STATE OF MICHIGAN

COURT OF APPEALS

LOUIS ZYCH, ZIGMUND RUDNICK, EDWARD GIZA and JOSEPH SHERBA, JR.,

Plaintiffs-Appellees,

v

CHESTER SZCZERBA, EDMUND SIEJA and YAKI TAM CLUB CORPORATION,

Defendants-Appellants.

UNPUBLISHED
December 11, 1998

No. 204323
Presque Isle Circuit Court
LC No. 93-001892 CZ

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's declaratory judgment upholding the validity of a corporate meeting that resulted in the removal of defendants from office and the dissolution of the Yaki Tam Club Corporation against defendants' wishes. Although defendants raise issues on appeal arising from numerous lower court orders, they failed to timely file claims of appeal regarding all of the orders except the June 16, 1997, order that validated the club's November 8, 1996, meeting. Therefore, the only issue this Court will consider is whether the trial court properly approved the November 8 meeting when defendants were not given notice that the purpose of the meeting was to dissolve the corporation and when defendants were not given copies of a plan to distribute the club's assets before the meeting was held.

Plaintiffs do not dispute that defendants were never apprised that the purpose of the November 8 meeting was to dissolve the Yaki Tam Club. They also do not dispute that defendants were never given copies of a plan to distribute assets after dissolution. Although we find that defendants were entitled to such notice and to copies of a plan for the distribution of assets after dissolution, we affirm the lower court's order for three reasons. First, defendants failed to raise statutory notice issues before the trial court and therefore failed to preserve those issues for appellate review. Second, to the extent that the trial court erred by overlooking statutory notice requirements, the court's error was harmless. Third, defendants waived their right to challenge the manner in which notice of the meeting was given when they attended the meeting without objecting at the outset that the meeting was not lawfully convened.

Defendants argue that the trial court failed to comply with MCL 450.2403; MSA 21.197(403). This statute provides, in pertinent part, that

> the circuit court . . . for good cause shown, *may* order a special meeting of shareholders or members to be called and held at such a time and place, upon such notice and for the transaction of such business *as may be* designated in the order. [MCL 450.2403; MSA 21.197(403) (emphases added).]

Defendants argue that the trial court erred because it was "require[d]" to comply with this statute but failed to specify how notice of the November 8 meeting was to be given when it required that the meeting be held in an order dated October 22, 1996. However, defendants never cited this statutory language in the lower court. Rather, defendants argued that the results of the November 8 meeting were invalid because plaintiffs failed to garner the three-fourths vote required by club bylaws to undertake corporate action. Defendants also stated that they received an agenda five minutes before the meeting started, and that the meeting was inequitably officiated. Although timing and fairness combine to suggest notice, giving rise to an argument that the notice issue was preserved, the mere suggestion of an issue before a trial court will not suffice to preserve the issue for appeal. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). This Court will not reverse the trial court on the grounds that it misapplied a statute that was never cited to it.

Even if defendants had preserved this issue, their argument would nonetheless fail because the word "may" designates discretion, *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993), and the words "may be" indicate a possibility. *Mull v Equitable Life Assurance Society*, 444 Mich 508, 519; 510 NW2d 184 (1994). Thus, under § 450.2403 the trial court could have ordered that the shareholders of the Yaki Tam Club hold a meeting in a particular place or at a particular time, or that notice of the meeting be given in a certain way. Conversely, under § 450.2403 the trial court was not precluded from issuing an order without any of these specifications.

Defendants correctly argue, however, that no matter what notice requirements the trial court saw fit to craft when it ordered that the November 8 meeting be held, the Nonprofit Corporations Act required notice of an intent to vote on dissolution and that a copy of the plan of distribution of assets be provided. MCL 450.2804(3); MSA 21,197 (804). However, this statutory language was never cited to the trial court. Additionally, were this Court to remand this case with instructions to hold a new meeting called with proper notice, the same result would obtain.

The facts of this case betray a long-standing, contentious relationship between the parties. Chester Sczcerba and Edmund Sieja together own three shares of the corporation. Plaintiffs own four shares. Thus, a new meeting would produce the same result; defendants would be replaced as corporate officers and would lose on every issue decided. Given the history of this dispute, it appears likely that they would appeal the results of the next meeting, as well.

Defendants argue that a different result would obtain after a remand because corporate dissolution requires a three-fourths vote pursuant to the club's bylaws; thus, plaintiffs would be unable to dissolve the corporation were a new meeting called. Even if this were so, such a result would not comport with notions of substantial justice. To suggest that this case should be remanded so two

shareholders can stymie this troubled entity and further delay its inevitable demise is to propose that which is at once inequitable and judicially inefficient.

Furthermore, as plaintiffs correctly pointed out before the trial court, the Nonprofit Corporations Act states that

> [w]hen an action, other than the election of directors, is to be taken by vote of the shareholders or members, it shall be authorized by a *majority of the votes cast* by the holders of shares or members entitled to vote thereon, unless a greater plurality is required by the *articles of incorporation* or another section of this act. [MCL 450.2441(2); MSA 27.197(441)(2) (emphases added).]

When a corporation seeks to change the vote required to accomplish corporate action, it must amend its articles of incorporation, not its bylaws. Defendants in this case argue that the club's *bylaws* require a three-fourths vote for dissolution. However, because the club's *articles* do not contain any such requirement, only a majority vote is required to dissolve the corporation pursuant to § 450.2441(2). Therefore, plaintiffs' four-vote majority would suffice to dissolve the corporation. Had defendants been apprised that the purpose of the November 8 meeting was to dissolve the corporation, and had they been provided with copies of a plan for the resultant distribution of assets, the club would still have been dissolved and its assets would have been distributed in the same manner. To the extent that an error occurred, then, it was harmless. MCR 2.613(A).

Finally, MCL 450.2404(3); MSA 21.197(404) states:

> Attendance of a person at a meeting of shareholders or members, in person or by proxy, constitutes a waiver of notice of the meeting, except when the shareholder or member attends a meeting for the *express purpose* of objecting, at the *beginning of the meeting*, to the transaction of any business *because the meeting is not lawfully called or convened.* [*Id.* (emphases added).]

The record before us reveals that Mr. Szczerba never expressly stated that he objected to the transaction of business at the November 8 meeting; he only stated that he wanted to run the meeting the way Yaki Tam Club meetings had always been run. Furthermore, the statute requires that an express objection to the transaction of business is to be made at the *beginning of the meeting*. Here, Mr. Szczerba abstained from voting after the meeting was underway, stating that he did not like the manner in which the meeting was being run, rather than that the meeting should not have been held in the first place. The statute also requires that a specific objection be made; Mr. Szczerba was required to object *because the meeting was not lawfully called or convened*. In this case, Mr. Szczerba objected *because he thought that the meeting was being run unfairly*. This is not a sufficient objection for one who wishes to avoid waiving notice of a meeting.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Richard A. Bandstra