

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. CV 56 of 2020**

**BETWEEN:**

**EVERALDO UK**

Claimant

and

**COROZAL SUGAR CANE PRODUCERS ASSOCIATION**

Defendant

**Appearances:**

Anthony Sylvester for the Claimant

Nigel O. Ebanks & Darinka Muñoz for the Defendant

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2023: 7 March  
12 September  
2024: 8 January  
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**DECISION**

[1] **FARNESE, J:** Mr. Uk seeks declarations that decisions taken by the Corozal Sugar Cane Producers Association (CSPCA) to remove him as a Director and expel him as a member are invalid and void. He claims he has suffered loss and damage because these decisions have directly affected his ability to deliver and sell his quota of sugar to the Belize Sugar Industry Limited/

ASR Group factory. He also seeks an order that he is entitled to a sum of money, but his pleadings do not specify the sum's amount or the basis of the claim of entitlement.

[2] Mr. Vladimir Puck submitted an affidavit in reply to the claim on behalf of the CSCPA as its Chairman. Mr Puck contends that Mr. Uk's expulsion was warranted because of Mr. Uk's improper conduct and abdication of duties as a Director of the CSCPA and leader of the cane farmers in the Patchakan Zone. Mr. Puck further contends that the expulsion followed the procedure outlined in the applicable bylaws.

[3] For the reasons outlined below, I find that the CSCPA's decisions to remove Mr. Uk as a Director and to expel him contravened the CSCPA's bylaws. Mr. Uk is entitled to be restored as a member of the association. Due to the passage of time and the recent decision in separate legal proceedings between the parties,<sup>1</sup> restoring Mr. Uk as a Director has become an impossibility. Mr. Uk, however, is entitled to damages in the amount of BZ\$9,600 and prescribed costs. I decline to make any decision as to whether the CSCPA was justified in their actions.

## Issues

- [4] The dispute between Mr. Uk and the CSCPA raises the following issues:
- a) Was the decision to remove Mr. Uk as a Director of the CSCPA lawful?
  - b) Was the decision to expel Mr. Uk as a member of the CSPCA lawful?
  - c) If either of the decisions were lawful, were they justified?
  - d) What remedy is Mr. Uk entitled to if any if the CSCPA's decision are found unlawful?

## Analysis

*Was the decision to remove Mr. Uk as a Director of the CSCPA lawful?*

[5] The CSCPA admits that the Board of Directors and Surveillance Committee sent a letter to Mr. Uk on 13<sup>th</sup> November 2019 (Removal letter) that stated that Mr. Uk was "immediately relieved of all

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<sup>1</sup> Corozal Sugar Cane Producers Association v Uk et al., Claim No. 176 of 2022 at paras 48 to 59 [CSCPA 2022].

duties and responsibilities as a board of Director” following a vote of non-confidence at a “special secluded emergency meeting” of the Board of Directors held on 10<sup>th</sup> November 2019.

[6] Mr. Uk argues, and I agree, that the decision was unlawful because the decision did not conform with the CSCPA bylaws. I also agree that the decision did not conform with the requirements of natural justice, principally the right to know the charge one is facing and the right to respond to those charges.

[7] The parties agree that bylaws passed in 2015 (2015 Bylaws) were in force when Mr. Uk was removed as a Director. The 2015 Bylaws do not address the removal of an elected member of the Board through a vote of non-confidence. The only means to remove a Director without bringing the issue to the membership at large is outlined in Article 9.4:

9.4 An elected member of Board shall cease to hold office if he/she:

9.4.1 is subject to any disqualification mentioned in the Act or bye-laws;

9.4.2 is absent from three consecutive meetings of the Board without leave of absence having been granted by the board; however, before taking any action, the Director concerned shall be given an opportunity by the Board to be heard;

9.4.3 resigned and his resignation has been accepted by the Board.

Disqualification references article 9.3 which outlines the eligibility requirements for election to the Board:

9.3 A person shall not be eligible for election as a member of the Board of Directors of the Association if he/she:

9.3.1 has not been a member of the Association for at least three years.

9.3.2 is a paid employee of the Association;

9.3.3 has applied for insolvency or is declared insolvent;

9.3.4 is of unsound mind;

9.3.5 is a defaulter in the payment of any debt due to the Association for a period not exceeding six months from the date on which the payment fell due;

9.3.6 holds any office of profit under the Association or receives any honorarium; Except under circumstances as approved by the Board.

The CSCPA has not argued that Mr. Uk was disqualified, and Mr. Uk has not resigned. Therefore, Mr. Uk could only be removed because he was absent from meetings.

[8] The balance of evidence does not support a finding that Mr. Uk was removed as a Director of the CSCPA for non-attendance at Board meetings. Mr. Puck testified that Mr. Uk boycotted approximately 20 meetings, a charge Mr. Uk denies. No evidence was provided in support of Mr. Puck's claim. But even if such evidence was provided, the Removal letter does not identify non-attendance at meetings as a reason for his removal. The letter contains many allegations of poor conduct and references two warning/caution letters sent to Mr. Uk by the Surveillance Committee. The first letter was purported to have been sent in February 2018. I am unable to conclude whether Mr. Uk's attendance was addressed because this letter was not submitted into evidence. The second letter was sent two days prior to the Removal letter and accuses Mr. Uk of behaviours that are irresponsible, damaging, immature, malicious, unnecessary, and designed for personal gain. The Committee requests that he immediately desists but fails to substantiate these allegations with examples of Mr. Uk's offending conduct; Mr' Uk's non-attendance at Board meetings is not mentioned.

[9] I also find that Mr. Uk was not given the opportunity to be heard as required by Article 9.4.2 of the 2015 Bylaws. Mr. Uk testified, and Mr. Puck did not deny, that Mr. Uk was not given notice of the "special secluded emergency meeting" in clear violation of the 2015 Bylaw. This violation alone is sufficient to declare the Board's decision unlawful and, therefore, invalid. The CSCPA is established under section 32 of the Sugar Industry Act.<sup>2</sup> The Sugar Act mandates that the CSCPA manage its affairs in compliance with the Act and the association's bylaws.<sup>3</sup>

*Was the decision to expel Mr. Uk as a member of the CSPCA lawful?*

[10] Mr. Uk was sent a letter (Expulsion Letter) on 31<sup>st</sup> December 2019 informing him that the Board of Directors and the Surveillance Committee met and decided to expel him as a member of the CSCPA pursuant to Article 41 of newly revised bylaws (Revised Bylaws). The Revised Bylaws

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<sup>2</sup> Cap. 283, the Substantive Laws of Belize (Rev. Ed. 2020) [Sugar Act].

<sup>3</sup> At subsection 32(4) and section 37.

were purported to have been passed at the CSCPA's annual general meeting (AGM) held on 7<sup>th</sup> December 2019. Mr. Uk disputes the validity of the Revised Bylaws on the grounds that they were not properly before the membership at the AGM because members were not given notice of the motion to amend the bylaws. He argues that the 2015 Bylaws continues to apply which mandate under Article 6.3 that he be given one month notice of an intention to expel him. Mr. Uk further asserts that regardless of which bylaws are found to apply, the expulsion was unlawful because he was not afforded the right to be heard.

[11] The CSCPA asserts that the Revised Bylaws were properly enacted and govern Mr. Uk's expulsion. While the CSCPA concedes that the AGM's agenda did not contain an express item for amending the bylaws, they argue that this item fell under "Other Business". Mr. Puck testified that the membership understood from previous AGMs that revised bylaws would be brought forward at the 2019 AGM. If, however, the court finds that the 2015 Bylaws applied, the CSCPA argues that Mr. Uk waived his rights to be notified and heard through his conduct.

[12] Based on the record before me, I find that the 2015 Bylaws were in force when Mr. Uk was expelled. The validity of the Revised Bylaws was recently the subject of a decision of Chabot J in a claim between the CSCPA and Mr. Uk and I endorse Chabot J's reasoning for reaching the conclusion that the Revised Bylaws were not properly enacted.<sup>4</sup> The members did not have proper notice that amendments to the bylaws would be considered at the 2019 AGM contrary to Article 17.1 of the 2015 Bylaws.

[13] Article 17.1 mandates members be given "due" notice of amendments. Due notice not only requires knowledge that an amendment to the bylaws will be proposed, but that the members have actual notice of the content of the amendment. I find that the members had neither in this case. First, even if I were to find as fact that members were made aware of the need to revise the bylaws at previous AGMs and that there was an intention to bring them forward at the subsequent AGM, an intention expressed at a previous meeting is not sufficient notice.

[14] Also, Article 17.1 requires members be given "due notice of the intention to move the amendment" (underline added). The use of "the" removes any doubt that members must have notice of the

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<sup>4</sup> CSCPA at paras 48 to 59.

specific changes proposed. The Article does not say members must be given notice of an intention to amend the bylaws - members must be given notice of “the amendment.” A review of the minutes of the AGM clearly establishes that the content of the amendments was not presented to the members for consideration.

- [15] I further find that the Board of Directors failed to comply with the requirement to give Mr. Uk notice of their intention to expel him from the CSCPA as required by Article 6.3 of the 2015 Bylaw. Notice is provided to give Mr. Uk the opportunity be heard in keeping with the principles of natural justice. Therefore, I find the Board also denied Mr. Uk his right to be heard in violation of principles of natural justice.
- [16] I am not surprised that I found no evidence of notice given the Board believed they were acting according to the Revised Bylaws where notice is not required. The letter from the Surveillance Committee, the Removal Letter, and the minutes of the December 2019 AGM all demonstrate that members of the Board had concerns with Mr. Uk’s behaviour. Some suggested that they may take action to address their concerns. Although the CSCPA has established that concerns were raised with Mr. Uk, at no point did the Board specifically identify, as required by Article 6.3, that it intended to expel him.
- [17] I find no evidence in Mr. Uk’s conduct that he waived his right to be heard. The CSCPA argues that Mr. Uk’s failure to respond to communications from the Surveillance Committee in the past and ongoing public ventilation of his opposition to the Board’s conduct entitled the Board to treat this conduct as a waiver of the right to notice and to be heard. The CSCPA offers no applicable authority for the proposition that past conduct, even where it is found egregious, is treated as a waiver of a person’s right to natural justice. The present case is clearly distinguishable from **Twentyman v Secretary, Department of Social Services** where the claimant was found to have waived his right to be heard when he walked out of the hearing.<sup>5</sup> It is also distinguishable from **Salazar v Corozal Sugar Cane Producers Association** where Shoman J found that Mr. Salazar waived his right to notice by demanding that the question of his expulsion be put to the membership at the 2017 AGM.<sup>6</sup>

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<sup>5</sup> [2018] FCA 1892 (Australia)

<sup>6</sup> Claim No. 55 of 2019.

[18] Furthermore, while I recognize that a person can contract out of the right to be heard in some circumstances by voluntarily joining an association whose governing bylaws explicitly specify that notice will not be given,<sup>7</sup> Mr. Uk has not contracted out of his rights. The 2015 Bylaws require notice. I find the decision to expel Mr. Uk in contravention of both the 2015 Bylaws and Mr. Uk's right to be heard cannot stand.

*If either of the decisions were lawful, were they justified?*

[19] My finding that the CSCPA's decisions were unlawful dispenses with the need to consider the issue of whether Mr. Uk's removal as a Director and his expulsion were justified. I, therefore, decline to make findings in this regard. I am mindful of the plethora of jurisprudence, some of which was cited in this case, which directs the court to be circumspect when interfering in the affairs of private, voluntary organizations, including those that perform statute-defined functions.<sup>8</sup> I would be remiss, however, not to make some observations in the circumstances to avoid either party claiming this decision as a vindication given this dispute has already resulted in multiple court claims.

[20] The evidence presented a trial demonstrates a long-standing dispute over the proper management and leadership of the CSCPA. For reasons unknown to the court, this dispute has become fuelled by personal animosity between Mr. Uk and Mr. Puck. While I do not doubt the sincerity of either man's belief that theirs is the just cause, in pursuit of that cause both men have abandoned their responsibilities to the members who elected them to conduct themselves in manner befitting of the trust that has been placed in them.

[21] During trial, the court learned of the importance, to the association itself and to individual members, of CSPCA's affiliation with Fairtrade International. Members ought to be very concerned about the impact of permitting this dispute to persist in the leadership of the CSPCA in light of the following comments of the Fairtrade representative for Belize captured in the minutes of the 7<sup>th</sup> December 2019 AGM:

Mrs. Yanis... shared with farmers the importance of conducting proper procedures and ethical behavior. She shared and reminded that the meeting that Fairtrade International was well cognizant of farmers' short falls in carrying out certain criterias/requirements and urged

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<sup>7</sup> McClelland v Burning Palms Surf Life Saving Club [2002] NSWSC 470 at para 91 [McClelland].

<sup>8</sup> See generally McClelland.

the membership that keen attention to such matters were of crucial importance in light of the Fairtrade Certification process. Mrs. Yanis shared with the meeting that as a member representative of CLAC her core responsibility was...working along with all association stakeholders of the industry and that CLAC would in no way get involved with any internal matters relating to any of the associations. She however urged the meeting that such behavior as was being observed by her was not conducive to the expected unity and respect for each fellow cane farmer. She expressed that the importance of an Annual General Meeting was to discuss farmers business moving forward and that under Fairtrade new criteria requirements were being introduced which farmers should start paying keen attention in the effort to complying [sic] with such new responsibilities of requirements.

*What remedy is Mr. Uk entitled to if any of the CSCPA's decisions are found unlawful?*

[22] Mr. Uk is entitled to declarations that the decisions to remove him as Director and to expel him contravened the 2015 Bylaws. Although Mr. Uk has not asked to be reinstated, the effect of the declaration would normally be to restore him to the position he would have been in if the decisions had not been made. I see no legal bar to restoring his membership in the CSCPA. That Mr. Uk did not explicitly seek restatement as a remedy is of no consequence.

[23] Restoring Mr. Uk as a Director is an impossibility because of the passage of time and subsequent elections that have been held by the CSCPA. I am aware that the subsequent elections have been ruled invalid in separate legal proceedings.<sup>9</sup> In those proceedings, Mr. Uk requested and received a declaration that the election was in breach of the governing bylaws, an order that a general meeting of the association be called, and a Board of Directors' election be held. I endorse that remedy as further or other relief in this case. Having been first removed as a Director and then expelled, Mr. Uk lost the right to bring the question of his continued leadership of the CSCPA to the membership.

[24] Mr. Uk also claims in his witness statement that he lost his position as Vice-Chairman and Quota Controller/Quality Director when he was removed as a Director. CSCPA does not dispute this claim. No further explanation about the loss of these positions was provided to the court. I note that Vice-Chairman is a named position on the Board of Directors in Article 9.2 of the 2015 Bylaws. Quota Controller/Quality Director is not a named position, but as it is called "Director," I must conclude

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<sup>9</sup> CSCPA 2022 at paras 63 and 104.



that one must be on the Board of Directors to hold this position. Therefore, it follows that Mr. Uk cannot be restored to those positions.

[25] Mr. Uk's claim form also requests the payment of a sum but has not particularized the amount or nature of that sum. Consequently, I will award no sum under this ground of relief.

[26] Mr. Uk seeks damages arising from his inability to sell sugar cane for two years as a member of the association and the loss of stipends he received as a Director. The CSCPA disputes Mr. Uk's entitlement to damages for the impact of his expulsion on his ability to sell sugar cane because he failed to mitigate his losses. They further argue that he is not entitled to any damages awarded for the loss of the stipends because Mr. Uk's appointment as a Director should have ended in 2018.

[27] That Mr. Uk received a \$400 monthly stipend as Director is not disputed. The parties dispute the duration of his entitlement. The CSCPA rely on a letter sent on Mr. Uk's behalf by his attorney to Mr. Puck in support of their position that no amount is owing. The letter asserts that elections to the Board of Directors have not been held since 2015. Therefore, the CSCPA argues that Mr. Uk's appointment would have expired in 2018 because the 2015 Bylaws specify elections are to be held every three years. Mr. Uk submits he is entitled to the stipend until he is properly replaced on the Board of Directors.

[28] The CSCPA position is untenable. Mr. Uk was removed as a Director in 2019. The correspondence on which the CSCPA relies, and their response, explain how elections have been conducted. The validity of that process was not before me. Moreover, although Chabot J found that the CSCPA was failing to follow the election process specified in the 2015 bylaws, she did not invalidate previous elections or decisions taken.<sup>10</sup> Therefore, based on the evidence before me, Mr. Uk would have been up for re-election in or around November 2021. He is entitled to damages from December 2019 to November 2021 inclusive.

[29] Mr. Uk's submission implies that he received an additional stipend as Vice-Chairman and Quota Controller/Quality Director. Mr. Uk relies on the CSCPA's Annual Cess Report & New Budget Proposal for 2019-2020 and argues that the funds were budgeted for these positions. The budget line item titled 'Director Allowance' perhaps applies, but this line could equally apply to the \$400

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<sup>10</sup> CSCPA 2021 at para 105.

stipend. The court will not speculate. I have also closely reviewed the remaining evidence and have only found reference to the \$400 stipend. Therefore, Mr. Uk has failed to prove that he lost an additional stipend as Vice-Chairman and Quota Controller/Quality Director.

[30] I find Mr. Uk has not proven that he is entitled to damages because he was expelled from the CSCPA. Mr. Uk had a duty to mitigate his losses. He testified that he was offered an individual contract by ASR, which he declined. His rationale for not selling his sugar cane outside of an association was because he would lose his bargaining power and the Fairtrade premium. While Mr. Uk's assertions may be true, they do not dispense with his need to mitigate. Any loss he would have suffered could have been sought in damages from the CSCPA.

[31] Mr. Uk has also not provided a satisfactory explanation for why he did not join another sugar cane producer association. Mrs. Yanis' comments, cited in paragraph 22 of this decision, suggest that other associations receive a Fairtrade premium. Mr. Uk did not provide evidence that he would have not been able to receive the same premium if he joined another association.

[32] I also have no evidence before me that Mr. Uk attempted and was refused membership in another association. Instead, Mr. Uk took the position that he could not join another association because he had not "resigned" from the CSCPA. Mr. Uk relies on subsection 35(5) of the Sugar Act in support of his position which provides:

Any cane farmer who desires to change or resign his membership from one association to join another association may do so provided that he changes or resigns his membership before the commencement of the grinding season.

Mr. Uk's reliance on this subsection is misguided. First, the subsection permits a person to join another association if he "changes or resigns". The use of the word "or" signifies that a change does not have to be predicated on a resignation. Second, subsection 35(3) provides for "any person who is a cane farmer and who wishes to become a member of an association" to be accepted as a member within 30 days of his application, if he satisfies the conditions of membership outlined in that association's bylaws. When Mr. Uk was expelled, he ceased to be a member of an association and could rely on subsection 35(3).

## Disposition

[33] It is hereby ordered and declared that:

- a) The decision of the Board of Directors of the CSCPA on the 10<sup>th</sup> November 2019 relieving Mr. Uk of all his duties and responsibilities as a Director of the CSCPA contravened the 2015 Bylaws and is invalid;
- b) The Association shall call a general meeting and hold an election for the appointment of a new Board of Directors in accordance with the 2015 Bylaws within 90 days of 5<sup>th</sup> January 2023.
- c) The decision of the Board of Directors of the CSCPA on the 31<sup>st</sup> December 2019 to expel Mr. Uk as a member of the CSCPA contravened the 2015 Bylaws and is invalid and of no effect;
- d) The CSCPA shall pay Mr. Uk damages of \$9,600 with interest at a rate of 6% per annum to accrue from the date of judgment; and,
- e) The CSCPA shall pay BZ\$12,500 in prescribed costs to Mr. Uk.

**Patricia Farnese  
High Court Judge**