

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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Ethylon B "E.B." Brown, Benjamin E. Myers,  
Robert "Bob" Scott, Shannon Hartfiel, Robert  
Wilson, William J. Brown, Dokor Dejvongsa,  
Steve Jackson, DeEtte Davis, Tamara Hardy,  
Lafayette Butler, Jernel McLane, Frank Essien,  
Kenya Weathers, and Jerry Moore,

Plaintiffs,

v.

**ORDER**

27 CV 09-2277

Michael "Kip" Browne, P.J. Hubbard, Robert  
Hodson, Anne McCandless, Don Samuels (in  
his individual and official capacities), Barbara  
Johnson (in her individual and official  
capacities), Michael Martin (in his individual  
and official capacities), City of Minneapolis,  
Minnesota, Stacy Sorenson, an Unknown  
Minneapolis "City Attorney John Doe  
Defendant #1," and John Does 2-5,

Defendants.

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The above-entitled matter came before Judge Charles A. Porter, Jr. on May 12, 13, 18,  
19, 20, 22, 26, 27, and June 1, 2009 for an evidentiary Temporary Injunction hearing.

Jill Clark, Esq. appeared for the Plaintiffs. David Schooler, Esq. and Tara Reese  
Duginske, Esq. appeared for Defendants Browne, Hubbard, Hodson, McCandless, and  
Sorenson. Albert Goins, Esq. appeared as associate counsel for the same Defendants.  
Defendants City of Minneapolis, Don Samuels, Barbara Johnson, and Michael Martin  
took no part in this hearing.

Based upon the evidence adduced, the argument of counsel, and all of the files, records,  
and proceedings herein,

THE COURT FINDS:

**Facts**

1. The dispute at issue in the temporary injunction hearing arises out of a  
disagreement over which individuals are the properly-elected officers of JACC, as  
between the group elected on November 12, 2008 and the group elected January

14, 2009. To avoid potential "Brown" and "Browne" confusion, the group of E.B. Brown, Benjamin Myers, Bob Scott, and Shannon Hartfiel is hereafter referred to as the "Myers Board" or the "Myers officers," and the group of Kip Browne, P.J. Hubbard, Robert Hodson, and Anne McCandless is hereafter referred to as the "McCandless Board" or the "McCandless officers."

2. This Court previously denied Plaintiffs' motion for a temporary restraining order but allowed the Plaintiffs to pursue a temporary injunction if they wished.
3. JACC is a neighborhood non-profit corporation, receiving major funds from the Minneapolis Neighborhood Revitalization Project ("NRP"), and also receiving funds from the Minneapolis Community Planning and Economic Development Agency ("CPED"), General Mills, McKnight, Otto Bremer Foundation, and St. Paul Foundation. NRP and CPED are affiliated with the City of Minneapolis. The other funders are private entities.
4. There is a history of strong contention within the JACC membership. Two groups with different philosophies are vying for control of JACC. The Myers Board and Benjamin Myers received many grievances from JACC members.
5. The content of the JACC by-laws is undisputed. The by-laws provide, in relevant part, as follows:
  - Art. III, §1: The general membership meeting in October shall be considered the Annual Business meeting. . . . Voting shall be held on offices available for election.
  - Art. V., §1(a): The Board of Directors shall be responsible for appointing officers of the organization, overseeing day-to-day business, setting and reviewing policies, preparing meeting agendas, approving expenditures within the limits of the budget, approving plans of work for standing and special committees and other duties which normally fall to a Board of Directors.
  - Art. V., §1(b): The Board of Directors shall be representative of the organization and therefore its actions shall be binding on the organization.
  - Art. V, §1(c): Directors shall serve a period of two years and will be elected at the General Membership meeting in October.
  - Art. V., §3(a): The Nominating Committee will be made up of at least three members of the Board of Directors and may include non board members of JACC. The members and chair of the Nominating Committee will be chosen by the Board of Directors and shall convene each year after the August Board of Directors meeting in order to

research and recommend, at the October Board of Directors meeting, a slate of candidates for election to the Board. . . . The Nominating Committee shall notify the membership by mail at least five days before the annual business meeting of the candidates for office. . . .

- Art. V, §3(d): Directors shall be installed at the first Board meeting in November. All Board members shall serve 2 year terms, but are eligible for re-election.
  - Art. V., §4: Any member of the Board of Directors may be removed from office “with cause”, provided that the following steps are taken in succession: [a resolution is passed by majority vote at a Board meeting, then all Board members are notified, then two-thirds of the total membership votes at a Board meeting to remove, all done at least one month apart].
  - Art. VI., §1(a): The Chair shall . . . be an ex officio member of all other committees except the Nominating Committee. . . .
  - Art. VI., §2: All officers shall be elected annually by the Board of Directors at the October Board meeting. No member of the Board of Directors shall serve more than two consecutive years in the same office. The outgoing Chair shall maintain his/her full Board status while serving ex-officio for a period of one year. . . .
  - Art. VI., §3: A Board officer may be removed from office, “with cause”, by a two-thirds vote of the total membership of the Board of Directors following the procedures set forth in Article V, Section 4 Removal.
6. The 2008 annual Board meeting was held on October 23, 2008. On that date, Kip Browne, as chair of the nominations committee, raised his concerns about the integrity of the nominations process. The membership voted to continue the elections. JACC voted by majority to postpone elections for the Board of Directors until January 12, 2009. Voting on officer elections was postponed to the November 2008 meeting. The written by-laws were not amended.
  7. Article V, §2(a) of the by-laws requires that JACC have a minimum of 5 and a maximum of 15 Board members at any given time. In October 2008, there were three seats whose terms were to expire before the new director election took place.
  8. After October 23, 2008, the next meeting of the Board was held on November 12, 2008. At the November 12, 2008 Board meeting, the then-chair, Benjamin Myers, chose to fill the three expiring seats rather than leave them open, and chose to fill them by election rather than by appointment. At the time these seats

were temporarily filled, there were still at least 8 other active Board members—more than the minimum 5 required under the by-laws.

9. The Myers Board also held an election of officers on November 12, 2008, which resulted in the Myers officers being elected. Benjamin Myers became the immediate past Chair. Under article 6, section 2 of the by-laws, as the immediate past Chair, Myers became an *ex officio* Board member.
10. On January 12, 2009, as approved in the October 2008 annual meeting, JACC held elections for the six open Board positions. Elected to fill the six vacancies were: Todd Heintz, Vladimir Monroe, Robert Hodson, Tyrone Jaramillo, Anne McCandless, and David Haddy (as a whole, hereafter, “the McCandless Board”).
11. On January 14, 2009, the McCandless Board held its first monthly board meeting. At the January 14, 2009 meeting, the McCandless Board voted to re-open the officer elections, and voted the McCandless officers in to replace the Myers officers.
12. As the January 14, 2009 meeting wrapped up, an altercation broke out between JACC Executive Director, Jerry Moore, and JACC Board member, Dennis Wagner. It began as a verbal dispute, then Wagner pushed Moore, and Moore shoved JACC member Megan Goodmundson. PJ Hubbard tried to intervene; Moore punched Hubbard with a closed fist in return. The McCandless Board soon voted to terminate Moore for cause because he threw the punch.
13. On January 15, 2009, McCandless organized a telephonic meeting of the McCandless Board, with the approval of McCandless Board Chair Kip Browne, for the primary purpose of discussing changing the signatories on the JACC checking account to remove Benjamin Myers and add McCandless Officers. The McCandless Officers were concerned that JACC money might otherwise be improperly spent because the JACC checkbook could not be found, and because they had concerns about the Myers Officers mismanaging JACC funds.
14. On or about January 26, 2009, the signatories were changed on the JACC checking account and the McCandless Officers began writing checks on the account to pay certain outstanding bills. The checks written by the McCandless Officers were not all specifically designated to the funding source. The McCandless officers are critical of the Myers officers for not paying bills on time; the Myers officers are critical of the McCandless officers for paying bills without having properly-designated money.
15. Thereafter, the McCandless Board held regular monthly meetings. Perhaps the most significant decision the McCandless Board has made that is in conflict with the Myers Board’s principles is to adopt the Minneapolis Advantage Program, which involves a \$5,000 grant for downpayment assistance for people buying vacant or foreclosed homes and staying five years. The Myers Board had

objected to this program because it required the buyers to have "A-rated" credit, which they believed was the City's using an inequitable tool in an attempt to "re-gentrify" the Jordan neighborhood. The debate over whether to adopt the Advantage Program was a source of great tension within JACC and highlighted a fundamental difference between the two groups.

16. Members of the Minneapolis City Council and the Minneapolis Police Department have recognized the McCandless Officers as the properly-elected officers of JACC.
17. After the January 14, 2009 meeting, certain JACC property became missing. The property includes a JACC checkbook, computers, a printer, and certain business documents (such as donor contracts). Benjamin Myers wrote two checks on the JACC account after January 14, 2009.

#### **A Temporary Injunction is Denied**

18. Plaintiffs now request a temporary injunction reinstating the Myers Officers and voiding all meetings and other actions taken by the McCandless Officers, most notably, the termination of Jerry Moore's employment as JACC Executive Director.
19. The Plaintiffs seek relief under Minn.Stat. §317A, which governs non-profit corporations. Section 317A.751, subd. 1 allows the court to grant equitable relief "it considers just and reasonable in the circumstances." The court may also dissolve the corporation and liquidate its assets. *Id.* Because this case has not yet reached a trial on the merits, the Plaintiffs are seeking temporary equitable relief. A party seeking temporary equitable relief must satisfy the *Dahlberg* analysis. Minn.R.Civ.P. 65.01; *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965); see also *Dodge v. Cedar-Riverside Project Area Committee*, 443 N.W.2d 844, 846-47 (Minn.App. 1989), *rev. denied* Sept. 27, 1989.
20. Courts weigh the following five factors in determining whether to issue a temporary restraining order: 1. the nature of the parties' relationship prior to the current dispute; 2. the balance of the relative harms if the relief is granted or not; 3. the moving party's likelihood of success on the merits; 4. public policy; and 5. administrative burdens on the court in supervising and enforcing the order. *Dahlberg* at 321-22. Here, an analysis of the *Dahlberg* factors weighs against issuing a temporary injunction.
21. The facts presented at the temporary injunction hearing add depth and clarification to the record, but are not materially different from those presented at the TRO stage of this litigation. The Court adopts the *Dahlberg* analysis done in the TRO Order and reaches the same conclusion.

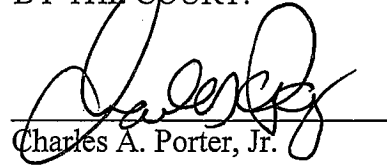
22. A temporary injunction should be denied, and the acts of the McCandless Officers should not be voided at this stage. This case should proceed to a trial on the merits.

IT IS ORDERED:

1. Plaintiff's Motion for a Temporary Injunction is hereby **DENIED**.
2. A conference call in this case is scheduled for **Tuesday, July 28, 2008 at 8:45 am**. All active counsel in this case shall participate. Plaintiff's counsel shall initiate the call, having brought all active counsel on the line, to 612-348-8150. If Plaintiff's counsel is unable to initiate the call, the parties may designate other counsel to do so.

Dated: 7-10-09

BY THE COURT:

  
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Charles A. Porter, Jr.  
Judge of District Court