COURT OF APPEALS
DECISION
DATED AND FILED

April 21, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3694

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JOHN F. MALONEY,

PLAINTIFF-APPELLANT,

V.

PORT SUPERIOR MARINA ASSOCIATION BOARD OF DIRECTORS, ROBERT GRAINGER, THOMAS LOVLIEN, MICHAEL SIKORRA, DAN JOHNSON, ROBERT MACLEOD, RON BIERGAUM, CHARLES HOLMES, AND JAMES PASSE,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Bayfield County: THOMAS J. GALLAGHER, Judge. *Affirmed.*

MYSE, J. John Maloney appeals a summary judgment dismissing his complaint. Maloney sought to recover a portion of expenditures assigned to him that were allegedly improperly paid out by the Board of Directors of the Port Superior Marina Association. The expenditure was eventually approved by a vote of the membership. Maloney claims that there is a material

issue of fact with respect to whether the expenditures were ultra vires, and thus incapable of ratification. Maloney also argues that there is a material issue of fact concerning which of the association's bylaws should govern this dispute. This court concludes that the issue raised presents a question of law and that ratification by a vote of the membership was sufficient to authorize the expenditures. This court also concludes that it need not determine under which article of the bylaws the expenditures were authorized because either prior approval of the members was not required or ratification by the membership vote was sufficient to authorize the expenditures. The judgment is affirmed.

The material facts underlying this dispute are straightforward and undisputed. The board authorized approximately $138,000 for legal and technical services without prior approval of the members of the association. After the expenditures were made, three meetings were held in order to win the members' approval. On the third try, over 75% of the members approved.

The trial court granted summary judgment in favor of the defendants. The court concluded that the members properly approved the board's expenditure, reasoning that article 20 of the bylaws did not require prior approval.[1] Alternatively, the court held that the members' vote ratified any unauthorized act. Maloney appeals.

On appeal of a summary judgment, this court applies a de novo review based on the same methodology as the trial court. ***Fritsch v. St. Croix Cent'l Sch. Dist.***, 183 Ws.2d 336, 342, 515 N.W.2d 328, 330 (Ct. App. 1994).

[1] The trial court quoted from article 20, section 8, which states in part: "When the Board of Directors authorize an individual expenditure which exceeds the sum of Three Thousand ($3,000.00) Dollars, said expenditures shall be approved by 75% of the Association Members."

The summary judgment methodology has been repeated often, and need not be repeated here. ***Id***. Summary judgment is appropriate if the proofs show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Section 802.08(2), STATS.

Maloney argues in his pro se brief that "the two failed votes to approve the expenditure may have made retroactive approval ultra vires." This court does not agree. An ultra vires act is one "beyond the scope of the powers of a corporation …." BLACK'S LAW DICTIONARY 1365 (5th ed. 1979). Nowhere in his brief does Maloney dispute the fact that the association had the power to make the expenditures. On the contrary, Maloney argues in his brief that the expenditures were subject to article 12 of the bylaws as capital expenditures, thus admitting that the expenditures were within the scope of the association's powers. Because these expenditures were not ultra vires, the members' approval of them properly ratified any error arising from the failure to get the their prior approval.

This court also rejects Maloney's argument that the initial failure to ratify an allegedly unlawful act of a board "may" make additional ratification attempts ultra vires. Maloney cites to no authority for that proposition. Instead, Maloney refers this court to a section in 18B AM. JUR. 2D *Corporations*, § 1638 (1985), a cite containing no relevance to the present controversy. The Am. Jur. cite refers only to limits on the ability of corporate officers, agents, or interested shareholders to ratify their own unauthorized acts. Because there is no allegation in the present controversy that the board ratified its own act, or that interested members did so, this argument is unpersuasive.

Maloney next argues that the trial court erred because there was a disputed material fact concerning whether the expenditure was a capital

expenditure. If it was a capital expenditure, Maloney contends, article 12 of the bylaws would govern this dispute and require prior approval. This court does not agree that this is either a disputed fact or material. First, the meaning and interpretation of bylaws and their application to undisputed facts presents a question of law. *See* ***Keane v. St. Francis Hosp.***, 186 Wis.2d 637, 649, 522 N.W.2d 517, 521 (Ct. App. 1994). Second, resolution of this legal issue is unnecessary. If article 12 applied and required prior approval, the ratification of this act by 75% of the members validated the expenditure even though the vote was taken after the act. It is well settled law that a corporation or other principal may ratify and thereby render binding upon it the originally unauthorized acts of its officers or other agents. *See, e.g.,* ***Lyons v. Menominee Enters.***, 67 Wis.2d 504, 510, 227 N.W.2d 108, 112 (1975) (a corporation may ratify acts of president and make those acts just as binding as if the power were formally conferred); *see also* 18B AM. JUR. 2D *Corporations* § 1635 (1985). On the other hand, if article 20 applied, the approval by 75% of the members properly validated the act.[2] It is thus immaterial whether article 12 or article 20 applied.

By the Court.—Judgment affirmed.

[2] Maloney does not dispute the trial court's interpretation that article 20 of the bylaws does not require the members' prior approval. Even if he did dispute this, however, the issue is immaterial because the 75% approval vote by the members ratified any failure to comply fully with article 20 in the same way that it ratifies any failure to comply with article 12.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.