

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

DEPARTMENT 72

TENTATIVE RULING

RESIDENTS FOR OPEN BOARD
ELECTIONS, an unincorporated
association, et al.,

vs.

PALOS VERDES HOMES
ASSOCIATION, a California non-profit
mutual benefit corporation, et al.

Case No.: BS169638

Hearing Date: October 10, 2017

Petitioners Residents for Open Board Elections and L. Ried Schott's verified petition to lower quorum of Palos Verdes Homes Association and modify election procedures, pursuant to Corporations Code §7515, is denied *without prejudice*.

Petitioner L Ried Schott, as a member of Palos Verdes Homes Association, may bring a petition *on behalf of Palos Verdes Homes Association*, the real party in interest under Corporations Code §7515. Petitioner shall file and serve an amended petition on or before _____.¹

Petitioners Residents for Open Board Elections, an unincorporated association ("ROBE"), and L Ried Schott ("Schott") (collectively "Petitioners") petition the Court for an order reducing the quorum required for the annual election

¹ Petitioner Residents for Open Board Elections, on the other hand, may *not* bring a petition on behalf of Palos Verdes Homes Association. Petitioner Residents for Open Board Elections is not a "director, officer, delegate or member" of Palos Verdes Homes Association. (Verified Petition §3). See Corporations Code §7515

of the members of the Board of Directors ("Board") for the Palos Verdes Homes Association ("Homes Association") and modifying election procedures.

Petitioners request the Court "lower the quorum and modify the election procedures so that an actual election may be held and the 5,400 members of the Homes Association can be given a voice on the Board." (Verified Petition, pgs. 1-2). Petitioners also request, with respect to the most recent election attempted to be held in January 2017, the Court direct the Homes Association to open the 1,589 ballots currently held by the public accounting firm and allow those votes to be taken and the votes to be determined valid, direct the Homes Association to install as members of the Board of Directors the top five candidates receiving votes in January 2017, and make such other orders as the Court finds fair and equitable under the circumstances pertaining to the January 2017 ballots. Petitioners represent Schott, Richard Fay, and Marlene Breene are ready, willing, and able to serve if elected. (Verified Petition §16a). Additionally, Petitioners request that, as to all future meetings and board elections, the Court lower the quorum for annual meetings and elections of board of directors from 50% to 25%, direct the Homes Association to conduct at least 3 mailings of ballots each year in the four month period before the January election (unless a quorum is achieved after 1 or 2 mailings), allow for cumulative voting, allow for voting by written proxies, allow for votes by members appearing in person at the January annual meeting, allow for voting by members dropping ballots off in a lock-box at the Homes Association office, require that as to Resolution 177 or any future procedures to nominate a candidate for Director – that incumbent Directors comply with the same requirements as non-incumbent Directors (such as requiring 100 signatures on a notarized petition) – and not support an invalid process or supply an unfair advantage to the incumbent directors, and allow for By-Law amendments to be approved by Homes Association members if there is a vote by 40% of all members. (Verified Petition §16b).

Corporations Code §7515(a) provides, as follows: "If for any reason it is impractical or unduly difficult for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles or bylaws, or this part, then the superior court of the proper county, upon petition of a director, officer, delegate or member, may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances."

Corporations Code §7515(b) provides, as follows: "The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably

designed to give actual notice to all parties who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this part, whether or not the method results in actual notice to every such person, or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are."

Corporations Code §7515(c) provides, as follows: "The order issued pursuant to this section may dispense with any requirement relating to the holding of and voting at meetings or obtaining of votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this part."²

Corporations Code 7515(e) provides, as follows: "Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this part."

Petitioners lack standing to pursue changes to the Homes Association's By-Laws under Corporations Code §7515. The real party in interest (i.e. the proper party to bring an action) is Homes Association. *See Greenback Townhomes Homeowners Association v. Rizan* (1985) 166 Cal.App.3d 843, 847-848 ("We conclude, however, that section 7515 does not intend to modify well-established rules specifying that the real party in interest is the proper party to bring an action. Both section 7515 and its legislative history indicate the real party in interest is the corporation.")(Citations Omitted).³ Petitioners argue the "express terms of the

² Corporations Code §7515(d) provides, as follows: "Wherever practical any order issued pursuant to this section shall limit the subject matter of the meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, sale of assets or reorganization of the corporation."

³ *See Greenback Townhomes Homeowners Association* at 848-849 ("We perceive no intent, either express or implied, in section 7515 to eliminate the corporation as the real party in interest and, therefore, the proper party to petition the court. *The language of subdivision (a) of section 7515 itself makes clear that the corporation is the entity directly interested in and benefited by the action*; it is, after all 'any corporation' that finds itself unable to function in the ways described. The remedial measures prescribed by the statute inure, first and foremost, to the benefit of the corporation in that these measures enable the corporation to do its business.

statute authorize[] this Court to lower the quorum 'upon petition of a director, officer, delegate or member...' (Petitioners' Brief, pgs. 8-9). Petitioners contend that Schott is a Homes Association member and ROBE is "an unincorporated association of Homes Association members," either of which are sufficient to serve as petitioners. (Petitioners' Brief, pgs. 8-9)(Verified Petition §§2, 4). However, Corporation Code §7515's use of the language, "upon petition of a director, officer, delegate or member," does not confer standing on such individuals. "The statute's evident purpose is to facilitate the initiation of an action, *in the name of the corporation*, by any of the designated parties to deal with a situation where approvals cannot be obtained from those ordinarily empowered to bring an action on behalf of the corporation. *In essence, the statute specifies who shall sign a petition, not who shall be the party bringing the action.*" *Id.* at 849 (Emphasis Added). Homes Association, as the corporation affected by this petition to lower the quorum and modify the election procedures, is the real party in interest and the proper party to petition the court. *Id.* at 849.

The *Greenback Townhomes Homeowners Association* ("Greenback") case is instructive. In *Greenback*, the Association's board of directors decided to revise its bylaws and CC&Rs to conform them to a revision of California's Nonprofit Corporation Law. *Id.* The "revisions required a vote of the members," the Association delivered proposed bylaws and CC&Rs to each lot owner along with ballots and summaries of the documents, and, at the conclusion of the balloting period, 121 members out of 155 voted on the CC&Rs, with 94 in favor and 27 in opposition. *Id.* "Since the CC&Rs provided they could only be amended by a vote of 75 percent of *all* members, the membership thus failed to approve the revised CC&Rs." *Id.* A petition, pursuant to Corporations Code §7515, was brought in the name of the Association. The petition, signed by the Association's president, was granted by the trial court. *Id.* "The order modified the voting requirement for amending the CC&R's so as to allow approval of amendments by a written ballot of 75 percent of those voting, so long as the total ballots cast represented at least a majority of the total membership." *Id.* at 846-847. Rizan filed a motion to vacate

Moreover, the legislative history of section 7515 implicitly treats corporations as proper parties to bring petitions. The Assembly Select Committee on Revision of the Nonprofit Corporations Code addressed in its report problems of nonprofit corporations which section 7515 was specifically intended to remedy. 'Due to poor record keeping, inactivity for a period of time, or other reasons, some nonprofit corporations are unable to obtain a quorum of members or directors, accurately identify their members or directors, or comply with various provisions of their articles or bylaws. The New [Nonprofit Corporation] Law allows a *corporation*, upon obtaining court approval, to extricate itself from this situation and restore regularity in its organizational structure and operations. Sections 5515 and 7515.'"(Citations Omitted)(Emphasis Added).

the order granting the petition on the ground that the trial court lacked subject matter jurisdiction pursuant to Corporations Code §7515(a). The trial court denied the motion and Rizan appealed. *Id.* at 847. Rizan argued that “because the Association was the only party petitioning the court, and because no director, officer, delegate or member was a party, no proper party brought the action and the court had no jurisdiction to grant relief under section 7515.” *Id.* The California Court of Appeal, Third Appellate District held “that a corporation is the proper party to petition the court for an order pursuant to subdivision (a) of section 7515.” *Id.* at 846. The Court of Appeal determined that both “section 7515 and its legislative history indicate the real party in interest is the corporation” and, consequently, the petition was properly brought in the corporation’s name. *Id.* at 847-848. The Court of Appeal stated the “statute’s evident purpose is to facilitate the initiation of an action, in the name of the corporation, by any of the designated parties to deal with a situation where approvals cannot be obtained from those ordinarily empowered to bring an action on behalf of the corporation.” *Id.* at 849. The Court of Appeal stated that, in essence, “the statute specifies who shall sign a petition, not who shall be the party bringing the action.” *Id.* The Court of Appeal recognized the “subject matter of the litigation and the relief sought directly affected the vitality and day-to-day operation of the Association.” *Id.* at 849. According to the Court of Appeal, the “Association, as the corporation affected by the petition, was the real party in interest and the proper party to petition the court” and since “the petition was signed by an officer of the Association – its president – the petition satisfied subdivision (a) of section 7515.” *Id.* (Emphasis Omitted). The Court of Appeal concluded Rizan’s motion was properly denied. *Id.*

Petitioners argue Homes Association is estopped from claiming that it should have been the petitioner in this action because it rejected Petitioners’ request that it be the petitioner in this action. (Petitioners’ Brief, pgs. 9-10)(Petition §18; Exhibits 1-2). However, Petitioners did not cite to on-point case law or authority to support the estoppel argument. Moreover, under Corporations Code §7515 and *Greenback*, Schott, as a *member* of Homes Association, could have signed the petition and brought it on behalf of Homes Association. (Verified Petition §2).

Based on the foregoing, the petition is denied *without prejudice*.

Dated: October _____, 2017

Hon. Ruth A. Kwan
Judge of the Superior
Court