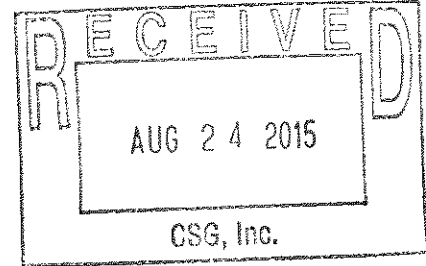


August 21, 2015



Ruth Meier, Clerk of Court
Alaska Trial Courts
101 Lacey Street
Fairbanks, Alaska 99701

Re: *Tok Community Umbrella Corporation v. Tok Chamber of Commerce;*
Case No. 4FA-15-1930 CI

Dear Ms. Meier:

Enclosed for filing are the following documents: *Reply to Opposition to "TCUC's" Submission Re July 9 election, Non-Opposition to Motion to Late File Lisa Conrad's Statement of Position and Response to Lisa Conrad's Statement of Position Regarding the July 9 Election, and Request for Oral Argument.* Also enclosed are an extra copy of each document for conforming and a return envelope.

Very truly yours,

Davis Wright Tremaine LLP


M. Kirsten Gustafson
Legal Assistant

Enclosures

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 TOK COMMUNITY UMBRELLA)
4 CORPORATION (as represented by the)
5 Board who contends they were not)
6 removed from office by the)
7 membership),)

8 Plaintiff,)

9 vs.)

10 TOK CHAMBER OF COMMERCE,)
11 INC.,)

12 Defendant.)

13 TOK COMMUNITY UMBRELLA)
14 CORPORATION (as represented by the)
15 Board elected on July 9, 2015),)

16 Third-Party Plaintiff,)

17 vs.)

18 TOK COMMUNITY UMBRELLA)
19 CORPORATION (TCUC) (as)
20 represented by the Board who contends)
21 they were not removed from office by)
the membership),)

Third-Party Defendant.)

Case No. 4FA-15-1930 CI

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REPLY TO OPPOSITION TO "TCUC'S" SUBMISSION RE JULY 9 ELECTION,
NON-OPPOSITION TO MOTION TO LATE FILE LISA CONRAD'S
STATEMENT OF POSITION AND RESPONSE TO LISA CONRAD'S
STATEMENT OF POSITION REGARDING THE JULY 9 ELECTION

1 **I. INTRODUCTION**

2 Third-Party Defendant Tok Community Umbrella Corporation ("TCUC")¹ herein:
3 (a) replies to Third-Party Plaintiff Lisa Conrad ("Conrad")'s Opposition to TCUC's
4 submission regarding the July 9 election; and (b) responds to Conrad's statement of
5 position regarding the July 9 election.²

6 Conrad's Opposition misrepresents TCUC's position and the Court's June 23
7 rulings with respect to both the disputed facts in this case and Conrad's authority as
8 Trustee for the Corporation. TCUC's Request for Clarification (filed June 22, 2015 and
9 attached hereto as Exhibit A) clearly indicated that it was not requesting and did not
10 believe it would be appropriate to issue a final ruling on the merits of Conrad's
11 Complaint at the June 23, 2015 hearing. Extensive discussion at the June 23 hearing
12 made clear that the Court did nothing more than (1) issue preliminary rulings about the
13 disputed facts raised by Conrad's initial Complaint, to address the FED proceedings
14 against the Chamber of Commerce; and (2) establish very limited trustee authority in the
15 one undisputed Director for the Corporation. At the time of the hearing, TCUC's answer
16

17

¹ While TCUC is aware that the Court has renamed the parties and substituted other individuals
18 for Conrad, the pending motion and opposition use the former names. Thus, for clarity with
19 respect to the pending motion, this brief uses the same party names as were applicable at the time
20 its Submission and Motion were filed on July 21, 2015.

21 ² Per email correspondence between the parties' attorneys on August 4, 2015, TCUC agreed to
 extend the deadline for Conrad's Opposition brief. TCUC does not oppose the late filing of
 Conrad's statement of position.

1 to the initial complaint was not yet due; and the First Amended Complaint had not even
2 been filed.³

3 Moreover, Conrad's Opposition asks the Court to assume as fact the very
4 allegations that TCUC is entitled to contest in this litigation. The civil rules require
5 discovery that will allow TCUC to gather and present evidence undermining the veracity
6 of evidence presented against it and supporting its own version of events.

7 The legal standards applicable in this case and the events giving rise to this case
8 are those established for non-profit corporations. The procedural rules for this litigation
9 are the Alaska Rules of Civil Procedure.

10 II. ARGUMENT

11 A. The Parties Did Not "Litigate the Corporate Authority Issue Before the 12 Court" on June 23, 2015

13 Contrary to Conrad's assertion, TCUC and Conrad did not litigate to conclusion
14 the corporate governance dispute, nor did TCUC ask or consent to a binding
15 determination of Board authority by the Court at the June 23rd hearing. As such, no
16 "estoppel" issue arises from these facts. The issue of Board authority had not yet been
17 asserted in Conrad's Complaint at the time of the June 23rd hearing. Rather, TCUC's
18 counsel requested a tentative determination in connection with the pending FED action

19 _____
20 ³ The First Amended Complaint having not yet been filed and none of the new claims or
21 allegations presented in that Amended Complaint were properly before the Court.

1 against the Tok Chamber of Commerce, Inc., subject to review, in order to evaluate the
2 issue of possession. The Court agreed, stating:

3 *I haven't made a final decision about everything we've heard here today,*
4 *but, we need to – this is like interim orders in a domestic relations case. . . .*

5 *The TCUC does need to operate in the interim, so all books and records, . .*
6 *. shall be provided to Conrad today.*
7 *. . . .*

8 *I have not ruled on any of that [the standing of Woody and VanZandt or*
9 *Tito's appointment or the investigative committee]. . . . I have not ruled on*
10 *what Ms. Conrad asked, which was that the April motion to remove them*
11 *was – should be implemented.*

12 *I have not ruled on whether the e-mail appointment of Ms. Tito, on its*
13 *merits, has been – whether I will find at the end of the hearing as final. So*
14 *those issues remain to be resolved on the merits.*
15 *. . . .*

16 *. . . But, I recognize that we have done this in an abbreviated accelerated*
17 *procedure that really doesn't have the benefit of the discovery that you*
18 *mentioned earlier. So, I'm reserving ruling on those on the merits. . . . But*
19 *for right now, I find that they have met – that they likely would proceed on*
20 *that, but I'm not making that finding to preclude you from litigating it*
21 *additionally on the merits.*⁴

The Court concluded only that Conrad was the sole *non-disputed* Board member
and thus appointed her as (limited) trustee to, in part, preserve the status quo to enable
discovery and development of evidence in the usual civil litigation process.⁵ Conrad

⁴ See Exhibit B, 6/23/15 Transcript at pp. 176-177, 180-182.

⁵ In fact, TCUC filed a "Request for Clarification" in advance of the June 23rd hearing to confirm its understanding that the: (a) "*sole purpose of the hearing is to evaluate the issue of possession with respect to the FED action against the Tok Chamber of Commerce, Inc.*"; and (b) the June

1 ignores that she brought claims in this forum against TCUC. Conrad is thus subject to
2 the rules of this forum, which includes TCUC's right, as recognized by the Court, to
3 litigate the questions of fact raised by Conrad's civil claims against TCUC.

4 **B. No Corporate or Statutory Authority Exists to Support Conrad's Position**
5 **that an "Objection" by Woody, VanZandt and Tito Would Have Enabled**
6 **Them to Participate in the July 9 Election**

7 Citing no supporting authority, Conrad asserts the Court should "*ratify*" the July 9
8 election because Woody, Van Zandt and Tito could "*simply have submitted an*
9 *objection*" prior to participating in the July 9 election.⁶ Aside from the fact that TCUC
10 bylaws, TCUC articles and/or the Alaska Nonprofit Corporation Act cite no provision
11 permitting the filing of an "objection" for such purposes, Conrad does not get to apply
12 court rules to corporate proceedings because the rules used in court are not parallel to the
13 procedures used by corporate entities. Woody, VanZandt and Tito did not attend the July
14 9 election for the reasons previously averred – *i.e.*, because they believed that doing so
15 would be a tacit approval of Conrad's actions and would undermine the lawful
16 governance of TCUC.⁷

17 ^{23rd} hearing "*will not have binding or prejudicial effect with respect to the claims and*
18 *allegations asserted in Conrad's June 8 Complaint.*" See Exhibit A, 6/21/15 [TCUC] Request
19 for Clarification.

20 ⁶ Conversely, TCUC cited *Nevins v. Bryan*, 885 A.2d 233, 247 (Del. 2005), where an ousted
21 director's wrongful removal claim was barred, in part, due to his acquiescence to the wrongfully
22 seated directors attending his removal proceedings.

⁷ TCUC does not understand Conrad's argument on page 4 of her brief regarding Tito's seat.
TCUC does not agree that Tito's seat was vacant at the time of the July 9 election. TCUC's

1 **1. Conrad Erroneously Relies on a *Pro Se* Standard to Establish the**
2 **Validity of the June 19th Hearing.**

3 Conrad claims the June 19th hearing was valid because “*legal efforts of citizens*
4 *are entitled to a deferential standard*” equivocal to pro se litigant standards. In support
5 of her claim, Conrad states that TCUC “*is the local government of Tok*” and that
6 proceedings of the membership “*are political*” and not “*a trial conducted in the*
7 *traditional sense of the law.*” This position is without merit.

8 TCUC is not the local government of Tok. TCUC is a non-profit corporate entity.
9 The citizens of Tok opted not to create a local government. They chose to incorporate an
10 entity that would operate pursuant to the Alaska Non-Profit Corporation Act and other
11 corporate law standards – not any political process or civil rule standards established for
12 pro se litigants. The June 19th hearing was subject to the applicable corporate rules, not
13 some deferential civil standard for pro se litigants. TCUC maintains that a small portion
14 of TCUC’s membership (86 out of nearly 1000) unlawfully removed Woody, VanZandt
15 and Tito; and the procedure undertaken by that small group contravened the
16 Corporation’s governing rules. The legal standard applicable to their actions arises from
17 corporate governance laws and the Corporation’s governing documents.

18 _____

19 position is that: (a) Tito’s seat was vacant at the time a majority of the Board properly appointed
20 her; (b) the June 19th hearing did not purport to remove Tito; rather that certain members
21 disputed Tito’s appointment; (c) Conrad improperly filled Tito’s seat on July 9th; and (d) whether
22 Tito was properly appointed and then improperly removed remains to be litigated.

1 **2. TCUC has a Right to Collect and Present Evidence to Contest the Facts**
2 **Alleged by Conrad and the Assertion that the June 19 Vote Complied**
3 **with the Corporation's Governing Documents and Corporate Law**
4 **Standards.**

5 It is unclear whether and to what extent the Policy on Disciplinary & Board
6 Removal Procedures is valid, and whether other applicable Corporate policies exist.⁸ If
7 the Policy is invalid and a trial was not necessary, that does not mean the June 19 vote
8 was a valid exercise of the membership's removal authority. The vote was taken
9 following procedures that purported to -- but did not -- follow the Policy. TCUC believes
10 and intends to prove that the membership present at the meeting was misled and
11 misinformed about (a) whether the Investigative Committee was operating in compliance
12 with the Policy; and (b) the facts alleged in the charge against Theresa Woody, Rhonda
13 VanZandt and Alvin Bates.

14 Since the purported trial was conducted during an executive session, TCUC also
15 has the right to ascertain exactly what representations were made and evidence was
16 presented to the membership leading up to the votes that took place on June 19, 2015. It
17 has a right to collect evidence to challenge the veracity of documents presented and
18 statements made by witnesses who testified at the June 23, 2015, hearing in this case.

19

20 ⁸ Mr. Wickwire was correct to note the Policy when the issue of removal came up at a Board
21 meeting, given that it is titled Policy on Disciplinary and Board Removal Procedures, but Mr.
 Wickwire was not in a position to analyze, nor was he asked to provide advice regarding, the
 detailed procedures discussed in the Policy and the specific steps required to remove Directors
 under that or any other policy.

1 Significant factual questions exist that are subject to discovery and a trial on the
2 merits. After discovery allows the parties to collect evidence in support of their
3 respective positions, the Court will need to determine, for example: (a) what the Policy
4 means; (b) whether the Policy applies to the removal of TCUC Directors (as opposed to
5 members); (c) whether the Policy, if valid, was properly followed; and/or (d) if the Policy
6 is not valid, whether adequate and proper procedures were followed to either remove
7 Woody, VanZandt and/or Tito or else to require a vote on removal.⁹

8 TCUC has not acted hypocritically; it simply has inadequate information about the
9 June 19th hearing and trial to adequately to defend itself against Conrad's claims in this
10 lawsuit. This includes whether the small minority of members who voted to remove
11 Woody and VanZandt on the heels of a trial (i.e., where guilt was presumed even before
12 the trial) were misinformed about their alleged "guilt."

13 **3. Discovery is Required to Determine if a Lawful Vote Was Taken to**
14 **Remove Woody, VanZandt and Tito on July 9**

15 No evidence exists to establish a lawful vote was taken on July 9. Conrad relies
16 almost exclusively on vague Board minutes and her June 23rd testimony. TCUC is
17 entitled to conduct depositions and other discovery to gather evidence about what
18 happened at the meeting and to challenge the veracity of Conrad's evidence. Indeed, by
19 all appearances, a minority of TCUC's members cast votes on the heels of a questionable

20 ⁹ TCUC also contends that Tito was properly appointed to the Board and that the Board had
proper authority to bring suit against the Chamber of Commerce.

1 “trial” where the accused were not even present due to their legitimate contention that
2 they were being denied due process and legal representation. TCUC does not know
3 exactly what happened during the trial – i.e., what was said, what evidence was
4 presented, who testified, whether the proceeding complied with TCUC’s governing
5 documents. Indeed, the cloak of secrecy surrounding this purported trial is startling in
6 light of the fact that extensive information the Policy required to be confidential was
7 publicly disclosed.¹⁰ But TCUC believes the voters were misled and substantially
8 misinformed about the facts presented to them and the validity of the procedures that took
9 place leading up to and during the June 19 hearing. Thus, any votes taking place on June
10 19 were tainted. TCUC has the right to collect evidence and prove its case.

11 **C. Conrad is the Charging Party in this Case; TCUC is Not Subject to a**
12 **Harmless Error Analysis.**

13 **1. Conrad Improperly Conflates Civil Rule Concepts With Corporate**
14 **Governance Requirements.**

15 Once again Conrad tries to apply legal civil rules to corporate proceedings, yet is
16 asking the Court to completely ignore the civil court procedures for purposes of litigating
17 this lawsuit. Conrad cites: harmless error, equitable estoppel, prejudice, the “rule of
18 necessity” and pro se standards as being applicable to the underlying corporate disputes

19 ¹⁰ Beyond the trial, nothing appears confidential. In fact, even attorney-client privileged
20 communications provided to Conrad in her capacity as Trustee were subsequently disclosed and
21 appeared on a public Facebook page. But the “trial” to remove Woody and VanZandt was
cloaked in secrecy.

1 that are now the subject of a civil lawsuit.¹¹ TCUC has been sued and is thus harmed and
2 entitled to defend itself. TCUC does not have to prove damages and/or prejudice because
3 it is the defendant in this case.

4 2. Due Process was Clearly Not Afforded to Woody and VanZandt

5 Conrad's claim that Woody, et al. were afforded due process is specious, at best.
6 The documentary evidence presented in TCUC's underlying motion demonstrates, for
7 example, that a finding of "guilty" was assumed before a purported trial was even held.
8 Conrad's claim that Woody, et al. were advised "*they could bring their request to have a*
9 *non-member attorney represent them before the investigative committee*" was an after-
10 the-fact statement by Conrad at the June 23rd hearing. Opposition, p. 7. Woody and
11 VanZandt were told only that they could be represented "*by another Member of TCUC,*
12 *who must be a Member in Good Standing[,]*" and thus they did not appear because
13 TCUC's attorney was not a TCUC member.¹²
14

15 ¹¹ The "rule of necessity" cited by Conrad is a court procedure which allows a judge to hear a
16 case even if he has a personal interest in the case, if there is no other judge available to hear the
17 case. Such a rule has absolutely no bearing on corporate procedure. Moreover, there was no
18 hearing in connection with appointment of the investigative committee. There was no formal
19 vote of the board or vote of the membership to formalize the selection of the investigative
20 committee. It is inapposite for Conrad to argue that the alleged disqualification of Woody,
21 VanZandt and Tito authorized haphazard selection of members to serve on an investigative
committee without following proper corporate procedures or the procedures under Robert's
Rules.

¹² Ex. E, p. 4, to TCUC's Memorandum in Support of TCUC Submission Regarding July 9
Election and Motion to Retain Status Quo Pending Outcome of This Litigation, Filed July 21,
2015.

1 Prior to June 19, Woody and VanZandt asserted a number of problems and
2 concerns they had with the Investigative Committee's appointment and procedures, to no
3 avail. They refused to participate in the June 19 proceedings because they did not want
4 the community and membership to be misled as to the invalid and improper processes
5 that preceded that hearing. In the context of this litigation, TCUC has a right to gather
6 and present evidence to prove their contentions.

7 **3. The Validity of the Removal Proceedings and the July 9 Election Must**
8 **Be Litigated in Accordance With the Civil Rules.**

9 TCUC has been harmed because its Corporate governance and integrity is
10 undermined by a failure to comply with its governing rules and the unlawful removal of
11 its Directors. Board members do not have a right to their seats ad infinitum. But TCUC
12 has a right to ensure that its Board members are only ousted in a manner that complies
13 with its bylaws, articles and other applicable corporate policies. Moreover, TCUC has
14 the right to defend itself against any claims. TCUC gets to conduct discovery, take
15 depositions, ascertain the veracity of Conrad and others, obtain evidence from other
16 persons who attending the June 19th hearing, to get recordings from that meeting, and to
17 collect and present evidence to the Court.

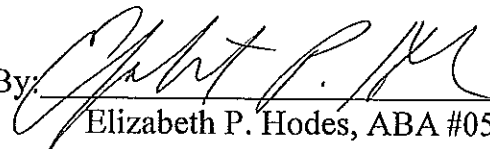
18 **III. CONCLUSION**

19 For the reasons set forth above and in TCUC's Submission Regarding the July 9,
20 2015 Board Election and Motion to Retain the Status Quo Pending Outcome of this

1 Litigation, TCUC requests entry of its proposed order to assist the parties in preserving
2 the status quo pending final resolution of the many factual and legal disputes at issue in
3 this litigation.

4 DATED this 21st day of August, 2015.

5 DAVIS WRIGHT TREMAINE LLP
6 Attorneys for Tok Community Umbrella
Corporation

7 By: 
8 Elizabeth P. Hodes, ABA #0511108

9 Certificate of Service

10 On the 21st day of August, 2015, a true and
11 correct copy of the foregoing document was sent
by

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13 to the following parties:

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17 Fairbanks, AK 99701

18 By: 
19 M. Kirsten Gustafson

20
21 REPLY TO OPPOSITION TO TCUC'S SUBMISSION RE 7/9 ELECTION, NON-OPPOSITION
TO MOTION TO LATE FILE CONRAD'S STATEMENT OF POSITION AND
RESPONSE TO CONRAD'S STATEMENT OF POSITION RE THE 7/9 ELECTION
Tok Community Umbrella Corporation v. Tok Chamber of Commerce; Case No. 4FA-15-1930CI
DWT 27681482v2 0104907-000001

FROM :

FAX NO. :4740069

Aug. 21 2015 03:42PM P2

Wickwire

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

Tok Community Umbrella Corporation)

Plaintiff,)

v.)

Tok Chamber of Commerce, Inc.,)
Defendant.)

Lisa Conrad,)
Third Party Plaintiff)

v.)

Tok Community Umbrella Corporation)

Case No. 4FA-15-1930 CI

FILED in the Third Courts
State of Alaska, Fourth District

JUL 22 2015

By _____ Deputy

REQUEST FOR CLARIFICATION

In light of the Court's decision at the hearing held on Tuesday, June 16, 2015, and in advance of Forcible Entry and Detainer ("FED") proceeding to be held on Tuesday, June 23, 2015, the Tok Community Umbrella Corporation ("TCUC") hereby requests clarification to confirm the purpose and impact of the June 23, 2015 hearing.

TCUC understands that the sole purpose of the hearing is to evaluate the issue of possession with respect to the FED action against the Tok Chamber of Commerce, Inc. Given the summary nature of the FED proceeding, TCUC further understands that the hearing will not have any binding or prejudicial effect with respect to matters raised in the Complaint filed by Lisa Conrad ("Conrad") against TCUC on June 8, 2015. TCUC

TCUC v. Tok Chamber of Commerce; Conrad v. TCUC, 4FA-15-1930 CI
Req Clarification
6-21-2015

Thomas R. Wickwire, Lawyer
2775 Hanson Road, #1,
Fairbanks, AK, 99709
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has a right to respond to the allegations in Conrad's Complaint, but its answer time will not have run by the time of the FED hearing. During this time, it will evaluate the Complaint and may elect to file a motion in lieu of an Answer. Moreover, the allegations asserted and relief sought by Conrad's Complaint involve significant corporate governance matters which cannot and should not be resolved in a summary proceeding.

An FED action "is summary in nature, and traditionally the court will recognize almost no affirmative defense or counterclaim. . . The sole issue to address is that of possession." *Vinson v. Hamilton*, 854 P.2d 733, 735, 737 (Alaska 1993) (citing *McCall v. Flickes*, 556 P.2d 535, 537 (Alaska 1976)). The Alaska Supreme Court has recognized, "[w]hen interpreting Alaska's FED statute, we must take care to preserve the swift proceedings that the legislature intended." *Id.* at 737.

In contrast, the corporate governance claims and allegations raised in Conrad's June 8, 2015 Complaint and the relief she seeks require discovery and all procedural protections afforded in the usual civil litigation process, including, potentially, a jury trial for disputed facts. TCUC is entitled to a summary proceeding regarding its right to possession of its building, but is not waiving its right to a full and fair process with respect to the allegations in Conrad's Complaint.

TCUC respectfully requests confirmation from this Court that, given the summary nature of the FED proceeding to be held on Tuesday, June 23, 2015, such hearing will not have any binding or prejudicial effect with respect to the claims and allegations asserted in Conrad's June 8 Complaint.

TCUC v. Tok Chamber of Commerce; Conrad v. TCUC, 4FA-15-1930 CI
Req Clarification
6-21-2015

FROM :

FAX NO. : 4740069

Aug. 21 2015 03:42PM P4

Dated: June 19, 2015.

Thomas R. Wickwire

Thomas R. Wickwire

ABA# 7111049

Attorney for Plaintiff and

Third Party Defendant

CERTIFICATE OF SERVICE

I certify that on June 21, 2015, a copy of this document was served by fax on:

Cook, Schuhmann & Grosoclose,
Attorneys for Intervenor Conrad
Fax: 452-8154

John Burns & Associates,
Attorney for Defendant Chamber
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TCUC v. Tok Chamber of Commerce; Conrad v. TCUC, 4FA-15-1930 CI
Req Clarification
6-21-2015

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

AT FAIRBANKS

TOK COMMUNITY UMBRELLA ,)
CORPORATION)

Plaintiff,)

vs)

TOK CHAMBER OF COMMERCE,)

Defendant.)

No. 4FA-15-01930 CI

FORCIBLE ENTRY AND DETAINER

PAGES 1 THROUGH 184

BEFORE THE HONORABLE JOHN MCCONNAUGHY
District Court Judge

Fairbanks, Alaska
June 23, 2015
8:38 a.m.

APPEARANCE:

| | |
|-----------------------|-----------------------------|
| FOR THE PLAINTIFF: | Zane Wilson |
| Third Party Plaintiff | Cook Schuhmann & Groseclose |
| Lisa Conrad | 714 4th Avenue, Suite 200 |
| | Fairbanks AK 99701 |

| | |
|--------------------|---------------------------|
| FOR THE DEFENDANT: | Thomas R. Wickwire |
| Theresa Woody | 2775 Hanson Road, Suite 1 |
| | Fairbanks AK 99709 |

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1 Tito -- at this time, pending resolution of the case on
2 the merit, shall not act as the directors at all during
3 the normal course of business. I haven't made a final
4 decision about everything we've heard here today, but,
5 we need to -- this is like interim orders in a domestic
6 relations case.

7 The election that is currently scheduled for
8 July 9th shall proceed as set out, and Conrad shall
9 immediately file with this court the results of that
10 election. And, by "immediately," I'm talking about,
11 you need to get that to Mr. Wilson the same day and he
12 needs to get it filed the next business day. And the
13 parties shall have until July 20th to file their
14 respective positions regarding that election.

15 It could be -- and, Mr. Wickwire is right.
16 There is a lot of speculation about who would be
17 elected and who wouldn't. It may well be, the board
18 could be Woody, Tito, VanZant, Conrad and maybe
19 somebody else. In which case, I would expect Woody
20 wouldn't object. And I'm not sure that Ms. Conrad
21 would have much to object about if that process if
22 filed. But I need to have the parties respective
23 positions by that.

24 The TCUC does need to operate in the interim,
25 so, all books and records, and checks and keys that are

1 necessary to operate on this interim basis, shall be
2 provided to Conrad today.

3 And Conrad shall have the authority to expend
4 funds necessary for the normal ongoing needs of the
5 organization, but any unusual expense must be approved
6 by me. I mean, if you need to pay a light bill,
7 because they're going to turn your lights off, that's
8 fine. But anything that can be postponed, needs to be
9 postponed. If you find that there is an extraordinary
10 expense that the community -- well, you're a steward
11 right now. You are now not a director. You're acting
12 in the role of a steward. And you need to be cognizant
13 of the community's funds and you need to apply to me,
14 by motion, before you expend anything other than what
15 is the bare minimum necessity to keep the organization
16 going.

17 And, Ms. Woody shall file an answer to the
18 complaint, which was dated June 8th, but, it needs to
19 be filed by June 28th. I don't have a calendar sitting
20 in front of me. So, if that's a Saturday or Sunday --
21 when I come up with these dates, it's going to be
22 whatever the next business day is.

23 The parties are going to have to exchange
24 their initial disclosures by August 1st. And for the
25 folks that aren't lawyers, initial disclosures are

1 MR. WICKWIRE: Where to go from here? What
2 else...

3 THE COURT: Let me just say one other thing,
4 Mr. Wilson.

5 To the extent that Ms. Woody [sic] is going
6 to need an order from this court to write checks or,
7 you know, deal with financial...

8 MR. WILSON: Ms. Conrad? I was doing the
9 same thing, Your Honor.

10 THE COURT: No, I -- Ms. Wilson -- Ms.
11 Conrad.

12 To the extent that your client needs an
13 order, you need to draft that.

14 I'm sorry, Mr. Wickwire, I interrupted you?

15 MR. WICKWIRE: Yes. And, it's helpful for me
16 to know how much of the evidence to gather, from the
17 future to -- has the court ruled that the -- the --
18 standing in position to Ms. Woody and VanZant from last
19 fall? Or, Ms. Tito's appointment? Or, the
20 investigative committee...

21 THE COURT: I have not ruled on any of that.
22 I'm saying, as of today, that -- either those -- those
23 folks cannot act as directors from this time forward.

24 I have not ruled on what Ms. Conrad asked,
25 which was that the April motion to remove them was --

1 should be implemented.

2 I have not ruled on whether the e-mail
3 appointment of Ms. Tito, on its merits, has been --
4 whether I will find that at the end of the hearing as
5 final.

6 So, those issues still remain to be resolved
7 on the merits. What I do find is that at this stage of
8 the proceeding there is sufficient information to
9 conclude that they have a likelihood of prevailing on
10 those issues, so that's why I'm implementing Ms. Conrad
11 -- yes, Ms. Conrad -- as the -- as the trustee.

12 MR. WICKWIRE: So, is this correct: The
13 court has not found that the Woody and VanZant
14 positions on the board were invalid? Or, that Ms.
15 Tito's appointment was invalid? Or, that the -- the
16 investigative hearing last week that purported to
17 remove them -- either of those are alternative grounds
18 for them. And, has the court picked one and said,
19 what's invalid?

20 THE COURT: No. I have found that they have
21 shown that they would likely prevail on all three of
22 those issues. But, I recognize that we have done this
23 in an abbreviated accelerated procedure that really
24 doesn't have the benefit of the discovery that you
25 mentioned earlier. So, I'm reserving ruling on those

1 on the merits. It could be -- after we have a hearing
2 on the merits, there could be some other result. But,
3 for right now, I find that they have met -- that they
4 likely would proceed on that, but I'm not making that
5 finding to preclude you from litigating it additionally
6 on the merits. All right.

7 MR. WICKWIRE: I understand now. Thank you.

8 THE COURT: Thank you for driving in, folks.
9 There is a lot of smoke out there today. Drive
10 careful. Everybody can be excused. Submit an order
11 that is necessary to do business, Mr. Wilson.

12 MR. WILSON: It is necessary. We will do
13 that, Your Honor.

14 THE COURT: Okay. Everybody can be excused.

15 MR. WICKWIRE: Your Honor, I'm sorry. Just
16 one more issue we need to take up. There is a finding
17 by this investigative committee last week that removes
18 -- it says that they are disqualified from acting for
19 the next five years. That means they wouldn't be able
20 to run for the office, if that's valid.

21 THE COURT: Yeah. And, again, I'm making no
22 finding on that. I guess I'm going to let the
23 community process play out on that, but I'm not making
24 a finding on that. She certainly is free to say that
25 she should be elected and make her bid for that. And

CERTIFICATE

THIRD DISTRICT

STATE OF ALASKA

I, Georgi Ann Haynes, Certified Professional Court Reporter for the Third Judicial District, State of Alaska, hereby certify:

That this transcript was prepared to the best of my knowledge and ability from a recording, recorded by someone other than H&M Court Reporting, therefore "indiscernible" portions appear in the transcript.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 8th day of July, 2015.

Georgi Ann Haynes
Notary Public in and for Alaska
My commission expires: 10/05/2015

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

TOK COMMUNITY UMBRELLA)
CORPORATION (as represented by the)
Board who contends they were not)
removed from office by the)
membership),)

Plaintiff,)

vs.)

TOK CHAMBER OF COMMERCE,)
INC.,)

Defendant.)

TOK COMMUNITY UMBRELLA)
CORPORATION (as represented by the)
Board elected on July 9, 2015),)

Third-Party Plaintiff,)

vs.)

TOK COMMUNITY UMBRELLA)
CORPORATION (TCUC) (as)
represented by the Board who contends)
they were not removed from office by)
the membership),)

Third-Party Defendant.)

Case No. 4FA-15-1930 CI

REQUEST FOR ORAL ARGUMENT

Third-Party Defendant Tok Community Umbrella Corporation (TCUC) (as
represented by the Board who contends they were not removed from office by the
membership) requests oral argument under Alaska R. Civ. P. 77(e)(1) on its Submission

1 Regarding July 9 Election and Motion to Retain Status Quo Pending Outcome of this
2 Litigation.

3 DATED this 21st day of August, 2015.

4 DAVIS WRIGHT TREMAINE LLP
5 Attorneys for Tok Community Umbrella
6 Corporation

7 By: 

Elizabeth P. Hodes, ABA #0511108

ORDER SETTING ORAL ARGUMENT

This Court reviewed Third-Party Defendant's Request for Oral Argument;

NOW, THEREFORE, it is ORDERED that the request for oral argument is granted. Oral argument will be held on the _____ day of _____, 2015, at the hour of _____ .m. Counsel for Third-Party Defendant TCUC will be permitted to participate telephonically and will call the court at the following number: (907) _____ at _____ .m. on the day of hearing.

DATED this _____ day of _____, 2015.

Hon. Michael P. McConahy,
Superior Court Judge

Certificate of Service

On the 21st day of August, 2015, a true and correct copy of the foregoing document was sent by U.S. Mail, postage paid to the following parties:

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Fairbanks, AK 99701

By: _____

M. Kirsten Gustafson

REQUEST FOR ORAL ARGUMENT - 3

Tok Community Umbrella Corporation v. Tok Chamber of Commerce, Inc., Case No. 4FA-15-1930 CI
DWT 27703397v1 0104907-000001