



1988

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HONORABLE NORMAN QUINN
CIVIL TRACK I

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

DONALD L. BARNETT,)
)
Plaintiff,)
)
v.)
)
JACK A. HICKS, JACK A. DuBOIS,)
and E. SCOTT HARTLEY, indivi-)
dually and as the Board of)
Directors of COMMUNITY CHAPEL)
BIBLE TRAINING CENTER and)
COMMUNITY CHAPEL AND BIBLE)
TRAINING CENTER,)
)
Defendants.)

NO. 88-2-04148-2

ORDER GRANTING DEFENDANTS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

THIS MATTER came on for hearing before the honorable
Norman Quinn, upon the Defendant's first Motion for Partial
Summary Judgment, and the Court having considered the certifi-
cations of Jack DuBois (CP ___) and Scott Hartley (CP ___)
in favor of the motion and their Affidavits (CP ___), and their Reply
Brief (CP ___) and the Declarations of Barnett (CP ___) and
Pierce (CP ___), plaintiff's Memorandum (CP ___) and Supple-
mental Memorandum (CP ___), excerpts from depositions of
DuBois (CP ___) and Hartley (CP ___), and the Court having
heard arguments by Robert J. Rohan, of Schweppe, Krug &
Tausend, P.S., representing defendants, and Roger Johnson and

ORDER GRANTING DEFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT - 1

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APPENDIX A

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1 Rodney G. Pierce, representing plaintiff, now makes the
2 following determinations:

3 1. The Relief Requested Is Not Beyond the Pleadings.

4 Barnett's argument that part of the relief requested by
5 defendants in this motion is beyond the pleadings is denied as
6 a matter of law because of notice pleading, ~~the failure of~~
7 ~~Barnett to argue or set forth facts regarding how he has been~~
8 ~~prejudiced~~, and because the court ~~has opened~~ may reform
9 articles and bylaws which violate state law on their face.

10 Plaintiff argued certain of his affirmative defenses as
11 defenses to defendants' summary judgment, ~~including~~
12 ~~the directors meetings, the validity of the pre-March 4, 1988,~~
13 ~~articles and bylaws, defendants' alleged breaches of fiduciary~~
14 ~~duty, defendants' prior agreement to the pre-March 4, 1988,~~
15 ~~articles and bylaws and others.~~ Neither party objected to
16 such arguments.

17 2. Certain Articles and Bylaws Violate the Nonprofit
18 Act and Are Void.

19 There are no ~~disputed~~ material fact regarding
20 the legal issue of whether the pre-March 4, 1988 articles of
21 incorporation and bylaws of Community Chapel on their face
22 violated the Washington Nonprofit Corporation Act, RCW 24.03.

23 As a matter of law, the Washington Constitution, Article
24 12, § 1, is a savings provision allowing the state to amend
25 statutes governing nonprofit corporations. Such amendments
26 are binding on and apply to all nonprofit corporations.

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Handwritten notes on the left margin, including "NO" and "10" repeated several times.

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1 Further, Community Chapel voluntarily took advantage of the
2 Nonprofit Act, RCW 24.03, when it amended its articles after
3 that Act was passed, and is bound by all of the provisions of
4 the Nonprofit Act. Furthermore, the Nonprofit Act, RCW
5 24.03.010, specifically applies to not-for-profit corporations
6 formed under prior acts, such as the former RCW 24.08 under
7 which Community Chapel was originally formed. RCW 24.03.920
8 (18) repealed the former RCW 24.08.

9 The requirement in Community Chapel's pre-March 4, 1988
10 articles for concurrence by the original pastor (Barnett) in
11 any amendment to the articles violated on its face the prohi-
12 bition against delegating the power to amend the articles.
13 This required concurrence by the original pastor was an unlaw-
14 ful delegation to one person, and was not a "greater propor-
15 tion" of directors as contemplated by RCW 24.03.020 and
16 .455, because all directors did not have the same rights.

17 Both directors and officers can be removed by the board
18 of directors here. RCW 24.03.103 and .130.

19 The articles and bylaws which on their face do not
20 conform to the Nonprofit Act are, and were prior to March 4,
21 1988, void as a matter of law.

22 3. The Articles Prevail Over Conflicting Bylaws.

23 On their face, the article and bylaw provisions regarding
24 removal of Barnett as a director are in conflict. As a matter
25 of law, articles prevail over conflicting bylaws and thus
26

1 Barnett could be removed as a director by a three-fourths vote
2 of the directors as provided in the articles here. RCW
3 24.03.025. On its face, the articles require the same result.

4 4. The March 4 and 10, 1988 Meetings of the Directors
5 Were Valid.

6 The Nonprofit Act provides for regular directors' meet-
7 ings with or without notice and for special directors meetings
8 upon such notice as set forth in the bylaws. RCW 24.03.120.

9 It is undisputed here that (a) the bylaws do not provide any
10 notice for regular or special directors meetings; (b) all four
11 directors were present at Barnett's house on the morning of

12 March 4, 1988; (c) ~~there was a discussion among the four of~~
13 ~~whether Barnett would permit a directors meeting;~~
14 ~~whether Barnett would permit a directors meeting;~~

15 (d) Barnett at one point ~~asked~~ ^{ASKED} the other three directors to
16 leave his house, which they did; (e) ~~the pattern estab-~~

17 ~~lished by the original articles and bylaws and all provisions~~
18 ~~thereof was to not require notice of directors meetings;~~ (f)

19 there was a bylaw that stated that directors' meetings must
20 either be permitted by Barnett or held in his presence; and

21 (g) all directors were in Barnett's presence on the morning of
22 March 4, 1988. The Court determines that there was a valid

23 directors' meeting on the morning of March 4, 1988. This
24 meeting was not terminated by Barnett's ~~demand~~ ^{REQUEST} that the other

25 directors leave his house. This ~~demand~~ ^{REQUEST} reflected Barnett's
26 clear choice not to participate in that meeting, either at

that time or at any continuation of that meeting later that

1 day. Based on the undisputed facts, and Barnett's own declar-
2 ation, it is unbelievable to suggest that Barnett intended to
3 or evidenced an intent to participate further in the meeting
4 on the morning of March 4, 1988, or any continuation of that
5 meeting later that day.

6 It is undisputed that directors Hartley, Hicks and
7 DuBois, ~~either in Barnett's presence or later on~~ March 4, 1988
8 ~~after Barnett demanded that they leave his house,~~ voted to
9 amend the articles, and that later that same day after leaving
10 Barnett's house, they voted to amend the bylaws, remove
11 Barnett as a director, and disfellowship Barnett. It is also
12 undisputed that on March 10, 1988, that directors Hartley,
13 Hicks, and DuBois met and voted to further amend the bylaws.

14 Based on the foregoing determinations and its conclusion
15 that defendants are entitled to partial summary judgment as a
16 matter of law, now, therefore, it is hereby ORDERED and
17 DECLARED that:

18 A. The March 4 and March 10, 1988 amendments by
19 Hartley, Hicks and DuBois to the Articles of Incorporation and
20 Bylaws of Community Chapel and Bible Training Center Corpora-
21 tion were and are valid actions of its board of directors, and
22 are set forth on Exhibits A, B and C which are hereby incor-
23 porated by this reference; and that the other actions by
24 Hartley, Hicks and DuBois on March 4, 1988 were valid actions
25 of the corporation's Board of Directors, namely removing
26

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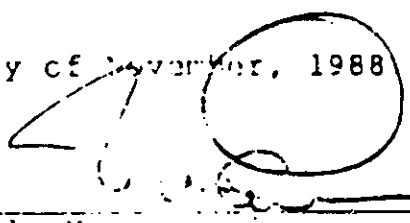
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APPENDIX A

1 plaintiff Barnett as a member of the Board of Directors (Board
2 of Senior Elders), as set forth on Exhibit D and incorporated
3 by this reference, and removing Barnett from all of his
4 officer positions with Community Chapel and Bible Training
5 Center Corporation and disfellowshipping Barnett; and

6 B. Those provisions of Community Chapel's articles and
7 bylaws in derogation of the Washington Nonprofit Corporation
8 Act, RCW 24.03, are and were void prior to March 4, 1988, and
9 the articles and bylaws are hereby conformed to the Act, and
10 those portions of the articles and bylaws which are and were
11 void are those circled on Exhibit E hereto which is hereby
12 incorporated by this reference.

13 DONE IN OPEN COURT this 30th day of November, 1988



Honorable Norman Quinn

16 Presented by:

17 SCHWEPPE, KRUG & TAUSEND, P.S.

18 C. This order is
19 subject to those
20 affirmative defenses
21 not decided by the
22 court.

19 By Robert J. Rohan
20 Robert J. Rohan
21 Attorneys for Defendants

22 ~~Copy Received: Notice of~~
23 ~~Presentation Waived:~~

24 By Roger Johnson Rodney G Pierce
25 Roger Johnson Rodney G Pierce
26 Attorney for Plaintiff
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