

Excerpts from November 30, 2017 Hearing on ROBE Petition over Quorum Reduction
(emphasis in bold added)

ON THE ISSUE OF THE STANDING OF RIED SCHOTT TO BRING THE LAWSUIT FORWARD:

Page 5

THE COURT: What I'm reading is that a member could bring the lawsuit irrespective of the board's authorization.

Page 6

THE COURT: But the thing is, **is there anything in 7515(a) that says that in order for a member to file a petition it has to be authorized by the board?**

MR. DVEIRIN: No. But -- but -- the "but" is I don't think -- you have to read into this the term "manner prescribed by its articles or bylaws," which is in 7515.

Page 7

THE COURT: No, no, no. It says: "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 will otherwise obtain the consent in the manner prescribed by its articles or by law." That is talking about when the action could be brought, okay? Not that a member who chose to bring this action in the name of the real party in interest has to now show somehow **they have sought the board's pre-approval to sue the association. No. I don't read it that way.** Because the whole purpose of this lawsuit is that they're saying that there has not been any election in years.

MR. DVEIRIN: No.

THE COURT: Because of the lack of quorum. We need to change quorum. And when you have a lack of quorum, basically you have no election, no real election as the bylaw contemplates there would be. So, therefore, I as a member would like to ask the Court to make certain changes. Now, **I do not read it, counsel, as meaning that that number now before bringing a lawsuit in the name of the real party in interest would then have to seek the approval of the PV Homes Association.**

Page 11

THE COURT: So without ruling on the standing issue at this point, because to me it's really form over substance, because I'll probably allow them to amend if I think the amendment -- that they didn't do it correctly. But I do believe that **if they do it correctly, they have standing.**

ON THE ISSUE OF MERITS OF THE CASE

Page 14

THE COURT: No. I understand that an operative term. I understand that. So they could, if they wish. Am I correct to say let's extend the election to see if we can get more people participate? Let's send out letters to say, hey, we don't have enough quorum from you guys. We need to elect a new board. You know, it's that time of the year. We only got 1,700 votes and we need at

least 2,700 so that we can elect a new board. Please come on, guys. It's been five years since we have had a new board. Is that -- they could do that if they want, right? My reading of this paragraph --

MR. DVEIRIN: I could not be more clear that a homeowner association's discretion lies with the board and they can pretty much do what they want as long as it complies with the bylaws. I don't find what you're saying to be a reasonable way to handle it, but that would be up to the board. The board has a right to act not reasonably.

THE COURT: But what I'm saying is the board has a right to not act reasonably. That's what you're saying?

Page 15

MR. DVEIRIN: I have been consistently arguing both in the prior case and in this case that the business judgment rule applies to the corporate actions of the board in that it goes so far that in the interest of the Homes Association **the board of directors can even in some instances violate their rules** in order to preserve the existence of the homeowners associations and do the business of the Homes Association.

Page 16

THE COURT: I have no intention of stepping in place of any board of directors. **I'm just deciding whether the quorum should be lowered**, okay? That's all that has been asked of me.

Page 18

THE COURT: I see some of your board members here. So I hope they're listening to me.

MR. DVEIRIN: Yeah, they are.

THE COURT: Because you know why? I'll tell you why. The reason is because it's not whether it is true that these old guards are trying to safeguard their own position and exclude these new people from coming in and shaking things up. Whether their allegation is true or not is irrelevant. It's the appearance. And **if you don't have -- if you're unable to have an election year after year after year because it's going to give the appearance that what they're doing is to safeguard their own position and not giving other people an opportunity and a voice to be heard. You know, this is irrespective of the allegations.** I'm only interested in knowing and understanding whether the board has done everything that they could to bring -- to get people to participate in the election or have they not. That's the reason why -- but, you know what? **At some point it becomes irrelevant because if year after year you don't have enough members participating, there's something wrong with the system. Because the system is not meant for existing board members to keep appointing new board members they like that are going to toe the line and think the way they think.** Okay?

I'm just going to tell you that.

MR. DVEIRIN: I get it and I hear you.

THE COURT: Okay. And they should be hearing me.

Page 20

THE COURT: Is there anything in the bylaw that says that if there's no election that somehow the existing board is reelected?

Page 21

THE COURT: So my question is this. **When there is a meeting, an annual meeting where board members are to be elected, and there's no quorum, is there anywhere in this article that says the existing board member is automatically elected? Because if there's no quorum for election, nobody gets elected.**

MR. DVEIRIN: No. The vacancies

THE COURT: Wait. The...

MR. DVEIRIN: My understanding is the vacancies are filled by the remaining directors. In other words, it's their discretion to fill the vacancies and they add people in. Sometimes people leave, but that Article 4, Section 2 says, "Vacancies in the board of directors shall be filled by the remaining directors," by a majority vote of the directors.

THE COURT: So then **what happens here is that they vote to keep themselves in.**

MR. DVEIRIN: Sometimes, yes. Most of the times, yes. Not all the times.

THE COURT: But most of the time. **Ninety-nine percent of the time.**

Page 24

THE COURT: So theoretically the term expires the end of the year. So **when there's no quorum for election the following year, these expired term board of directors, even though they were not reelected, they can vote themselves.** They can vote themselves back in? That's what you're saying?

MR. DVEIRIN: I'm saying they have to vote themselves back in because there is no quorum. That unless they do the day-to-day thing it's at their discretion.

THE COURT: Okay. I'm go through this exercise for the benefit of the record and also **for the existing board members who are here to hear from an outsider's point of view how that may seem and how that may look.** Okay? So that **when you conduct your next election, you will make sure that it's done accordingly so that maybe you would want to -- even if you don't have a quorum -- do what I suggest, to extend the election period and urge all homeowners to put in -- to participate up to the point where you can get a quorum.**

Page 25

THE COURT: But **you're the one who tells me if they want to even violate their own bylaw, they could.**

MR. DVEIRIN: No. I'm saying that they could violate it in -- they might be able to violate the bylaw in the other case in a small way to preserve more usable property and to dispose of a hillside property to a particular owner in order to settle litigation to which you're bound by the settlement agreement if you're a member of the association. That I agree with.

Page 29

THE COURT: If that's the case, then, boy, **whoever wants to be a part of the association, whoever wants to own a condo, whoever wants to be part of a co-op if you can have a board that could run itself, violate some terms of law, the bylaws that the lawyer tells you that you could, and then forbid somehow it's big enough so that you don't generate enough interest**

for people to vote except for the few people that cares, and you somehow always stack your own board with your friends and reelect yourself year after year.

Page 31

THE COURT: I'm going to tell you where I'm going. If the board doesn't make a quorum this time, I'm going to lower it. I'm not going to lower it to 25 percent. That's way too low. I'm not going to tell you what I'm thinking. Excuse me. In the interim I'm going to ask you to amend your petition to do what I tell you you need to do and I'm going to hold this hearing after you amend it next year. Hopefully by then the election has taken place and we'll see if the board can be more conscientious in bringing a quorum here. I think that the board has mighty power here. And if they want to encourage people to go vote, I think they will. If they need to extend the election period to get enough members to vote, I think they can do that as well.