

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

J. MICHAEL BRANDON, an individual;  
and MARY J. BRANDON, an individual,

Plaintiffs,

Case No. 13-10843-NZB

vs.

HON. CHRISTOPHER P. YATES

ADMINISTRATION SYSTEMS RESEARCH  
CORPORATION INTERNATIONAL, a  
Michigan corporation,

Defendant.

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OPINION AND ORDER GRANTING IN PART, AND DENYING IN PART,  
PLAINTIFFS' MOTION FOR ADVANCEMENT OF FEES AND COSTS

This case flows from an underlying lawsuit initiated against J. Michael Brandon and Mary J. Brandon based upon alleged misconduct in operating Administration Systems Research Corporation International (“ASRCI”). See Todd Alan Stacy v J. Michael Brandon, *et al*, 17th Circuit Court Case No. 12-11945-NZB. In the instant action, the Brandons demand that ASRCI provide them with indemnification and reimbursement of their costs, attorney fees, and expenses incurred in defending the underlying lawsuit. Although the Brandons acknowledge that they are entitled to indemnification only if they prevail in the underlying lawsuit, they now request an advancement of their costs, attorney fees, and expenses.

The Brandons’ claim for indemnification and litigation expenses is based upon the bylaws of ASRCI. Under Michigan law, “[t]he bylaws of a corporation, so long as adopted in conformity with state law, constitute a binding contract between the corporation and its shareholders[.]” see Allied Supermarkets, Inc v Grocer’s Dairy Co, 45 Mich App 310, 315 (1973), and “[t]he bylaws may contain

any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.” MCL 450.1231. Under the Michigan Business Corporation Act (“MBCA”), MCL 450.1101, *et seq*, a corporation may indemnify its officers, directors, or employees for costs, attorney fees, and expenses incurred when threatened with litigation related to the affairs of the corporation. See MCL 450.1561. Here, ASRCI chose to include the following indemnification provision in its bylaws:

The corporation shall indemnify any Director or officer, or former Director or officer of the corporation . . . against reasonable expenses, including attorneys’ fees, actually and necessarily incurred by him in connection with the defense of any civil, criminal or administrative action, suit or proceeding in which he is made a party . . . by reason of being or having been or because of any act as such Director or officer, within the course of his duties or employment, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties.

See Complaint, Exhibit A (Bylaws of Administration Systems Research Corporation International, Art VII). The Brandons argue that this provision entitles them to reimbursement and advancement of their litigation expenses incurred in the underlying lawsuit.

To resolve this issue, the Court must consider the provisions of the MBCA and the bylaws of ASRCI. “The fundamental goal of contract interpretation is to determine and enforce the parties’ intent by reading the agreement as a whole and applying the plain language used by the parties to reach their agreement.” Dobbelaere v Auto-Owners Ins Co, 275 Mich App 527, 529 (2007). Likewise, the “goal of statutory interpretation is to determine and give effect to the intent of the Legislature[.]” Id. at 529-530. In both contexts, when the language is clear and unambiguous, the Court must enforce the statute or contract as written. Driver v Naini, 490 Mich 239, 247 (2011); Rory v Continental Ins Co, 473 Mich 457, 468 (2005). Here, the Court finds that the indemnification provision in ASRCI’s bylaws, coupled with the language of the MBCA, does not require ASRCI to advance the Brandons’ litigation expenses.

Under the MBCA, a corporation may require advancement of litigation expenses in its bylaws. See MCL 450.1564b(1). Further, the MBCA requires advancement of litigation expenses regardless of an express advancement provision in the bylaws if those bylaws make indemnification mandatory. See MCL 450.1564b(4). But here, the ASRCI bylaws do not contain an advancement provision, and the indemnification provision is not mandatory because it requires ASRCI to pay the Brandons' reasonable litigation expenses only if the Brandons are not adjudged "to be liable for negligence or misconduct in the performance of [their] duties." See Complaint, Exhibit A (Bylaws of Administration Systems Research Corporation International, Art VII). Thus, the Brandons do not enjoy any automatic right of advancement.

But the Brandons are entitled to recover the expenses they have already incurred in connection with their successful defense against several claims in the underlying action. The ASRCI bylaws require indemnification of a director or officer "except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties." See Complaint, Exhibit A (Bylaws of Administration Systems Research Corporation International, Art VII). This phrase distinguishes a "matter" from an "action," indicating that a "matter" must be considered a subpart of an "action." Therefore, the Brandons may seek reimbursement for their expenses as to each individual claim in the underlying complaint upon which they prevail. Although the underlying case is still in progress, the Brandons have already defeated several of the claims against them, see Opinion and Order Granting In Part, and Denying In Part, Defendants' Motion for Summary Disposition (17th Circuit Court Case No. 12-11945-NZB), so ASRCI must indemnify the Brandons for the expenses already incurred in defeating those claims.

In sum, the Court concludes that the Brandons are not entitled to an advancement of litigation expenses, but ASRCI must reimburse the Brandons for the expenses already incurred in connection

with the Brandons' successful defense of a portion of the claims against them. The Brandons are invited to file an itemized request for reimbursement of expenses they have already incurred, and if that request is challenged, the Court will set the matter for an evidentiary hearing. See B&B Investment Group v Gitler, 229 Mich App 1, 15-17 (1998). The Court notes, however, that the Brandons will only be able to recoup expenses incurred in the successful defense of claims against them. Thus, the Court will not yet award the Brandons any expenses incurred in connection with their efforts to defeat claims that have not yet been dismissed or any expenses incurred by other defendants in the underlying matter.

IT IS SO ORDERED.

Dated: February 25, 2014



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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge