# COURT OF APPEAL FOR ONTARIO

CITATION: Varjacic v. Radoja, 2024 ONCA 233
DATE: 20240404
DOCKET: COA-23-CV-0577

Miller, Copeland and Gomery JJ.A.

BETWEEN

Dragan Varjacic, Roy Varjacic*, Natasha Varjacic and Miroslav Milenkovic

Plaintiffs
(Appellant*)

and

Nenad Radoja*, Sveto Volanovic, Susan Glenn, and Milan Djordjevic

Defendants and
Plaintiffs by Counterclaim
(Respondent*)

and

Dragan Varjacic* and Miroslav Milenkovic

Defendants by Counterclaim
(Respondent*)

and

Ljubornir Jovancevic, Rade Cavic, Djuro Zdero and Stevo Gajic

Third Parties

and

Aleks Vujicic, Drasko Zdero and Ned Totic

Intervenors (Respondents)



Dan Gouge, for the appellant

Joshua Samac, for the respondents Aleks Vujicic, Drasko Zdero and Ned Totic

Dragan Varjacic, acting in person

Bozica Sajatovic, acting in person for the respondent Nenad Radoja

Heard: March 19, 2024

On appeal from the order of Justice Elizabeth C. Sheard of the Superior Court of Justice, dated March 20, 2023.

REASONS FOR DECISION

[1] The Hamilton branch of the Royal Yugoslav Army Combatants' Association in Canada is mired in conflict. It is an unincorporated, voluntary organization whose main asset is a 16-acre parcel of land that once served as the centre of an active community. Its membership dwindled as the founding members aged and their children and grandchildren pursued other priorities. The memberships lapsed as well as the terms of the last members of the board of directors. The gates of the property were locked. Years passed.

[2] Eventually, some former members and directors sought to revive the association. Others disagreed vehemently and argued that the land should be sold and the funds applied toward other purposes. Disagreement about the future of the land led to litigation among rival groups of former members. By all accounts, the 14-day trial was an extraordinarily difficult process, made more difficult by the

fact that the parties were, for the most part, self-representing and had an inadequate grasp of their documentary disclosure obligations and the trial process.

[3] The trial judge made a heroic effort to provide the parties with an order that would put them in a position to take control of their affairs and re-establish governance of the association. The judgment dated September 1, 2021, which was not appealed, provided a process by which the association could enroll new members, hold an annual general meeting (AGM), and elect a new board of directors. The process was detailed and complex, but it did not suffer from ambiguity, vagueness, or other indeterminacy that could frustrate its application.

[4] Unfortunately, matters did not go as envisioned. The plaintiffs, including the appellant, held an AGM on November 27, 2021 and a slate of directors were elected. However, the respondents disputed the validity of that AGM and held a second AGM on December 4, 2021, at which other directors were elected. The plaintiffs then brought a motion before Sheard J., seeking a declaration that the November AGM was validly held, and the November board was validly elected. The respondents brought a motion seeking the same but with respect to the December AGM and board election.

[5] The plaintiffs, after multiple opportunities, were unable to satisfy the motion judge that the November AGM followed the procedures set out in the September 1 judgment. Their initial evidentiary record was found to be inadequate. Two more

appearances followed. The motion judge came to the conclusion that the proper procedures were not followed by the plaintiffs and refused to grant the declaration that the November AGM and board were valid.

[6] The motion judge was persuaded, however, that the December AGM had been held in accordance with the terms of the September 1 judgment, and she granted a declaration that the board elected at that meeting was validly elected.

[7] Though there appears to have been a concession to the contrary below, the appellant's factum contests the motion judge's finding that the November AGM did not satisfy the September 1 judgment in every respect. He also argues that the December AGM did not meet the requirements of the September 1 judgment and that the application judge misapprehended the evidence and made palpable and overriding factual errors in concluding that the terms of the order were followed.

[8] In his factum's main submission, the appellant sought a declaration that the November AGM and board were valid. At the hearing, the appellant focussed on his alternative submission: that in order to move the association forward and avoid further factionalism, this court should reset the clock on the mechanism put in place by the September 1 judgment and give the parties another attempt to hold an AGM in compliance with it.

[9] The respondents argue that whether the respondents satisfied the terms of the September 1 judgment is a question of interpretation and that this court ought to defer to the motion judge's interpretation of her own order.

[10] We do not agree with the respondents. They have not identified any aspect of the September 1 judgment that admits of competing interpretations. Nor could they. The terms of the judgment are clear and do not depend on exercises of judgment or the application of vague criteria. What the respondents argue, essentially, is that the motion judge is entitled to determine what constitutes sufficient compliance with the September 1 judgment.

[11] During the motion below, the respondents advised the motion judge that they had complied with the September 1 judgment. They compiled a voluminous motion record that they claimed demonstrated their compliance. The motion judge accepted that the documents were as described by the respondents. But, as the appellant demonstrated on appeal, on closer inspection the documents show that the respondents fell substantially short of compliance with the September 1 judgment. The application for membership forms included in the record postdated the AGM, suggesting they were not completed in advance of the AGM as required. Most of the application forms did not indicate that the applicants affirmed that they met the criteria for admission set out in the constitution. There were no membership applications submitted for the respondents themselves, who had purportedly been elected to the board. The provisions for appointing a chair and

note-taker, set out in paragraphs 2(e) and (f) of the judgment, were not complied with.

[12] Despite these issues, the respondents argue that the motion judge was entitled to determine that, on her interpretation of the September 1 judgment, they had satisfied the terms for holding a valid AGM. We do not agree that that is what the motion judge held. In effect, the respondents are arguing either that the motion judge determined that they had substantially complied with the judgment, and that substantial compliance was enough, or that the motion judge had implicitly varied the judgment. Neither of these correspond to what the motion judge said she was doing in her endorsement. It states simply that the directions set out in her reasons had been followed and that the December board was therefore properly elected. We are persuaded that this finding was premised on a misapprehension of the evidence and the order must therefore be set aside.

[13] We arrive at this conclusion with considerable reluctance. It is not in anyone's interest, as far as we can discern, that the current impasse be prolonged. It should be of considerable embarrassment to the community that it cannot achieve the degree of cooperation necessary to admit new members, hold an AGM, elect a board, and accept the results of the election. The sooner the association can restore its internal governance, the sooner it can return to fulfilling its historic role. This dispute has already consumed a vast amount of court time.

It is past time for the community to achieve the level of cooperation needed to settle its internal disagreements.

**DISPOSITION**

[14] The appeal is allowed, but we decline to declare either AGM or board to be valid. A new AGM must be held in accordance with the September 1 judgment, for the purpose of electing a board of directors. All memberships that had been granted are annulled, and any funds collected are to be credited towards fresh applications. Accordingly, judgment shall issue in the terms of the September 1 judgment, varied such that paragraph 2(a) shall read: “an AGM is to be held on June 22, 2024.”

[15] If the parties are unable to agree on costs, they may make written submissions not in excess of three pages (exclusive of bills of costs), to be provided by the appellant by April 9, 2024 and by the respondents by April 16, 2024.

“B.W. Miller J.A.”
“J. Copeland. J.A.”
“S. Gomery J.A.”