



Summary of the June 6th Zoom Call About the Judge's Order to Deny the Owner's Motion to Dismiss Corbin's Lawsuit

Earlier today, Mark Warnquist, one of Corbin McNeill's legal advisors, spoke on his behalf on a ZOOM call for Boulders Members, to explain the Judge's June 4th ruling denying the owner's motion to dismiss Corbin's lawsuit. The following is a summary of his comments.

On June 5th, we received Federal District Court Judge McNamee's Order denying CP Boulders' Motion to Dismiss Corbin's Complaint. The Order rejected all of CP Boulders' various efforts to obtain dismissal at this stage – and as you might expect, Corbin is very pleased not only with the outcome, but with the substance of the Order.

It is evident from the Order that Judge McNamee understands the facts and issues in dispute. His lengthy Order also demonstrates that the Judge and his staff spent considerable time getting to the right outcome on all of the issues raised by the parties.

Significantly, Judge McNamee rejected CP Boulders' argument that it has complete discretion under the Bylaws to do as it sees fit, and that Corbin has no legal right to contest their actions in court. The Order points out that the Bylaws expressly obligate CP Boulders to act "reasonably and in good faith," and that reading the Bylaws to preclude Corbin from pursuing judicial relief for breach of the Bylaws "raises serious unconscionability concerns." Unconscionability is a legal concept used to refer to contract terms that are unfair, grossly oppressive, and unjust. When a court finds the

terms of a contract unconscionable, those terms are deemed unenforceable.

Regarding the argument that Corbin's claims are barred by the statute of limitations, the Order appropriately looked to what Corbin alleged in his Complaint. The Court noted that Corbin alleged a breach in 2023 and other breaches occurring after 2017, all within the 6-year statute of limitations applicable to breaches of contract.

CP Boulders argued that it "scrupulously drafted" the 2023 Disputed Bylaws to avoid impacting Members' rights under the 2008 Bylaws (amended in 2015), and that the Disputed Bylaws are not a breach of its contractual obligations. The Court rejected that argument, finding that Corbin has alleged that "the Disputed Bylaws substantially, materially and adversely affect" Corbin's and the Members' rights in a number of ways. That raises factual issues, the Court said, which are inappropriate for a Motion to Dismiss.

Similarly, the Court found that CP Boulders' arguments about the "integration clause" in the Bylaws also raise factual issues that are inappropriate to decide at this stage of the case. The so-called integration clause provides that all prior representations, agreements and understandings of the parties are superseded by the terms of the Bylaws.

Lastly, Judge McNamee denied CP Boulders' argument that Corbin's Complaint must be dismissed because all Members, including those that joined under the Disputed Bylaws, are necessary parties to the lawsuit. In doing so, the Court noted that no Member has intervened nor otherwise claimed a legally protected interest in the suit.

In addition to denying the Motion to Dismiss, the Order directs CP Boulders to answer or otherwise respond to the Complaint within 14 days. An Answer consists of a line-by-line response to the Complaint, either admitting or denying the specific allegations in the Complaint.

Once the Answer is filed, counsel for the parties must work together to prepare a proposed Scheduling Order that sets the schedule for the case. They must do so within 30 days of the Answer. The Judge then considers the parties' proposal, makes any changes he sees fit, and issues a Scheduling Order that governs the case.

Then within 30 days, both parties are required to exchange "Rule 26(a)(1) disclosures." This is an important milestone in the case, as the disclosures are required to identify all potential witnesses and relevant documents, including documents stored electronically.

Following the Rule 26(a)(1) disclosures, the case enters the "discovery phase." During this phase, each side has the opportunity to submit written questions (known as interrogatories), requests for production of documents, and requests for admission. Parties can also subpoena documents and people in this phase. Additionally, parties can take the depositions of witnesses for either side.

In summary, Corbin is extremely satisfied with the Order and Judge McNamee's understanding of the issues. Corbin and his attorneys now have the right to gather the facts and evidence needed to present his case. While this is an important win for Corbin, it is still early and there is much to do, but it is a good starting point to the case.

**Support Corbin McNeill's efforts to enforce our contract - the 2008 Bylaws -
with a donation to the **Legal Enforcement Fund.****

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