “[a] provision of a corporation’s articles of incorporation or bylaws that was valid under the law in existence at the time the same was adopted remains in effect, notwithstanding a contrary provision of this Act, until repealed or amended by voluntary act of the corporation . . .” 13-C M.R.S. § 1701(3) (2010). Because Section 7 of the by-laws was in effect prior to the Act, the provisions of the Act do not supersede the requirements of the by-laws.

directive on the proxy form, the Association should not have counted votes that were cast by a proxy signed by fewer than all lot owners.<sup>11</sup>

If the vote does not include the votes cast by proxies signed by only one joint owner of a lot, and does not include the multiple votes cast on behalf of Unit 16C, the Amendment fails to achieve the 67% threshold necessary for approval. As mentioned above, the Court cannot view these deficiencies to be technical shortcomings as the Association argues. Indeed, if the Court were to consider the many problems with the vote (e.g., the discrepancy between the number of votes and the number of proxies, two votes counted for one unit, the acceptance of votes that were submitted in a form that is in direct contravention of the requirements of the by-laws, the failure of some of the individuals to whom proxies were granted to appear at the meeting to cast the vote) to be technical and without consequence, the Court would in essence have to conclude that the voting process is irrelevant, that the Association can disregard the requirements of the by-laws when it so desires, and that any vote endorsed by the Association's management is beyond reproach.

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<sup>11</sup> Plaintiffs also cite other deficiencies with various votes and the voting process. Given the issues regarding the count of the vote, and given that the Court has concluded that four of the votes that the Association counted as affirmative votes are invalid, the Court has determined that the Amendment did not achieve the 67% threshold necessary for approval. Consequently, the Court will not address specifically each of Plaintiffs' remaining challenges. However, because the Court recognizes that the Association might seek another vote on the Amendment, the Court believes that it is appropriate to comment upon some of Plaintiffs' other challenges. First, the manner by which the proxy votes were cast is inconsistent with the way in which proxies are usually exercised. A proxy is not equivalent to an absentee ballot. Through a proxy, a voter grants to another person the authority to cast the vote. Thereafter, the person to whom the proxy is granted actually casts the vote. This is consistent with the express language of Section 7 of the by-laws, which contemplates "authority [being] given by a member to another person to *represent such member at meetings of the Association ...*" (emphasis supplied). In at least some of the votes exercised by proxy, the person to whom the proxy was granted did not appear at the meeting to exercise the vote thereby generating legitimate questions about the validity of some of the votes cast by proxy. In addition, the votes cast on behalf of some of the lots owned by a corporate or other legal entity are of concern. For instance, the votes cast on behalf of Pleasant Cove Beach, LLC, Eye Venture Associates, and Fifth Third Bank, Trustee of the Grace B. Kennedy Real Estate Trust would warrant closer scrutiny had the Court not already determined that the Amendment did not have sufficient votes for approval. At a minimum, these additional issues contribute to the Court's concerns about the integrity of the vote.

While the Court supports the policy of limited judicial intervention in the affairs of private organizations, *see Hottentot*, 549 A.2d at 368, the Court recognizes that in certain situations intervention is warranted and necessary. Where, as in this case, the Court finds that an association has failed to follow the voting process proscribed by its by-laws, and where the votes cast in contravention of the by-laws constitute the votes necessary to make a fundamental change in the relationship between the association and its members, the Court would be remiss if it did not intervene, and require that the association conduct the vote in accordance with the association's by-laws. *See Swisher v. Collins*, No. CV 06-338-S-BLW, 2009 U.S. Dist. LEXIS 49266, at \*71-\*72 (D. Idaho June 11, 2009) ("The League's Bylaws and Administrative Procedures . . . are the contract, and the court's judicial review authority is limited to whether the League followed its own procedures set forth in those bylaws and administrative procedures.") *Garvey v. Seattle Tennis Club*, 808 P.2d 1155, 1157 (Wash. Ct. App. 1991) ("When courts intervene in the internal affairs of a social club it is only to determine whether the club has violated its own rules."); *accord Owens Entertainment Club*, 466 S.W.2d at 73 (invalidating the vote of a private association to convey real estate because the vote did not conform to the procedure mandated by the association's constitution). In other words, the Court does not consider its insistence that the Association comply with the terms of its agreement with its members to be improper interference with the internal affairs of the Association. In fact, without the Court's intervention in a situation such as this, members of an association who are aggrieved by the association's breach of its agreement with its members (i.e., the by-laws) would have no recourse.

## Conclusion

Based on the foregoing analysis, the Court concludes and orders:

1. On Count I of Plaintiffs' Third Amended Complaint, the Court determines that Article 12 of the Declaration governs the vote on the Amendment, and that Plaintiffs' challenge is not time-barred by Article 12(B)(6).

2. On Count IV of Plaintiffs' Third Amended Complaint, the Court determines that there were several deficiencies with the vote on the Amendment, including the fact that the number of the votes counted is inconsistent with the number of proxies submitted, and that the Association improperly included several votes among the votes cast in favor of the Amendment. When the invalid votes that were included among the affirmative votes are not considered, the vote on the Amendment fails to achieve the 67% threshold necessary to approve the Amendment. Accordingly, the Court determines that the Amendment was not properly approved at the Association's June 30, 2007, vote on the Amendment.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Judgment into the docket by reference.

Date: 4/22/11

  
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Justice, Maine Business & Consumer Docket