

CERTIFIED TRANSLATION FROM POLISH

Case Rec. No.: 36312/16/892
Date of decision issuance: 04.01.2017

Court Rec. No.: KR XI Ns Rej KRS 36312/16/892
KRS [*National Court Register*]: 383669

DECISION

Date: 04.01.2017

District Court for Kraków-Śródmieście in Kraków, 11th Commercial Division of the National Court Register

The Presiding Judge: Małgorzata Szmudzińska, Judge of the District Court

Recording Clerk: personally

having examined on 04.01.2017 in Kraków,

during a closed door hearing,

the case initiated by: Stowarzyszenie Beit Kraków [*Beit Association Kraków*] with its registered office in Kraków

for an entry of changes

has decided to:

refuse David Tilles, Barry Smerin, Estera Stopińska, Karolina Chmielewska, to participate in the case in the capacity of participants of the proceedings.

Grounds

On 28 October 2016, Members of the Management Board of Stowarzyszenie Beit [*Beit Association*] with its registered office in Kraków, who had been dismissed, i.e. David Tilles, Barry Smerin, Estera Stopińska, Karolina Chmielewska, files an application to be allowed to participate in the proceedings initiated by the motion of Stowarzyszenie Beit [*Beit Association*] with its registered office in Kraków, represented by its Management Board through Magda Rubinfeld-Koralewska, Aneta Kuberska, Marta Kalamar, for an entry of changes into the register.

Pursuant to Decision of 10.11.2016, the Court Clerk refused the former Members of the Management Board to participate in the proceedings, stating that former Members of the Management Board have no legal interest to participate in the proceedings, since its result establish their rights, but the resolutions of the General Meeting of Members.



The said decision was appealed by the dismissed Members of the Management Board demanding being allowed to participate in the case. In the grounds to the appeal, they stated that the proceedings concerning the entry in the register concern their rights, and - since they have no other means at their disposal to prevent invalid (in their opinion) resolutions of the General Meeting of 9.10.2016 from being adopted - only in this way are they able to eliminate invalid resolutions from approval.

Lodging of an appeal to the decision of the Court Clerk caused that decision to lose its validity and the case had to be reconsidered.

The Court considered as follows:

At each stage of the case, the Court has to take care of the subject party to the proceedings. Such care is expressed in refusing to allow those persons who are not interested in the case to participate and to call the persons who have not participated in the case yet, while they have legal interest to participate.. The aim of such procedure is to avoid rash inclusion of persons quoting their personal interest in the case in the proceedings (compare Decision of the Supreme Court of 10 July 1997 I CZ 82/97).

The circle of participants of given proceedings is determined by substantive law and rights derived from it.

The circle of participants of given proceedings is determined by exactly on the basis of the legal relationship type. The registration procedure these proceedings refer to is governed in Article 694 and subsequent articles of the CCP and constitutes a special type of non-litigation proceedings. This special type of proceedings determines also a specific circle of its participants. Registration procedure concerns the entity subject to the entry in the Register (registered entity). In such procedure, the indispensable participant is always the registered entity, even if it is not the applicant itself (Article 694³ of the CCP). Consequently, in order for a person or an organisational unit with legal capacity provided for in relevant regulations to be deemed an an interested party within the meaning of Article 510 & 1 of the CCP and to participate in the proceedings in the capacity of a participant, the result of such proceedings must cause legal consequences in the area of their rights and duties (compare Resolution of the Supreme Court of 19.10.2000 III CZP 20/00, OSNC 2001/2/260).

It means that a former, dismissed member of the management board cannot be a participant of such proceedings, due to the very fact that the proceedings concern the registered entity - the association - and its does not affect the direct legal capacity of former members of the board. Different interpretation would be contrary to Article 694³ & 1 and 2 of the CCP and would lead to the conclusion that former members of the management board, former partners, shareholders of joint-stock companies, as well as current members of the association, cooperative, partners and shareholders of companies could become participants to the proceedings. And, pursuant to the quoted Article 510 & 1 of the CCP, the interested parties of the case are all those parties whose rights the proceedings concern. Thus, holding only a legal interest, which can be indirect, not economic or actual, and even substantive, constitutes a premise of participation in given proceedings in the

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capacity of a participant. However, as it was mentioned above, in order to participate in the registration procedure in the capacity of a participant, the result of such procedure must concern one's own matters. In this case, it is not the result of the court proceedings that modifies (establishes, amends, divests) in any way the legal capacity of former members of the management board, but legal action in the form of resolutions adopted by the General Meeting of Members of the Association of 9.10.2016. Besides, the very entry of changes in the personal composition of the management board is only of disclosing nature and reflects the resolutions of the association's body, i.e. the General Meeting of its Members. Legal status of persons holding functions in the bodies of legal persons results from common law regulations, its statutes or articles of association and relevant resolutions. It seems that former members' application to participate in the proceedings was caused by their different assessment of the effectiveness of the resolutions adopted by the General Meeting of Members of the Association on 9.10.2016, which were - according to them - invalid, since contrary to the statutes or regulations of the management board operation in the scope concerning the procedure of calling the General Meeting (by 3 members, not just one). However, questioning of the resolutions adopted by the Association, including its General Meeting, may be only performed in the mode of negotiations to be conducted pursuant to the Law of 7.04.1989 on associations, uniform text Journal of Laws of 2015, item 1393. 1923, i.e. Article 29(1) of the Law. It provides for the right on part of the supervising body or a prosecutor to apply to the court to issue a reprimand to the association's bodies, to demand from them to repeal a resolution which is illegal or contrary to the statutes, or even to demand the association to be dissolved.

Taking into consideration the circumstances, it was adjudicated as in the sentencing part, pursuant to Article 510 & 1 of the Code of Civil Proceedings.

*[A round red ink seal with the Polish national emblem in the centre and a circumscription reading:
DISTRICT COURT FOR KRAKÓW-ŚRÓDMIEŚCIE IN KRAKÓW]*

*[A rectangular red ink seal with the content reading:
Relevant signatures on the original.*

Certified to be a true copy.

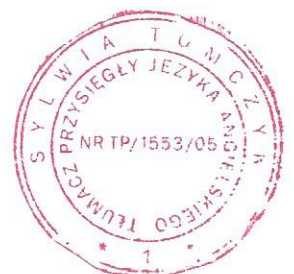
Bożena Towarek

Senior Court Clerk]

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District Court for Kraków-Śródmieście in Kraków
11th Commercial Division of the National Court Register

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Register A No. 86 / 2017

I, the undersigned, Sylwia Tomczyk M.A., a Sworn Translator entered in a register of sworn translators kept by the Minister of Justice under no. TP/1553/05, do hereby certify that the above translation is consistent with the original Polish document.

Pszów, 02.02.2017

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