

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

**O. C. No. 491 NP of 2011
Control No. 115117**

United States On Leong, Non-Profit Corporation

OPINION SUR DECREE

O'KEEFE, ADM. J.

June 28, 2013

Before this Court is Petitioner's Amended Complaint seeking a declaratory judgment to have Respondents' organization declared subservient to its own organization, injunctive relief to enjoin Respondents from holding themselves out as representatives of their organization and damages for monies that were allegedly improperly collected by the Respondents that was transferred to Orphans' Court from the Trial Division on April 8, 2011. A three day trial was held to decide the matter.

Facts and Procedural History

Petitioner is United States On Leong, a Chinese merchants association incorporated in 2006 and approved to operate in Pennsylvania in 2011. The On Leong Chinese Merchants

Association first formed in New York City in 1893. Thereafter, several other cities started On Leong Chinese Merchants Associations, including Philadelphia in 1905. In August, 2010, the United States On Leong, Petitioner, after an emergency national meeting, removed the elected governing body of the local Philadelphia On Leong, the Respondents, and replaced them with a board of Philadelphia On Leong members that were elected only by the board members of other local On Leongs. Respondents did not accept the actions of Petitioner and have attempted to act as if they were never removed.

There is some confusion regarding the participants as United States On Leong, which was formed in 2006, is headquartered in New York City along with the local New York On Leong that was formed in 1893. United States On Leong purports to be at the top of a hierarchical structure with the local New York On Leong below them, the 13 local On Leong organizations below the local New York On Leong and, finally, sub-chapters below the 13 local On Leong organizations.

This Court is statutorily authorized to grant declaratory judgment and “...shall have the power to declare rights, status, and other legal-relations...[t]he declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.” 42 Pa.C.S. §7532.

For the reasons set forth below, this Court holds that, while the Philadelphia On Leong is part of a loose hierarchy of fraternal organizations, the bylaws governing the organizations appear to be little more than instructive and optional rather than absolute and controlling requirements. Therefore, Petitioner’s request for injunctive relief is denied as this Court was not convinced that the Philadelphia On Leong ever agreed to be bound by the national bylaws or that

the bylaws empowered Petitioner to remove the entire elected board of the Philadelphia On Leong and install a Board of Seven in their place.

The Living Relationship Test

Petitioner relies heavily on the “Living Relationship Test” as providing guidance in the instant conflict. The Living Relationship Test is applied when determining whether a diocese has authority over a local church. *St. John Chrysostom Greek Catholic Church of Pittsburgh v. Nicholas Ilko*, 436 Pa. 243 (1969), *American Carpatho-Russian Orthodox Greek Catholic Diocese of the U.S.A. v. The Church Board of St. Michael’s Orthodox-Greek Catholic Church of Clymer*, 749 A.2d 1003 (2000). This test was created because of the landmines associated with a court potentially trampling on the religious protections provided by the First Amendment and centuries of jurisprudence. None of the First Amendment or ecclesiastical issues that necessitated the creation of The Living Relationship Test are present in this matter. Because none of the On Leong organizations are religious, this Court need be bound only by neutral evidence that is wholly secular in nature and need not be restricted by guidelines set forth in The Living Relationship Test.

Activities Required by the Bylaws

It is without any doubt that the Philadelphia On Leong was a part of a loose hierarchical structure of local On Leong organizations. The Philadelphia On Leong attended national conventions and participated in elections according to prescribed procedures set forth by the

bylaws that appear to have been followed by all of the chapters. Those two things, however, are the only actions that were both required by the bylaws and performed with any consistency by the Philadelphia On Leong. The Petitioner argues that, in addition to attendance at convention and voting rules, the Philadelphia On Leong has consistently performed several other activities that render Philadelphia On Leong subservient to the National On Leong and bound by the bylaws. These activities include:

1. The Swearing of Oaths;
2. Conventions;
3. Oversight of Real Property;
4. Reports on Chapter Finances and Operations;
5. Remittance of Funds and Payments to and from On Leong;
6. Voting; and
7. Discipline.

Brief for Petitioners at 9-10.

1. The Swearing of Oaths

Petitioner claims that every member of On Leong must take the oath prescribed by the bylaws before becoming a member and that taking this oath is an agreement to be bound by the bylaws. During the trial, however, there was no consistent testimony regarding the swearing of oaths. Petitioner's own witness, the corporate designee of the National On Leong, testified that his oath was to "the association," not to either a national or local On Leong. (N.T. July 31, 2012, 217:4 – 227:4). He also testified that this generic oath appeared in several different versions of the bylaws. *Id.* The witness further testified that he had to assume that the oath was to become a member of On Leong because the bylaws did not state the name of the organization. (N.T. July

31, 2012, 225:4 – 225:19). A different witness testified that he took no oath at all. (N.T. Aug. 1, 2012, 8:6-16).

The On Leong organization has existed for decades in over a dozen cities. If the swearing of oaths was a requirement of the bylaws and those bylaws were controlling on the local On Leongs, there should have been an abundance of witnesses available to testify that they took this oath with the knowledge that they would be bound by the bylaws. Instead, this Court heard nothing proving that any oaths were ever taken that bound the oath taker to the bylaws. Further, the informality and genericness of this oath does not give one an impression that the bylaws are anything more than a mere model or template to be used instructionally.

2. Conventions

Petitioners claim that, because the Philadelphia On Leong sent representatives to the National On Leong Conventions, the Philadelphia On Leong has agreed to be bound by the bylaws. There is no doubt that the Philadelphia On Leong participated in national conventions, however, this is only a relevant factor in the application of the Living Relationship Test. As stated above, the Living Relationship Test does not apply in this situation.

If it is to be considered, attendance at a biennial celebration seems more like an event to see old friends and pat each other on the back for work well done within the On Leong organization rather than an onerous situation that is to be endured. Simply attending this celebratory event does not convince this Court that the attendees have all agreed to be bound by the bylaws simply because they attended national On Leong conventions.

3. Oversight of Real Property

Petitioner asserts that the Philadelphia On Leong is bound by the national bylaws because the Philadelphia On Leong consistently sought approval from the National On Leong for any repairs to real estate costing more than \$5,000.00 and that those payments were made through the National On Leong. Again, if the 13 local On Leongs that have existed for decades have been so strictly bound by the bylaws, this Court should have been overwhelmed with evidence of approval requests from the local On Leongs. As it stands, the only evidence presented was a letter sent to the National On Leong, one month before the Board of Seven was installed, complaining that \$7,000.00 was paid for work done on a Philadelphia On Leong property. (N.T. July 31, 2012, 57:7 – 61:21). There was, however, no evidence presented that mentioned whether any attempt to discipline the Philadelphia On Leong was undertaken by the National On Leong for this direct violation of the bylaws. Respondent's witness testified that no approval was necessary for the repairs and this assertion was not challenged during his cross-examination. (N.T. Aug 1, 2012, 95:10-13, 104:16 – 107:25).

The Court was not given any reason to believe that the Philadelphia On Leong ever consistently abided by this requirement of the bylaws to the extent necessary to establish that the Philadelphia On Leong ever behaved as if it were actually bound by the national bylaws.

4. Reports on Chapter Finances and Operations

Petitioner asserts that the Philadelphia On Leong agreed to be bound by the national bylaws because it provided financial reports at the biennial conventions. These reports consist of

membership information as well as income and expenses. (N.T. July 31, 2012, 67:9, 71:13-17). Again, only a limited number of reports were provided. Only reports from 1959, 1969, 1977, 1978, 2006, 2009 and 2010 were offered into evidence. (N.T. July 31, 2012, 197:16 – 198:5). If every local On Leong was so strictly controlled by the bylaws then there should have been pages and pages of financial reports available to be submitted.

Further, providing a record of revenue and expenses related to properties that the National On Leong was already aware of is not of such a confidential nature to potentially give rise to concluding that the submission of these reports somehow rendered the Philadelphia On Leong under the control of the National On Leong.

Regarding the level of control that the National On Leong maintains in relation to these financial reports, this Court directly asked whether the National On Leong would accept “...anything any chapter wants to send in,” and the witness, a former national president of On Leong, answered “yes.” (N.T. July 31, 2012, 76:8-11). This flexibility within the bylaws’ requirement for financial reports, about what is basically known information, convinces this Court that the submission of financial reports to the National On Leong from the Philadelphia On Leong makes the National On Leong appear to be more of a paperwork repository than the head of a hierarchical structure enforcing the controlling bylaws.

5. Remittance of Funds and Payments to and from On Leong

Petitioner claims that the bylaws require the Philadelphia On Leong, as well as all of the other local On Leong organizations, to remit 5% of their gross monthly rentals to the National On Leong, if they can afford it. Deciding whether a local On Leong can afford to pay is,

according to Petitioner's own witness who is the current Assistant Secretary of the National On Leong, left to the local On Leong to decide for itself. (N.T. July 31, 2012, 206:10-20). This same witness testified that he has never seen a local On Leong's decision to not pay overruled by the National On Leong. (N.T. July 31, 2012, 207:15-19).

Such testimony wholly contradicts Petitioner's contention that the requirement of the Philadelphia On Leong to remit funds to the National On Leong rendered it under the control of the National On Leong and its bylaws. Further cementing this Court's belief is, once again, the complete lack of an overabundance of evidence submitted at the trial. If each of the local On Leongs were required to submit monthly remittances multiplied by the number of local On Leongs as well as their decades of existence, there should be no shortage of cancelled checks and bank statements evincing the binding nature of the bylaws requirement of monthly payments. Surely, not all of the local On Leongs decided that they cannot afford to pay most of the time and, if that has been the case, this requirement of the bylaws has been effectively neutered and cannot be said to be controlling.

When compared to what evidence this Court believes should exist regarding monthly payments to the National On Leong and what was offered at trial, the number of cancelled checks was less than de minimis. This is even more so when you consider that most of the checks presented by Petitioner were explained away by witnesses as being money sent by the Philadelphia On Leong to the National On Leong for National to distribute to another local On Leong. (N.T. July 30, 2012, 60:21 – 65:23). This Court was not convinced that the bylaws were controlling in the face of this lack of evidence.

6. Voting

Petitioners claim that the Philadelphia On Leong agreed to be bound by the National On Leong bylaws because it has participated in the voting process provided by those bylaws. Respondents do not challenge the assertion that the Philadelphia On Leong uses the voting procedures in the bylaws. Petitioner's witness, the Assistant Secretary of the National On Leong, testified that each local On Leong votes for president and the person with the most votes is elected the "autonomous president." (N.T. July 31, 2012, 104:4-6). The names of the other candidates who ran but did not win are then sent by the National On Leong to the local On Leong's and then the nine officers and twenty-four senators of each local On Leong vote for what is called the "jointly elected president." (N.T. July 31, 2012, 102:19 – 106:16).

During cross-examination, however, the witness admitted that, if a local On Leong only submits one name for jointly elected president, then that person would be selected as there would only be one person available to receive votes. (N.T. July 31, 2012, 209:10 – 213:21). The witness also testified that, recently, the local On Leongs in Pittsburgh, Cleveland, Detroit and Baltimore all sent in only one name for selection and, in every case, that person was selected as jointly elected president. Allowing the allegedly subordinate local On Leong organization to decide who will be selected greatly diminishes any claim that voting according to the procedures required by the bylaws are controlling because the local On Leong is effectively deciding who will be selected by itself. It appears, once again, that the National On Leong is more of an announcer of events rather than an entity in control of those events.

7. Discipline

Finally, Petitioner argues that the Philadelphia On Leong has agreed to be bound by the national bylaws because all of the local On Leongs have consistently abided by the bylaws rules regarding discipline. Discipline is not really mentioned much in Petitioner's brief which is curious considering that this entire litigation is basically an argument about disciplinary procedures. A witness for Respondents, who has been a Philadelphia On Leong member for 45 years, testified that the Philadelphia On Leong has handled their disciplinary matters themselves. (N.T. July 30, 2012, 51:8-17). He also testified that the National On Leong did not have the right to discipline a Philadelphia On Leong member; rather, National On Leong could only offer advice on the matter. (N.T. July 30, 2012, 51:20-23). Petitioner's witness, an On Leong member for approximately 35 years, was asked if he had any familiarity with the procedures of the National bylaws regarding discipline and he answered that he was aware of the system but had never had any personal experience with it. (N.T. July 30, 2012, 130:25 – 131:8).

The Bylaws

Even if this Court were inclined to find that the national bylaws were controlling on the Philadelphia On Leong, this Court's review of the most recent bylaws found that there is nothing in those bylaws that allows for the wholesale removal of a local On Leong's governing body and the installation of a new, non-temporary body. (*Pet's Ex. P16*). According to the bylaws, a lifetime ban from the On Leong organization and a call to the authorities is the strongest punishment that can be meted out. *Id. at 45*. Additionally, the Board of 7 that was installed to

take the place of the removed Philadelphia On Leong officers was elected using methods that were not provided for under the bylaws' rules on voting or discipline.

Conclusion

If bylaws are to be given any controlling effect, there must be some evidence of consistent enforcement. The United States On Leong, a seven year-old corporation, has not proven to this Court that it has the authority to strictly apply its bylaws to the local On Leong organizations. When it comes to violations of the national bylaws, the evidence presented by Petitioner never gave this Court the impression that it has a history of enforcement on the local On Leongs. Rather, it seems the Philadelphia On Leong obeyed which bylaws it wanted to and ignored the ones it did not and had no trouble doing so for over a century.

It is in the face of this lengthy history that this Court is unable to declare that the Philadelphia On Leong is subservient to the National On Leong or that the Philadelphia On Leong is bound by the national bylaws. It was never shown that the Philadelphia On Leong spent a significant amount of time abiding by the bylaws. Instead, the evidence provided to this Court showed a local merchants association that had never been disciplined by the National On Leong, had never been required to pay dues to the National On Leong and that had voted according to the bylaws but, with a wink and a nudge, selected whomever they wanted for jointly-elected president.

Thus, this Court cannot provide Petitioner with the result it seeks because the Philadelphia On Leong does not appear, either in action or in deed, to have agreed to be bound by the bylaws to such an extent as to allow the National On Leong to remove the elected board

of the Philadelphia On Leong, install a new board without a vote of the Philadelphia On Leong and to begin taking rents from Philadelphia On Leong properties. The remaining open Preliminary Objections and Petitions are hereby denied as moot as the decision provided in this Opinion decides the issues included therein.

O'KEEFE, ADMIN J.

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