Court File No.: 17-71275

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

JANE CARDWELL

Plaintiff

- and -

ANANDA MARGA CANADA, ~~MEHOOL DAVE~~, ~~AWDHESH PANDEY,~~ PRAMOD KUMAR BISWAS, ACHARYA VIMALANANDA AVADHUTA, DIDRIK SVEINN BOGASON, TOM LAVRIH, ~~L. MICHAEL HEMMELGARN and JOHN DOE~~ ACARYA ABHIRAMANANDA AVADHUTA, and ANDRII GOLOVINIA

Defendants

AMENDED STATEMENT OF CLAIM
(Notice of Action issued on January 12, 2017)

CLAIM

1. The Plaintiff claims from the Defendants the following relief:

   a) An order amending the articles of Ananda Marga Canada (AMC) reinstating the provisions contained in the original letters patents of AMC (or its predecessor) dated May 18, 1973, subject to the requirements of the *Canada Not-for-Profit Corporations Act*;

   b) An order amending the by-laws of AMC reinstating the provisions of the original by- laws of AMC (or its predecessor) dated May 18, 1973, subject to the requirements of the *Canada Not-for-Profit Corporations Act*;

   c) An order rectifying the members register of AMC recognizing all those persons who presently qualify as members of AMC pursuant to the provisions of the original letters patent and by-laws of AMC (or its predecessor) of May 18, 1973.

d) An order revoking the purported election and/or appointment of those persons currently serving as Officers and Directors of AMC;

e) An order that all those persons who presently qualify as members of AMC pursuant to the provisions of the original May 18, 1973 letters patent and by-laws take immediate steps to convene a meeting of the members to elect Officers and Directors of AMC;

f) A temporary order enjoining AMC from selling, transferring or otherwise dissipating its assets until a final determination of the within application is made;

g) Costs on a full indemnity basis; and

h) Such further and other relief as this Honourable Court may deem just.

2. The Plaintiff is a former member, director and officer of the AMC (and its predecessor).

3. AMC is a not-for-profit federally incorporated organization, Corporation number 010141-9, that is now governed by the *Canada Not-For-Profit Corporation Act* and having its registered office in the City of Brampton, in the Province of Ontario.

4. The Defendants, ~~Mehool Dave, Awdhesh Pandey,~~ Acarya Abhiramanada Avadhuta, Andrii Golovnia, Pramod Kumar Biswas, and Didrik Sveinn Bogason are individuals purporting to be the current Officers and Directors of AMC.

5. The Defendant Tom Lavrih resides in the City of Toronto and at all relevant times was an officer (Vice-President) and Director of AMC.

~~6. The Defendant L. Michael Hemmelgarn is an American citizen who at all relevant times was a member, Officer and Director of Ananda Marga Inc (USA).~~

~~7. John Doe is any other member, Officer or Director of AMC who assisted with the passage of AMC's 1998 supplementary letters patent, by-laws and amendment to by-laws or any person who may become a director during the course of this action.~~

8. The Plaintiff states that AMC, then known as Ananda Marga Yoga Corporation, was first incorporated as a not-for-profit corporation in or about May, 1973.

9. The Plaintiff states that AMC's predecessor organization applied for letters patent which set out the objects of the non-for-profit corporation to be as follows:

a) To propagate the philosophy and practices of yoga;

b) To work for the development of a universal corporation and welfare of human beings through

1. Literacy drive;
2. Social services and reforms;
3. Relief work among suffering humanity;
4. Encouraging the literary and artistic faculties in people;
5. Spiritual, moral and cultural upliftment;
6. Development of integrated human personality embracing all spheres of life;

c) To exert all resources for the cause of peace, security and universal fraternity;

d) To work for the benefit of mankind without any distinction of caste, creed, religion or nationality and to help the Government in all its constructive and welfare activities;

e) To raise funds for the activities of the Society through legal appeals for charity, donations or otherwise;

f) To print, publish and distribute spiritually-oriented books and literature and to manufacture and distribute various spiritual condiments such as incense, oils, etc.;

g) To purchase, rent, lease and otherwise acquire houses and other buildings for the Corporation purposes and objects of the Society.

10. When AMC's predecessor was incorporated, it passed a May, 1973 by-law that referenced the rights and obligations of the organization's members, officers and directors. A member was defined to mean any one that follows the ideals of the organization,

performs its practices and was recognized as members by the Board of Directors. Membership was only to cease in the event the member chose to resign or ceased to participate in the activities or follow the ideals of the organization. All members were voting members at special and/or general meetings.

11. The May, 1973 by-law provided that the affairs of the organization were to be managed by a Spiritual Director and Board of Directors. The Directors were to be elected by members at an Annual General Meeting. Members were to be given at least 4 weeks notice of an annual general meeting. As well, if a special meeting was necessary then members were to given at least 7 days notice.

12. The Plaintiff was a member of AMC (and its predecessor organization) from 1977 onwards. In or about 2001, the Plaintiff became an Officer (Vice-President) and Director of AMC and served in that position until she took on the Presidency of AMC in or about March, 2014.

13. In or about November, 1998, the Defendant Lavrih applied on behalf of AMC (or its predecessor) to Industry Canada for the supplementary letters patent to change the objects of the organization. At about the same time the Defendant Lavrih also applied to Industry Canada for approval of an amended by-law for the organization.

14. The Plaintiff states that on or about November 30, 1998, Industry Canada notified the Defendant Lavrih that it was prepared to accept the proposed by-law amendment for the organization but only with proof that the amendment had membership approval. Industry Canada required that the proposed amended by-law and supplementary letters patent be approved by a 2/3 vote of the organization's membership.

15. On or about December 22, 1998 the Defendant Lavrih filed a Statutory Declaration with Industry Canada deposing that the Board of Directors of the predecessor organization of AMC had duly enacted a new set of by-laws dated July 1, 1998 and addendum to by-law dated October 15, 1998. In addition, the Defendant Lavrih deposed that the new by-laws and addendum to by-laws were approved at a special meeting of the members where the vote was 100% in favour. Further, the Defendant Lavrih deposed that proper notice of the special meeting had been given to the members as required by the then existing by-laws of the organization.

16. The 1998 new by-laws and amendment to by-laws fundamentally changed the structure of AMC (and its predecessor organization). The Sectorial Secretary, appointed by Ananda Marga Pracaraka Samgha (AMPS) of India, as head of the entire North American Continent, now alone had the power to suspend and remove any Director or Officer of AMC, with or without cause. The voting membership was reduced to only those few individuals on the Board of Directors. Effectively, the general membership was eliminated. General members lost their rights to vote with respect to the activities of AMC (and its predecessor organization). Furthermore, in Canada, the board members could no longer elect candidates of their choosing. They could only elect new board members from a list of candidates selected by a selection committee of three persons, the SS and two Regional Secretaries. All three of these positions are appointed by AMPS (India).

17. On or about October 1, 2014, the Plaintiff was removed by the SS as an Officer (President) and Director of AMC.

17A. Until her removal in October of 2014, Cardwell had no reason to suspect any fraudulent implementation of the corporation's bylaws.

17B. Following her removal from AMC's Board in the fall of 2014, Cardwell began to investigate the way by which AMC's by-laws had been amended in 1998.

17C. While it is true that Cardwell assumed the position of Vice-President in 2001, Defendant Lavrih provided Cardwell with only a portion of his AMC files.

17D. The files provided to Cardwell by Lavrih disclosed nothing about the 1998 bylaw implementation, nor did it include Lavrih's correspondence with Industry Canada, nor anything related to it.

17E. Accordingly, in the fall of 2014, Cardwell filed a request with Industry Canada, asking for all documents and correspondence which they had in their records, related to the corporation.

17F. Cardwell received a response to her request in late 2014. It was via this disclosure that Cardwell first saw the letters, which Industry Canada had sent to Defendant Lavrih in November 1998, at his home address, advising him that:

a. His request for supplementary letters patent with respect to the change of objects of the corporation could not be approved;
b. He needed to follow the guidelines as stated in the kit on Supplementary letters patent;
c. Industry Canada required a copy of the by-laws that had been passed by 2/3 of the members and not just approved by the directors;

d. The by-law amendments enacted by the directors on October 15, 1998, were acceptable and had received Ministerial approval to be effective on November 19, 1998, conditional on membership approval on that date;

e. If membership approval was not obtained, then Ministerial approval would not take effect; and

f. Industry Canada was to be given written confirmation of membership approval as quickly as possible.

18. On or about January ~~14~~ 15, 2015, Cardwell telephoned the Defendant Lavrih, who informed the Plaintiff that:

a) On or about November 30, 1998, Lavrih received - at his home - a letter from Industry Canada, advising him that, in order to amend the organization's bylaws, a meeting and vote of general members was required;

b) Sometime shortly following his receipt of the letter referenced in the subparagraph above, Lavrih called Defendant Hemmelgarn and Sectoral Secretary Devashradhananda via a three-way conference call to solicit their instructions about what he should do in response to the Industry Canada letter;

c) Devashradhananda Avadhuta instructed Lavrih not to inform the members of Industry Canada's requirement, not to hold a meeting, but to simply confirm to Industry Canada that a meeting had been held and that the members had voted to approve the bylaw;

d) He and Acarya Devashraddhananda Avadhuta, who was the then SS and President of AM Inc. (USA), together with the former Defendant Hemmelgarn, who is now deceased, ~~and he himself~~ had conspired to falsify the Statutory Declaration filed with Industry Canada so that the 1998 supplementary letters patent, new by-laws

and amendment to by-laws would be approved. More particularly, the Plaintiff states that these Defendants realized that they could not obtain the necessary membership vote in favour and as a result, falsely represented to Industry Canada that the necessary meetings had been held and votes taken.

18A. Cardwell specifically pleads that until January 15, 2015, Defendants Lavrih and Acharya Devashradhananda Avadhuta on their own behalf and on behalf of Ananda Marga Canada wilfully concealed from Cardwell, and everyone else, the fact that Lavrih had falsified the statutory declaration which he filed with Industry Canada in December of 1998.

18B. Cardwell pleads that January 15, 2015 was the first day on which she knew or ought reasonably to have known that (i) injury, loss or damage had occurred, (ii) the injury, loss or damage was caused by or contributed to by an act or omission, (iii) the act or omission was that of the person against whom the claim is made, and (iv) having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it.

18C. Cardwell specifically pleads and relies on section 5, and section 15, subsection 4, subparagraph (i) of the Limitations Act, 2002, SO 2002, c. 24, Sched. B. and pleads that the limitation period was not running during the period of time that Lavrih's deception was being wilfully concealed.

19. The 1998 supplementary letters patent, the July 1, 1998 by-law and October 15, 1998 amendment to by-law, all approved by Industry Canada, were not voted upon by the general membership as no meeting was convened for those purposes.

20. In or about 2015, a new by-law was enacted for AMC in order to be compliant with Industry Canada requirements. All of the changes brought about by the unlawful passage of the 1998 by-laws and amendments to by-law were carried forward into the 2015 by-law. In addition, the 2015 bylaw states as per Section 8.02 that" The President shall be a director who shall be the Sectorial Secretary of Ananda Marga Inc." (USA)

21. The main purposes of the unlawful implementation of the 1998 by-laws and amendments to by-laws were to deny members of AMC their lawful rights and to transfer full control over the AMC assets and activities to the SS and President of Ananda Marga Inc. (USA).

22. AMC owns two significant assets. The first being a 72 acre parcel of land with dwelling and the second an 18 acre vacant lot.

23. The Plaintiff pleads and relies upon sections 168 and 169 of the *Canada Not-for-Profit Corporations Act,* SC 2009, c. 23, or in the alternative shall rely upon sections 106 and 157 of the *Canada Corporations Act*, RSC 1970, c. C-32; and sections 109, 111.1, 112, 138 and 157 of the *Canada Corporations Act*, RSC 1970, c. C-32.

24. The Plaintiff submits that the trial of the action be at the City of Ottawa

Date: ~~February 10, 2017~~
December 11, 2023

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- and -

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