SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 02/01/2021 TIME: 01:30:00 PM DEPT: C42

JUDICIAL OFFICER PRESIDING: David A. Hoffer
CLERK: Cora Bolisay
REPORTER/ERM: Mary Webb CSR# 4347
BAILIFF/COURT ATTENDANT: Debra Checco

CASE NO: **30-2020-01144444-CU-MC-CJC** CASE INIT.DATE: 05/26/2020
CASE TITLE: **Association of Presbyterian Members of Hoag vs. Providence St. Joseph Health**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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EVENT ID/DOCUMENT ID: 73410277

EVENT TYPE: Demurrer to Complaint
MOVING PARTY: Providence St. Joseph Health, St. Joseph Health System, Covenant Health Network, Inc.
CAUSAL DOCUMENT/DATE FILED: Demurrer to Complaint, 07/27/2020

EVENT ID/DOCUMENT ID: 73410278

EVENT TYPE: Case Management Conference
MOVING PARTY: George Hoag Family Foundation, Association of Presbyterian Members of Hoag
CAUSAL DOCUMENT/DATE FILED: Complaint, 05/26/2020

APPEARANCES
Steven A. Velkei/Matthew Kugizaki, from Baute Crochetiere Hartley & Velkei LLP, present for Plaintiff(s) telephonically.
Tania Ibanez, from Attorney General of California, present for Defendant(s) telephonically.
Michael C. Tu/Kevin M. Askew, from Orrick, Herrington & Sutcliffe, LLP, present for Defendant(s) telephonically.

The Court hears oral argument and adopts the tentative ruling as follows:

Defendants' demurrer to the Complaint is **OVERRULED**. Defendants are ordered to answer within 10 days; Plaintiffs are ordered to give notice.

Request for Judicial Notice

A demurrer is not meant to become an evidentiary proceeding through the guise of presenting evidence via requests for judicial notice. (See *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 477-78.) Moreover, taking judicial notice of a document does not mean accepting that the contents are complete, true, and without factual dispute. Private contracts are not normally the subjects of judicial notice. (*See Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145; *Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-15.) Despite these issues, Plaintiffs and Defendants are not disputing the authenticity of the proffered materials and do not appear to object to them. Hence, the Court will consider them for preliminary evaluation. The parties should keep in mind that determinations of the meaning of these materials will depend upon future development of the facts

and applicable law.

Demurrer Based on Standing

Subsection (a) of Corp Code 6510 identifies who can file a complaint for involuntary dissolution of a nonprofit public benefit corporation. Subsection (b) then provides the substantive grounds for the remedy. Defendants argue that Plaintiffs lack standing to seek involuntary dissolution of CHN under subsection (a).

Subsection (a) confers the right to seek involuntary dissolution on a number of classes of persons, and, as relevant here, "A person or persons holding or authorized in writing by persons holding not less than 33 1/3 percent of the voting power exclusive of memberships held by persons who have personally participated in any of the transactions enumerated in paragraph (5) of subdivision (b)." (Corp. Code § 6510(a)(2).) The Complaint alleges the standing, as follows: "[a]t all times herein mentioned, and presently, the Founders [Plaintiffs] have held not less than thirty-three and one-third percent (33 1/3%) of the voting power in CHN." (Compl ¶ 7.)

Nonprofit corporations have greater flexibility than for-profit corporations in terms of their governance and management including as follows: they need not have any "members" (Corp Code § 5310; *Health Maintenance Network v. Blue Cross of So. California* (1988) 202 Cal.App.3d 1043, 1052); their directors can be the only members (§ 5310(c)); their directors need not be "elected" by the "shareholders" (members); the directors can be simply "designated" by persons (designators) as specified in the organizational documents (§ 5220); and the management powers can also be shared by "delegates" appointed by the "members" (§5152).

Whereas various rights are centralized in shareholders in for-profit corporations, nonprofits enjoy a greater latitude in terms of the persons who can take part in their affairs. (See Plff Supp. RJN, Exhibit C, p. 40 (stating "Many persons such as donors or contributors may have a significant interest or even rights in regard to the corporation… because the New Law is primarily concerned with internal governance, the New Law mainly deals with the rights of those who can vote and not with the rights of other persons. Nevertheless, the New Law allows the corporation through its articles and bylaws to confer some or all of the rights of "members" upon those who do not vote…").

CHN does not have any members. The organizational documents provide that the rights accruing to members under the nonprofit law, are held by the directors. (See Moving Exhibit A, Article 3, Moving Exhibit B, Art. 2.1.2, and Moving Exhibit C, Section 4.)

The parties agree that CHN is controlled by the 7 directors. In accordance with the corporate flexibility mentioned above, the directors of CHN are not elected. Instead, pursuant to the organizational documents and the Affiliation Agreement between the parties, the directors of CHN are "designated" by the two sides in writing. Four of the seven directors are designated by Defendants in their sole discretion while three of the directors are designated by Plaintiffs in their sole discretion. It appears that this is also a perpetual right given to the two sides to continuously designate the directors of CHN, subject to amendment of the powers as provided for in the bylaws. (See Moving Brf. at 5:13, and moving Ex. A ¶ 4.2, 4.4, 4.16(d), and moving Ex. B at 2.3.2, p. 028, at p. 097 ¶ 4a, p. 102, 2.3.2.)

As previously noted, § 6510(a)(2) allows "a person or persons holding . . . not less than 33 1/3 *percent of the voting power*…" to seek involuntary dissolution. Defendants point out that, pursuant to § 5078, "voting power" is a defined term which means "the power to vote for the election of directors . . . ." Because this definition refers to "election" of directors (and the CHN directors are not elected), Defendants argue there is no qualifying "voting power" held by the Plaintiffs, and, therefore, Plaintiffs have no standing to seek dissolution under § 6510(a)(2). Under Defendants' interpretation, despite the fact that Plaintiffs control 43% of CHN (by virtue of their power to appoint 3 of 7 directors), plaintiffs would have no power to involuntarily dissolve the company no matter how substantial the grounds for such a remedy under § 6510(b).

At this stage of the proceedings, the Court is unable to concur with this interpretation.

Defendants main argument is that § 5078 is clear on its face and precludes plaintiffs from having "voting power." This court disagrees. The definition in § 5078 seems written for a situation where there are members who vote for directors – not for a situation where there are no members and the directors are designated. In a situation such as this one, the application of § 5078 is extremely unclear. Of significance, § 5002, the preface for all the definitions in the code, provides that "[u]nless the provisions or the context otherwise requires, the general provisions and definitions set forth in this part govern the construction of this part . . . ." The present case is a situation where the context requires a more nuanced understanding of "voting power." (See *Escalante v. City of Hermosa Beach* (1987) 195 Cal.App.3d 1009, 1015 (interpreting similar provision in Election Code to allow statute requiring punchcard ballots marked with pencil to include those marked with pen); *Watershed Enforcers v. Department of Water Resources* (2010) 185 Cal.App.4th 969, 979-980 (interpreting similar provision in Fish and Game Code to expand meaning of person to include public entity).

Regarding the "election of directors" (§ 5078), § 5220(a) provides that "directors shall be elected…" for specified terms. However, it also provides an alternative way for the directors to be chosen; that is, by the designation method that CHN's bylaws provided for. Subsection (d) reads: "Notwithstanding subdivisions (a) to (c), inclusive [*regarding election of directors*] . . . all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection by a specified designator as provided by the articles or bylaws rather than by election." (§ 5220(d).) Designation is, therefore, another method of exercising *the power to* select the directors who, in turn, control corporate affairs. (§ 5210) (stating that subject to the articles and bylaws, "the activities and affairs of a corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board").

Furthermore, § 6510(a)(2) does not limit standing to members. It is more broad, conferring the standing on "a person or persons holding or authorized in writing by persons holding not less than 33 1/3 percent of the voting power . . . ." (compare § 1800(a)(2) (in the case of for-profit corporations, the statute is written more narrowly to limit the standing to the "shareholders" holding 1/3 of shares)). In the end, the essence of the matter appears to be about those who are in *control* of the entity, i.e. significant stakeholders.

"[S]tatutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—one that is practical rather than technical and that will lead to a wise policy rather than to mischief or absurdity [citation]." "We must construe a statute to comport with apparent legislative intent and with a view to furthering, not defeating, the general statutory purpose."

"And where statutory meaning is uncertain, 'we may also consider the consequences of a particular interpretation, including the impact on public policy." (*Watershed Enforcers v. Department of Water Resources* (2010) 185 Cal.App.4th 969, 979.)

It would appear that no gainful purpose would be served to construe the term "voting power" in section 5078 in such a way as to entirely eliminate the category of standing in section 6510(a)(2) in the situation of a nonprofit corporation that has no members to control the entity, and instead where that control is given to the directors – who in turn are permanently selected according to the current entity's organizational documents. In the present situation, the Court finds it reasonable to view "voting power," under the particular fact pattern of this case, to mean the power that Plaintiffs and Defendants hold over corporate affairs.

For the foregoing reasons, the Court is unable to conclude at the present time that the Plaintiffs' complaint must be dismissed for lack of standing. The issue may be developed further by the parties moving forward. For purposes of pleading, the demurrer is overruled.

Demurrer re: Failure to Allege Grounds for Involuntary Dissolution

The Court finds the Complaint has alleged sufficient facts to state a cause of action.

Defendants argue that subsection (b)(3) of 6510 refers to seeking dissolution when there is dissension among members, leading to business deadlock but that CHN has no members. Plaintiffs point out that various provisions of the organizational documents refer to the *directors* as the members at least for purposes of § 5310. (See Moving Ex. A, Art 3, Ex. C, Art IV) For the present time, the flexibility provided for in the preface to the definitions (§ 5002) permits the claim to stand.

The Complaint has alleged that the two sides in control of CHN's directors and affairs are having significant disagreements about the entity's purpose, direction of care, and business decisions. (Complaint ¶22-32, 35.) The issue at this time does not concern whether the Plaintiff can *prove* that there is sufficient internal dissension and those in control are so deadlocked as to prevent the corporate activities to be conducted with advantage. (*Cf. Fuimaono v. Samoan Congregational etc. Church of Oceanside* (1977) 66 Cal.App.3d 80, 84 (noting, "during the pendency of the … action, further evidence supporting the fact of dissension, and dissension of such character as to prevent further successful operation of the business of the church to the advantage of its membership, [wa]s found …"). At the pleadings stage, the Court gives the complaint a liberal construction (CCP § 452), views it as a whole, and draws reasonable inferences favorable to the pleader. (*Buss v. J. O. Martin Co.* (1966) 241 Cal.App.2d 123, 136; *Perez v. Golden Empire Transit Dist. (*2012) 209 Cal.App.4th 1228, 1238). Under these standards, the general demurrer is overruled.

Because a cause of action appears to be stated under (b)(3), it is unnecessary to consider the Defendants' further objection to dissolution under (b)(6). If the claim is acceptable in any respect, a general demurrer must be overruled. (*See Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38.)

. To better evaluate submissions in the future, the Court is requesting that the parties file their exhibits with "electronic bookmarks". (See CRC 3.1110(f)(4)) ("electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit…"). This process will aid in consideration of evidence.

The Status Conference is scheduled for 03/02/2021 at 09:00 AM in Department C-42.

Plaintiff's counsel is ordered to prepare the Notice of Ruling.