

CHEN V. TAIPEI AMERICAN SCHOOL FOUNDATION

SUMMARY AUTHORED BY DANIEL G. MACKRIDES

C.A. No. 2021-0926-MTZ

January 27, 2023

**Key Takeaway:** *Members of nonstock corporations enjoy the same protections of their right to vote on matters regarding the corporation's bylaws under DGCL § 109(a) as those of stock corporations.*

In *Chen*, the plaintiff, Randy Chen—a general member of the Taipei American School Foundation (the “Foundation”), a nonprofit, nonstock corporation—sued the Foundation and its current and former directors for amending the charter in a manner which violated the general members’ voting rights under Section 109 of the Delaware General Corporation Law (“DGCL”). The defendants moved to dismiss, asserting that the amendment complied with Section 109 because the directors as special members could vote on the bylaws. Vice Chancellor Morgan T. Zurn concluded that the plaintiffs properly stated a claim that the amendment in question violated DGCL § 109(a) by divesting the general members of their right to vote on the bylaws.

The Foundation is a nonprofit corporation incorporated in Delaware in 1971 for the purpose of overseeing schools—specifically the Taipei American School. The Foundation’s original certificate of incorporation provided that members voted for directors and that directors could make, alter, or repeal the bylaws, without expressly authorizing members to vote on the bylaws. Over several decades, the Foundation’s board exercised its power to amend its governing documents, leading to the 2019 amendments at issue.<sup>1</sup> These 2019 amendments defined the non-director parents as general members without the power to amend the bylaws but left them power to vote for special members. They defined directors as special members with sole power to vote on bylaws.

In 2021, Chen sent a letter to the chair of the Foundation’s board asserting that the 2019 amendments contravened the will of the general members, disenfranchising them in violation of Delaware Corporate Law. Chen requested that the Board repeal the 2019 amendments, amend the bylaws to restore general members’ voting rights, and hold a meeting for

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<sup>1</sup> Of note, 2013 amendments to the bylaws created general and special member roles and gave the general members express power to vote on the bylaws. *Chen*, 47 DEL. J. CORP. L. at 483.

the general membership to vote on such amendments. The board rejected this request. Litigation followed.

Chen asserted two claims: 1) that defendants breached their fiduciary duties to him as a general member; and 2) that defendants violated 8 Del. C. § 109(a).<sup>2</sup> Chen sought both declaratory and injunctive relief. The defendants moved to dismiss under 12(b)(6).

The operative section of DGCL § 109(a) reads, “In the case of a nonstock corporation, the power to adopt, amend or repeal bylaws shall be in its members entitled to vote.”<sup>3</sup> Chen argued that the operative language entitled any member of the Foundation the right to vote on *anything* also enjoys the right to vote on bylaws. Conversely, the defendants argued that “members entitled to vote” in the statute referred only to those members entitled to vote on the bylaws. The Court, relying on a plain-text reading, sided with Chen, stating that the meaning of entitled to vote was, “entitled to cast a ballot, full stop.” The court reasoned that this interpretation was consistent with established Delaware caselaw that emphasizes the importance of the stockholders’ right to vote.<sup>4</sup> Acknowledging the nonstock nuance of the Foundation, the court stated that DGCL § 109(a) employs the same “entitled to vote” language for stock and nonstock corporations. Further, the court analyzed that the ability to vote on bylaws is even more important for voting members of nonstock corporations if the boards of those corporations do not owe fiduciary duties to those members. Finally, the Court found other differences between stock and nonstock corporations unavailing, instead returning to the unambiguous interpretation of the language of DGCL § 109(a).

Members of a nonstock corporation who are “entitled to vote,” are entitled to vote on the bylaws. “Entitled to vote,” means entitled to vote on *anything*. Throughout the many bylaw amendments in the Foundation’s history, the general members of the Foundation always maintained the right to vote on *something*’—nonvoting membership never existed. Therefore, the attempt to deprive those general members—and the plaintiff in the instant case—is a valid violation for which to plead a claim. Vice Chancellor Zurn therefore denied the motion to dismiss in part as to Count II against most of the directors of the Foundation.<sup>5</sup>

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<sup>2</sup> The court asked for separate briefing for Count I and only considered Count II.

<sup>3</sup> 8 Del. C. § 109(a).

<sup>4</sup> *E.g.*, *Jana Master Fund, Ltd. v. CNET Networks, Inc.*, 954 A.2d 355, 339 n.16 (Del. Ch. 2008) (“To the extent there is any ambiguity in interpreting bylaws, doubt is resolved in favor of the stockholders’ electoral rights.”) (internal quotation marks omitted) (collecting authorities).

<sup>5</sup> The motion was granted as to four directors whom plaintiff did not allege held director status when the 2019 amendments passed.