

FILED

IN THE CHANCERY COURT, STATE OF WYOMING

2025 WYCH 13

Christine Kosydar,

Plaintiff,

v.

Forest Edge Homeowners Association,

Defendant.

Case No. CH-2025-0000021

Order of Dismissal

[¶1] This order addresses whether a homeowner’s association named as a defendant may object to proceeding in chancery court when it allegedly lacks a board of directors with authority to engage counsel for its defense.

BACKGROUND

[¶2] Under W.R.C.P.Ch.C. 3(a), defendant Forest Edge Homeowners Association, represented by counsel, timely objected to proceeding in chancery court. (FSX No. 77158486). The court acknowledged that objection. (FSX No. 77163765).

[¶3] In response (FSX No. 77217024), plaintiff Christine Kosydar asked the court to strike defendant’s objection as immaterial under W.R.C.P.CH.C. 12(f), arguing that the HOA has no board of directors and that—because the HOA’s bylaws and Wyoming law require at least three board members to transact any business—no one currently has authority to engage counsel to represent the HOA in this lawsuit.

[¶4] To support the allegation that the HOA lacks a board, Kosydar’s filing includes two February 2025 emails from HOA board members. One, from Barbara Larkin, stated: “This email will serve as notice of my resignation as Secretary / Treasurer of Forest Edge Homeowners Association. Resignation to this voluntary position is effective immediately.” The other, from Kevin Byrne, stated: “Let this email serve as formal notice of my resignation as Vice President of Forest Edge Homeowners Association Management Committee. Resignation to this voluntary position is effective immediately.” Both emails were circulated to the board members and HOA participants.

[¶5] According to Kosydar, Larkin and Byrne also submitted a non-compliant “Appointment of New Registered Agent and Office” to the Secretary of State that, although filed to change the HOA’s registered agent, also reflected their resignations as board members. (FSX No. 77217024 Ex. 5). The Secretary of State rejected that filing.

[¶6] In reply (FSX No. 77277935), the HOA argues that Ms. Larkin and Mr. Byrne resigned only their officer positions, not their positions as directors. The HOA acknowledges that the two attempted to resign their director positions on the rejected Secretary of State form, but notes that both changed their minds after receiving the Secretary’s rejection.¹

[¶7] Plaintiff followed up (FSX No. 77402785) with several exhibits aiming to show that “Byrne’s and Larkin’s conduct and documents that followed their resignation emails in February 2025 are consistent with their resignations as board members, not just as [officers].” *Id.* pgs. 2-3. These exhibits generally indicate that the HOA board was inactive between February and September of 2025. Emails from third parties show that other members of the HOA attempted to convene a special meeting to elect a new board. Included with the exhibits are an email from Larkin (of June 17, 2025):

Forest Edge Homeowners Association received a [request for architectural review]. Teton County Building Department has approved the project and the owner is awaiting approval from Forest Edge before proceeding. Approval of construction requires a Board of Directors. Is anyone willing to be nominated to serve on the Board?

and an email from Byrne and Larkin (of September 3, 2025):

We would like to bring your attention to a recent event that affects the state of the FEHOA Management Committee (MC). Barbara Larkin, attempting to update our Wyoming non-profit corporate information to reflect current situation, received a response . . . informing her that her request was denied because a WY Nonprofit Corporation **REQUIRES** a minimum of three officers listed at all times. After consultation with legal counsel, the preferred and recommended course of action is for currently elected and listed HOA officers to resume their positions back to the first resignation which was Jones on 02/22/25. To refresh the HOA,

¹ The HOA also argues that Ms. Kosydar comes to court with unclean hands because her “actions contributed to a board member resigning and other members refusing to serve.” (FSX No. 77277935 pg. 4). Both sides submitted evidence on that topic, which the court has reviewed (including FSX No. 77504119, a late-filed exhibit inadvertently not included in the HOA’s reply). The issue will not be decided here: the court—under current Rule 3—exercises no discretion in dismissing after a Rule 3(a) objection, leaving little room for consideration of equitable relief. *Cf. Davidson-Eaton v. Iversen*, 2022 WY 135, ¶ 54, 519 P.3d 626, 643 (Wyo. 2022) (Under the doctrine of unclean hands, “a litigant may be denied relief by a court of equity on the ground that his or her conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.”).

upon receiving the Jones resignation, the MC immediately tried (unsuccessfully) to fill the open slot. Therefore Barbara and Kevin will ‘resume’ their elected positions on the MC as of the date of the WY response letter (e.g. 08/15/25) as well as their attempt to fill the open MC slot. Member(s) interested in filling the open VP position on the MC please email . . . for consideration. . . .

[¶8] Both sides agree that one director position was vacant on the HOA board for much of 2025. An affidavit of Ms. Kosydar notes that board member “Llewellyn Jones resigned on February 22, 2025[.]” (FSX No. 77217024 Ex. A, pg. 2). According to defendant, that recently changed: an affidavit of Mr. Byrne states that Arnold Byrd was appointed by Larkin and Byrne to serve as the third board member during the weekend of September 27. (FSX Nos. 77277935 pg. 3; 77277935 ¶ 14). Mr. Byrne also states that Byrne, Byrd, and Larkin later voted to confirm and ratify retention of counsel for this lawsuit. (FSX No. 77277935 ¶ 15).

LAW

[¶9] The Forest Edge Homeowners Association is organized, as is usually the case, as a nonprofit corporation whose powers come from its governing documents. *Conger as Tr. for Dee L. Conger Jr. Revocable Tr. v. AVR Homeowner's Ass'n, Inc.*, 2025 WY 91, ¶ 21, 574 P.3d 623, 629 (Wyo. 2025). Pertinent here, Wyoming law and the HOA’s governing documents treat the HOA’s directors and officers as distinct positions. The election and resignation of each position is governed by different articles of the HOA’s bylaws and by different sections of Wyoming statute.

[¶10] As for election: Article IV § 2 of the HOA’s bylaws and Wyo. Stat. § 17-19-804(a) provide that the HOA members elect the directors. Bylaws Article VIII § 2 provides that the directors elect the officers, while statute suggests that the board appoints the officers. Wyo. Stat. §§ 17-19-840(a), 844(a).

[¶11] As for resignation: Article IV § 3 of the bylaws recognizes but does not include a procedure for director resignation while, by statute, a “director may resign at any time by delivering written notice . . . to the board of directors, its presiding officer or to the president or secretary.” Wyo. Stat. § 17-19-807(a). Likewise, an “officer may resign at any time by delivering notice to the corporation.” Wyo. Stat. § 17-19-843(a). This subsection is like Article VIII § 5 of the bylaws: “Any officer may resign at any time [by] giving written notice to the Board, the president or the secretary.”

[¶12] In this context, resignations require clarity. *Spence v. Sloan*, 2022 WY 96, ¶ 38, 515 P.3d 572, 582-83 (Wyo. 2022). To be effective, a resignation “must clearly show an intent to resign.” 2 Fletcher Cyc. Corp. § 346 (cited by *Spence*, ¶ 38, 515 P.3d at 583). Put differently, an implied resignation is not effective. *Spence*, ¶ 38, 515 P.3d at 583 (quoting *C-Ville Fabricating, Inc. v. Tarter*, No. CV 5:18-379-KKC, 2022 WL 896104, at *10 (E.D. Ky. Mar. 25, 2022) (“[A]n act of resignation must be an action that clearly manifests that the director has resigned his fiduciary position.”) and *Hockessin Cmty. Ctr., Inc. v. Swift*, 59 A.3d 437, 458 (Del. Ch. 2012) (resignation by “[l]oose and ambiguous language” generally insufficient)). Resignation is also “not presumed by the corporation's failure to meet and observe formalities, but requires an overt refusal to act or lack of attendance at actual meetings.” 2 Fletcher Cyc. Corp. § 350.

[¶13] Under HOA bylaws Art. IV § 3, a vacancy created by resignation is filled when the remaining members of the board select a successor. On this point, statute defers to the bylaws. Wyo. Stat § 17-19-811(a). Under § 811(a)(ii) & (iii), director vacancies following resignation may be filled by the board of directors—with or without a quorum. The statute would also allow members to fill the vacancy. § 811(a)(i).

[¶14] The number of directors is also set by statute and the HOA’s governing documents. Article IV § 1 of the bylaws provides that “a Board of three (3) directors” will manage the HOA’s affairs, and statute requires at least three directors. Wyo. Stat. §17-19-803. Under subsection 803(b), the number of directors “may be increased or decreased . . . from time to time” but only “by amendment to or in the manner prescribed in the articles or bylaws.”

[¶15] A nonprofit corporation may only appear in chancery court through counsel. U.R.Ch.C. 101(b). Corporate acts, like engaging counsel, are “exercised by or under the authority of” the nonprofit’s board of directors. Wyo. Stat. § 17-19-801(b). A board acts through a majority vote of its directors when a quorum is present. Wyo. Stat. § 17-19-824(b). Article VI § 3 of the HOA’s bylaws similarly provides that every “act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.”

[¶16] Even when a nonprofit has engaged counsel without authority, the representation is binding if its board later ratifies the engagement. *See Spence*, ¶ 46, 515 P.3d at 584. A litigant who challenges an attorney’s authority to appear on behalf of their opponent has the burden of proving that such counsel is not authorized to represent the opposing party. *Heyer v. Hines*, 36 Wyo. 53, 252 P. 1028, 1029 (Wyo. 1927).

ANALYSIS

[¶17] Plaintiff has not carried that burden here. Wyoming law requires unambiguous notice that clearly manifests an intent to resign. Actions or inferences suggesting resignation are no substitute for an express notice tendered to the appropriate party.

[¶18] The only unambiguous resignation notices before the court resigned officer—not director—positions. Larkin’s and Byrne’s February emails show that they resigned only as Vice President and Treasurer under Wyo. Stat. § 17-19-843. Without an express resignation from their director positions, the evidence does not establish that Larkin or Byrne resigned as directors.

[¶19] The other emails submitted by Kosydar could be interpreted as suggesting resignation, but they do not clearly show that Larkin or Byrne intended to resign as directors. Mere hints or inferences are insufficient. *See Spence*, ¶ 38, 515 P.3d at 582; Wyo. Stat. § 17-19-807; 2 Fletcher Cyc. Corp. § 346. This standard ensures certainty in corporate governance and prevents disputes over authority based on speculation or incomplete evidence.

[¶20] Ms. Larkin’s emailed statement that “[a]pproval of construction requires a Board of Directors” and her appeal to “anyone willing to be nominated to serve on the Board” do not necessarily “show that there was no Board” as plaintiff argues. (FSX No. 77402785 pg. 3). Ms. Larkin could have thought, for example, that three board members were required to transact business and that the board therefore needed a third director. And the September 3 email from Byrne and Larkin expressly mentions “officers” but not directors. The email’s reference to the HOA’s “management committee” is too vague: the court cannot assume that Byrne and Larkin—despite in the same email seeking to fill “the open VP position on the MC” because the HOA lacked three “officers”—actually intended to “resume” their positions as directors on the management committee and were thereby implying that they had earlier resigned as directors. Again, resignation cannot be ambiguous.

[¶21] The other circumstances presented also fall short. Board-member resignation is not presumed by a failure to meet. And here, Larkin sent a form changing the HOA’s registered agent—not a notice of resignation—to the Secretary of State. Even had a resignation notice been sent to the Secretary of State, it would not have been effective: a director’s resignation must be delivered “to the board of directors, its presiding officer or to the president or secretary.” Wyo. Stat. § 17-19-807.

[¶22] The evidence before the court does not suggest that the HOA lacked a board that could engage counsel for this lawsuit. Since Byrne and Larkin never resigned as directors, action by the two constituted a quorum sufficient to transact business on the HOA’s behalf. The two directors deciding to engage counsel was an “act of the Board” under Article VI § 3 of the HOA’s bylaws.

[¶23] The court has found no precedent indicating that a three-member nonprofit board is hamstrung by the resignation of one member—unable to transact business until the vacancy is filled. As long as the board retains a quorum, it remains able to transact business. In other words, the court does not agree that a vacancy created by a resignation affects the number of directors contemplated by Wyo. Stat. § 17-19-803. To change the number of directors sitting on a nonprofit corporation’s board, subsection 803(b) requires either (1) a method for doing so in the governing documents or (2) an amendment to the governing documents. Plaintiff has presented no evidence of either of those requirements.

[¶24] And even if Byrne and Larkin did not have authority to retain counsel at the time of engagement, they did have authority under the HOA’s bylaws to select a third director. Byrne, Larkin, and Bird’s ratification of counsel’s engagement would have validated the representation. *See Spence*, ¶ 46, 515 P.3d at 584.

CONCLUSION

[¶25] Defendant, appearing through counsel, objects to proceeding in chancery court. Counsel’s appearance is presumed to be authorized. Plaintiff has not shown that the HOA lacked a board of directors with authority to engage counsel to defend the HOA in this lawsuit. Dismissal is mandatory under Rule 3(a). *Layne v. West*, 2024 WYCH 9 (Wyo. Ch. C. 2024) ¶ 4.²

[¶26] Plaintiff’s request to disregard or strike as immaterial defendant’s Rule 3(a) objection is **DENIED**. The case is **DISMISSED** without prejudice.

SO ORDERED.

Dated: 11/4/2025

/s/ Benjamin M. Burningham
CHANCERY COURT JUDGE

² Rule 3 is jurisdictional—*Layne*, 2024 WYCH 9 at ¶ 8—but the court has authority “to decide all questions, whether of law or fact, the decision of which is necessary to determine the question of jurisdiction.” 21 C.J.S. Courts § 102. *See also United States v. United Mine Workers of Am.*, 330 U.S. 258, 310 (1947) (“[T]he very existence of a court presupposes its power to entertain a controversy, if only to decide, after deliberation, that it has no power over the particular controversy.”).