

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

FILED IN DIV. 17

JAN 25 2017

RICHARD KENDRICK and PAIGE)
WATKINS,)
Plaintiffs,)
v.)
ST. LOUIS ROWING CLUB, a Missouri)
Benevolent Association, et. al.)
Defendants.)

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY
Case No. 15SL-CC04043
Division: 17

**CONSENT ORDER TO APPROVE THE BYLAWS OF THE ST. LOUIS
ROWING CLUB, INC. AND RATIFY PROCEDURES BY WHICH THE ST.
LOUIS ROWING CLUB CAN OBTAIN NEW 501(C)(3) STATUS AND MOVE TO
SELF GOVERNANCE**

Background:

The St. Louis Rowing Club (“Club”) is a Missouri benevolent association formed in the 19th Century pursuant to a judicially ratified Constitution. The Defendants named in the present action are the Club, and the individuals who at the time of the initiation of the present action were the governing officers of the Club. Plaintiffs’ cause of action seeks solely equitable relief to remedy governance, financial and record keeping ambiguities and operational issues (collectively “Issues”), many of which have been identified during the course of the present litigation as being a product of archaic Missouri statutory framework governing benevolent associations, last revised in the 1930s.

Nationally recognized for its competitive junior, masters and recreational rowing programs, the Club has been home to national championship winning junior and master rowing athletes. The nation’s elite college rowing programs regularly recruit from, and

accord scholarships to, the ranks of the Club's junior rowing program participants. The Club's home course was the site of the rowing events during the 1904 Olympics.

Historically, management of the Club's day-to-day affairs and operations have been handled by part-time volunteer members of the Club, often without the knowledge of the legal framework under which benevolent associations are required to operate. Unprecedented growth of the junior rowing program has, over time, proven to seriously strain the part-time governing body of the Club.

In particular, for a period of not less than five (5) years prior to the filing of the present action, governance of the Club's junior rowing program was separate from the adult Master Rowing program with separate bank accounts and separate books and records. Complicating matters, with the expansion of the junior program, the lion's share of the Club's revenue was generated through dues and fees paid by the junior parents, and was not under control of those individuals understood to be the elected governing body of the Club, but were shared with the Executive Committee of the Club. This, historically had been the process. As a result, the accounting records and financial statements of the Club were at times not current and at times did not accurately reflect all aspects of the financial condition of the Club, its assets and its liabilities.

Current Status:

As a result of collaborative efforts of legal counsel for the parties, a number of Interim Orders have been issued by the Court to facilitate reconciliation and remedying the Issues.

1. On the 8th day of February, 2016, an Order was issued by this Court (“February 8, 2016 Order”) directing Defendant Deena Krestel-Rickert to serve as the Interim President (“IP”) of the Club.
2. Under the February 8, 2016 Order, Defendant Jeff Marden was directed by the Court to serve as the Interim Treasurer (“First IT”) of the Club.
3. Under the February 8, 2016 Order, the Court ordered:
 - a. That all prospective material correspondence issued by the Club shall be issued under the direction, supervision, and under the name of the IP;
 - b. That all monetary receipts of the Club shall be held, maintained, deposited and disbursed solely by the IT who shall be responsible for maintenance and retention of all back-up and supportive documentation corresponding to receipts, deposits, and disbursements;
 - c. That the IP shall otherwise be responsible for maintaining order over the day-to-day business and affairs of the Club;
 - d. That the IP shall bring to the attention of the Court, by and through the attorneys of record, any matters or issues which require attention but which otherwise fall outside of the scope of that which reasonably constitutes the ordinary and usual business of the Club.
4. On the 6th day of June, 2016, an Order was issued by this Court (“June 6, 2016 Order”) ratifying the appointment of Charles “Chuck” Cook to serve as the Interim By-Law Coordinator (“IBLC”) of the Club.
5. Mr. Cook fully discharged in a timely fashion his duties under the June 6, 2016 Order by assembling focus groups consisting of adult master rowers and the parents of junior rowers. From those information gathering sessions, a Bylaw

Committee, that had been meeting prior, was re-formed to include both Junior rowing parents and adult rowers and charged with the task of further revising new Club Bylaws to incorporate the suggestions garnered from the focus groups where applicable. That task was completed on September 10, 2016 when the Bylaw Committee presented all counsel of record with a draft set of proposed Bylaws.

6. Counsel for Plaintiffs and counsel for Defendants suggested changes that for the most part were considered and adopted by the Bylaw Committee.
7. There now exists a complete set of agreed-upon Bylaws that are attached to this Motion as Exhibit A.
8. The Parties request the Court enter this Consent Order appointing an interim management team (“IMT”) to carry out the activities of the Club that occur in the ordinary course of business for a period of not less than nine months from the date of this Order. It is the intention of the Parties that the IMT remain in place until the completion of the Audit Committee Investigation Report as set forth below in paragraph 15 which the Court encourages be completed with diligence, but not later than one (1) year from the date of this Order. By this Order, the Court appoints the following SLRC members to be the IMT: Deena Krestel-Rickert, President; Charles Cook, Interim Financial Advisor, Leah Picker, Treasurer; Lisa Hawkins, Booster Coordinator; and Susie King, Secretary.

The activities that occur in the ordinary course of business shall include:

- A. The IMT shall have the authority to operate the club in the ordinary course of its business as generally described by the Purpose stated in the draft bylaws: “... providing facilities, equipment, coaching, events and programs

for competitive youth rowers, competitive and recreational adult rowers, and interested others in St. Louis.”

B. The IMT may establish temporary committees/working groups of the type described in Article V of the bylaws to secure the human, equipment and financial resources needed to operate the club in a manner consistent with its stated purpose, including conducting fundraising for the Club.

C. The IMT shall appoint a chairperson of each temporary committee created, and will provide guidelines for each committee’s membership and responsibilities. Such guidelines may be more general and in some details different from the descriptions of committees described in Article V of the draft bylaws, but shall be generally consistent with the stated purpose.

D. The IMT shall consult with the chairpersons as they deem necessary to direct the affairs of the club.

E. The IMT may hold meetings of the membership as is, in their judgment, appropriate to communicate important information. Nonbinding votes may be taken in such meetings for informational purposes to help the IMT understand the opinions of the membership.

The IMT may not take actions that in the draft bylaws require a vote of the membership, or enter into material new obligations that commit the club beyond a 12 month period, with two exceptions: 1) the IMT may increase dues/fees as necessary to cover anticipated expenses; and 2) the IMT may finalize the agreement made with Washington University for payment of the club’s share of the cost of the shore remediation project.

All actions of the IMT require a vote of three of the four members. Should any member of the IMT be unable to serve for any reason, the remaining four members shall appoint a fifth member and this vote must be unanimous.

9. On the 9th day of September, 2016, an Order was issued by this Court (“September 9, 2016 Order”):
 - a. Ratifying the appointment of Charles “Chuck” Cook to serve as the Interim Financial Advisor (“IFA”) of the Club and whose duty was to take possession of, and review the current accounting books and records of, the Club and direct such action as may be needed to identify issues and establish recommendations (“Accounting Issues” and “Accounting Recommendations”) and to provide the Court and counsel for the parties with a written report delineating the Accounting Issues and Accounting Recommendations.
 - b. Accepting the resignation of The First IT appointing a certified public accountant, Leah Picker, to serve as the second IT (“Second IT”);
 - c. Directing the IP to take those steps necessary to provide to counsel for the parties with that which the Club believes represents the current list of voting members of the Club.
10. The IFA’s Written Report Delineating Accounting Issues and Accounting Recommendations was filed with the Court on the 9th day of September, 2016 (“IFA Report”).
11. The IFA’s Supplemental Update dated September 30, 2016 (“Supplement to IFA Report”) was filed with the Court on October 3, 2016.

12. The IFA, who is not a CPA or accountant, has managed other not-for-profit clubs.

His opinions set forth in his IFA Report and Supplement to IFA Report, were:

September 9, 2016 Report:

- a. a lack of reasonable reporting practices on the club's financial affairs.
- b. a lack of a forecasting practice to incorporate new information (although it was later discovered that a forecast and budget had been prepared but not obtained by the IFA).
- c. inadequate support of the bookkeeper to ensure that expenses are recorded in the proper account.
- d. inadequate support of the bookkeeper to collect late payments owed the club.
- e. inadequate support of the bookkeeper to resolve outstanding questions on a timely basis.
- f. QuickBooks should be incorporated into record keeping as soon as practical to associate costs with specific activities.
- g. Junior rowers pay a Booster Fee of \$350 (\$175 for each season), the use of which is less than clearly defined. It is generally described as an equipment fee to purchase new boats, but use of some of these funds for coaches' compensation has also been mentioned. Furthermore, funds from the capital account, of which the largest component is booster fees, are transferred to the general operating account when that balance is not sufficient to cover the club's obligations. The reports do not provide a record of the use of booster fees or the amount to be repaid from the operating account.

h. There is no orderly system to plan for replacement of assets. A program for disciplined creation of reserves, as well as equitably funding them, should be undertaken as a high priority.

i. The club's financial reports state cash accounting, not accrual. However current practice is neither consistent nor fully identifies obligations and assets, and there is no policy statement defining what should be done. A hybrid cash/accrual accounting policy should be developed that meets the club's specific needs, and should be reviewed by a tax accountant for acceptability.

j. The Club needs to develop projections of income and expense going forward.

13. The opinions expressed in the IFA's Supplemental Findings after viewing additional documents included:

a. The records contained information on regatta expenses reflected little attention to organization. Receipts were haphazardly accumulated, and in only a few cases were they consolidated to transparently indicate and summarize expenses by category. With one exception, there was no apparent reconciliation of fees collected with expenses actually incurred. There was a good format for planning regatta expenses which provided an appropriate place for comparison with actual expenditures.

b. The club's accounts receivables were not reviewed on a regular basis for disciplined collection of amounts overdue or purging where credits had been issued.

c. A review of fund raising and financial aid accounting showed a lack of proper record keeping. With the exception of the Simon Fund, financial aid did

not appear to be awarded against a set of written criteria. When awarded it often occurred as a credit against dues, without advising the bookkeeper of the need to credit the proper accounts to cancel outstanding dues charges.

d. There was a significant disparity in the amount of funds raised by junior parents and master rowers. This, in combination with the lack of clarity about how such funds will be used, clearly indicated that fund raising needs to be coordinated by the board in a committee that represents the interests of all rowers and engages all potential donors. Fund raising targets should be driven by budgeted needs. Donations should be tax deductible, but the club does not appear to have a clear practice of issuing acknowledgements or a policy of when that is to be done.

e. Insurance records were not clear as to the club's policies in force. It did not appear that competitive bids had been solicited or that policies had been reviewed for appropriate coverage.

14. The IFA's opinion concluded:

“While ongoing review of the club's financial affairs will undoubtedly turn up other issues requiring attention, I am developing some confidence that the most significant issues have been revealed. Therefore efforts have begun to turn to corrective actions. Among those underway are:

1/ engagement of a few knowledgeable people to assist the bookkeeper in determining what receivables are valid and should be pursued and what should be purged;

2/ the club's cash flow forecast for the balance of the year is updated as new information is developed;

3/ notes of processes and procedures that need change or implementation are being assembled;

4/ a preliminary pro-forma annual budget has been created and will be refined as more information is available; and,

5/ preliminary notes suggesting a revised chart of accounts have assembled.”

15. In short, given the foregoing, the Parties request the Court order the ratification of an audit committee (“AC”) that shall work with an outside, independent Certified Public Accountant, to conduct such review and investigation (“AC Investigation”) as deemed appropriate by the AC. If records can be obtained, it is the intention for the AC to look back five (5) years preceding the filing of the present cause to verify and determine the Club’s financial history and report to the Club’s IMT and members the findings of the AC in this regard (“AC Investigation Report”). The Club will then distribute the AC Investigation Report in written form to all Club members of record contemporaneously with the provision of it to the Club’s officers and directors. The individually named Defendants will play no role in the undertakings pursued by the AC in connection with its investigation and the preparation of the AC Investigation Report.

16. The AC shall be comprised of five members in good standing and the following persons shall make up the AC: Charles Cook, Leah Picker, Lori Perry, Steve Turner and Alan Taxman. Should any member of the AC be unable to serve for any reason, the IMT, by unanimous vote shall appoint a new member.

17. The IMT shall cause a copy of this Order to be issued to all members of the Club in good standing delineated in the attached Exhibit B not later than ten (10) days from the date of this Order.

WHEREFORE, Defendants request the Court enter an Order as follows:

1. The Parties are hereby authorized and directed to promptly file such documentation with the Office of the Secretary of State of the State of Missouri as is

necessary to create a new not-for-profit corporation to be named and known as “St. Louis Rowing Club, Inc.” (Successor Entity”) and to promptly file such paperwork with the Internal Revenue Service/Department of the Treasury as is needed to apply for recognition of the Successor Entity by taxing authorities as a 501(c)3 business association.

2. The Club shall maintain a roster of all members in good standing as reflected in the Club Roster attached hereto, incorporated herein by reference and marked Exhibit B. Such roster shall be updated periodically by the IMT.

3. The St. Louis Rowing Club, Inc. By-Laws attached hereto, incorporated herein by reference, and marked Exhibit A are hereby ratified and approved for purposes of obtaining corporate status in the State of Missouri and for filing an application with the IRS for recognition as a tax exempt entity and prospective use on a going forward basis by the Club as the by-laws under which the Club will be governed (subject to the IMT undertakings directed herein by the Court).

4. With the exception of the IMT members named herein, the individually named defendants shall refrain during the IMT’s management of the Club from chairing any committee established by the IMT or serving on any committee involved in the financial aspects of the Club.

5. The IMT will publish to the Club’s members its recommended slate of officers and directors for the Successor Entity in conformity with the By-Laws.

6. The first meeting of the members of the Successor Entity shall be considered and treated as though it was an Annual Meeting of the Members of the Successor Entity.

7. The first meeting of the members of the Successor Entity is ordered to be conducted within 60 days of the completion of the AC Investigation Report.

8. Upon conclusion of the election of officers and directors of the Successor Entity at the First Meeting, all assets and liabilities of the Defendant Club shall be transferred to and deemed received and effective on the date the Successor Entity receives recognition from the U.S. Internal Revenue Service of 501(c)3 status (“Preferred Status Procurement Date”). Also, upon conclusion of the election of officers and directors, all Interim positions held will be terminated. Elected officers will resume those appropriate responsibilities.

9. The Defendant benevolent association Club shall immediately commence operating subject to and in strict conformity with the By-Laws.

10. Upon the Preferred Status Procurement Date, the benevolent association Club shall be deemed judicially dissolved and notice thereafter shall be issued by the Successor Entity to the Missouri Office of the Secretary of State and to the Missouri Attorney General’s Office and thereafter the Successor Entity shall commence holding itself out to the public in all respects as St. Louis Rowing Club, Inc.

11. The Court specifically ratifies and approves the agreement of the Club, and hence the obligation of the Successor Entity, to abide by its agreement to share with its co-tenant, Washington University in St. Louis (“University”), under the lease affixed to the Plaintiff’s petition filed herein, the costs associated and incurred for erosion remediation measures pursuant to the following terms of a promissory note under which the Club is the maker and the University is the Holder, a copy of the form of which is attached hereto, incorporated herein by reference and marked Exhibit C.

12. The Court directs the IMT to promptly but not later than three (3) days from the date of the filing of this Order with the Court, confer with the Club's Head Coach to advise of the substance and contents of this Order, to provide the Head Coach with a copy of this Order, and stress to the Head Coach the fact that the Head Coach and all coaches working under the Head Coach are obliged to fully comport themselves in compliance with the By-Laws reflected in the attached Exhibit A and this Order.

13. The IMT is directed and ordered to immediately change all passwords and access codes for the Club-wide email system, the club's bank accounts and financial accounts and records ("Passwords") for dissemination to and use solely by IMT until the First Meeting, at which time the Passwords will be provided to the president of the Successor Entity.

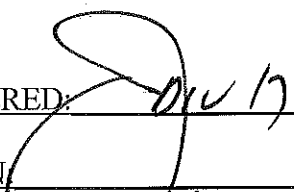
14. The Court suggests the Defendant benevolent association Club and Successor Entity regularly and on an ongoing basis consult with legal counsel as may from time to time be deemed appropriate by any one or more of the IMT until the First Meeting and thereafter by any one or more of the officers and directors of the Successor Entity.

KODNER WATKINS, LC

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SO ORDERED: 
DIVISION: _____
DATE: 1/25/17