

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 10th day of December, 2015.*

Kingsmill Community Services Association, Appellant,

against Record No. 150159  
Circuit Court No. CL14-1097

Kings~Mill United, Inc., et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Williamsburg and James City County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that the circuit court erred in sustaining demurrers to the complaint for declaratory judgment filed by appellant Kingsmill Community Services Association (“KCSA”) against appellee Kings~Mill United, Inc. (“KU”) and appellees, John Dennis Niland, Michael Sean McGurk, Leonard T. Berl, and Andrew Lloyd-Williams (collectively, the “individual appellees”). Thus, we will reverse the judgment of the circuit court.

As alleged in its complaint, KCSA is a Virginia non-stock corporation responsible for managing the Kingsmill residential development (“Kingsmill”) in James City County. KCSA’s Articles of Incorporation (the “Articles”) prescribe, inter alia, the procedures for its members to elect a portion of the directors to the KCSA Board of Directors (the “Board”) — with provision made for the remaining directors to be appointed by Kingsmill’s developer. KCSA alleges that “controversies” have arisen between it and the appellees, who are part of and/or represent through KU a “dissident” faction of KCSA members<sup>1</sup>, over the interpretation of the Articles regarding the election of directors. KCSA identifies in its three-count complaint the various provisions of the Articles that it claims are in dispute and seeks a declaratory judgment, pursuant

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<sup>1</sup> At least two of the individual appellees, according to KCSA’s complaint, were involved in organizing KU as a “competing ‘owner’s association’ . . . to systematically oppose the actions of [KCSA’s] elected Board of Directors and [KCSA’s] developer.”

to Code § 8.01-184, as to: (i) the number of directors to be elected by KCSA's members versus the number to be appointed; (ii) whether "cumulative voting" is permissible whereby a member could cast multiple votes for a single candidate; and (iii) whether members who are co-owners of a Kingsmill lot or housing unit are permitted to cast votes individually for different candidates.

Some of the appellees demurred to KCSA's complaint on the contention that there is no "justiciable controversy" between the parties, as required by Code § 8.01-184, because KCSA's claims are based on speculative future events, the complaint seeks an advisory opinion, and thus no jurisdiction exists for a declaratory judgment. In making these arguments, appellees further asserted that KCSA's action is precluded by Code § 13.1-861 of the Virginia Nonstock Corporation Act. This statute provides to any member or director of such corporation who is "aggrieved by an election of directors" a post-election remedy by way of a summary proceeding in which the circuit court may "determine the persons elected or order a new election or grant such other relief as may be equitable." Id.

After hearing argument from the parties on the demurrers, the trial judge ruled from the bench that the court was without jurisdiction to decide the case and sustained the demurrers. In explaining his ruling, the trial judge stated that "what this case comes down to really is whether this [c]ourt has jurisdiction and whether this is a situation that's ripe for judicial intervention and decision or whether . . . the [c]ourt's being asked to make an advisory opinion." The trial judge then pointed to Code § 13.1-861 and indicated that an aggrieved member or director of KCSA may bring an action under this statute "down the road." But "while there may be an action that comes in the future," the trial judge concluded, "that's more speculation or an advisory opinion . . . so I don't think the [c]ourt has jurisdiction at this point." Afterwards, the trial court denied KCSA's request to amend its complaint and entered a final order dismissing the case with prejudice.

On appeal, KCSA argues the trial court erred in deciding that the complaint failed to allege facts sufficient to show a justiciable controversy, in denying its declaratory judgment jurisdiction over the case, and in thus sustaining the demurrers. We agree with KCSA.<sup>2</sup>

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<sup>2</sup> Because we conclude KCSA's complaint makes the requisite showing for a declaratory judgment, we need not address its alternative argument on appeal that the trial court erred in denying its request for leave to amend the complaint after the court sustained the demurrers.

Circuit courts are given the power to issue declaratory judgments under Code §§ 8.01-184 through -191. “Pursuant to this authority, circuit courts may make ‘binding adjudications of right’ in cases of ‘actual controversy’ when there is ‘antagonistic assertion and denial of right.’” Martin v. Garner, 286 Va. 76, 82, 745 S.E.2d 419, 422 (2013) (quoting Code § 8.01-184; other citations and internal quotation marks omitted). Under this statutory scheme, “no action or proceeding [for declaratory judgment] shall be open to objection on the ground that a judgment order or decree [seeks] merely [a] declarat[ion] of right.” Code § 8.01-184. As particularly relevant here, the statute also expressly provides that such controversies over “the interpretation of . . . instruments of writing” may be so adjudicated. Id. (emphasis added).

Furthermore, this statutory scheme is “declared to be remedial” in nature: “Its purpose is to afford relief from the uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle him to maintain an ordinary action therefor. It is to be liberally interpreted and administered with a view to making the courts more serviceable to the people.” Code §§ 8.01-191. See Green v. Goodman-Gable-Gould Co., 268 Va. 102, 106-07, 597 S.E.2d 77, 80 (2004) (“The purpose of declaratory judgments . . . is ‘to supplement rather than to supersede ordinary causes of action [by] reliev[ing] litigants of the common law rule that no declaration of rights may be judicially adjudicated until a right has been violated.’” (quoting Williams v. Southern Bank of Norfolk, 203 Va. 657, 661-62, 125 S.E.2d 803, 806-07 (1962))).

The presence of an “actual controversy” as so understood — also referred to as a “justiciable controversy” — is thus a “prerequisite” to a circuit court having the authority to issue a declaratory judgment. Charlottesville Area Fitness Club Operators Ass’n v. Albemarle Cnty. Bd. of Supervisors, 285 Va. 87, 98, 737 S.E.2d 1, 6 (2013). “If there is no actual [or justiciable] controversy between the parties regarding the adjudication of rights,” then the declaratory judgment is no more than “an advisory opinion that the court does not have jurisdiction to render.” Id. In other words, “a controversy is ‘justiciable’ only if the claim is ‘based upon present rather than future or speculative facts [that] are ripe for judicial adjustment.’” Martin, 286 Va. at 83, 745 S.E.2d at 422 (quoting Blue Cross & Blue Shield v. St. Mary’s Hosp., 245 Va. 24, 35, 426 S.E.2d 117, 123 (1993)).

Accordingly, it is axiomatic that a complaint for declaratory judgment “must allege an ‘actual controversy’ existing between the parties based upon an ‘actual antagonistic assertion and denial of right.’” Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors, 286 Va. 38, 46, 743 S.E.2d 132, 136 (2013) (quoting Code § 8.01-184); see Martin v. Garner, 286 Va. at 83, 745 S.E.2d at 423 (the complaint “must aver a controversy beyond ‘the realm of speculation’”) (quoting River Heights Assocs. v. Batten, 267 Va. 262, 268, 591 S.E.2d 683, 686 (2004)). Whether in this case KCSA’s complaint meets this standard as tested by the demurrers is an issue of law, which we review de novo. Friends of the Rappahannock, 286 Va. at 44, 743 S.E.2d at 135. In doing so, we accept as true all facts properly pleaded and all reasonable inferences that may be drawn from those facts. Id.

We conclude that KCSA’s complaint meets the standard in setting forth the alleged “controversies” with the appellees over the election of directors to the Board based on the parties’ divergent interpretations of the Articles. We recite the allegations central to our decision as follows:

The appellees disagree with KCSA in its interpretation of the Articles and, in particular, its intended implementation of election practices and procedures for the upcoming Board election.<sup>3</sup> Both individually and through KU, the appellees “have issued repeated allegations that [this] election process is improper and violates Virginia law and [the] Articles.” Certain of the appellees have specifically asserted that KCSA members are not entitled to vote for a candidate to fill an open seat on the Board that the developer is entitled to appoint; that the members are entitled to cast their votes cumulatively; and that members who are co-owners of a

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<sup>3</sup> According to the complaint, KCSA was scheduled to elect two members of its nine-member Board at its then upcoming annual meeting. KCSA has the right and, indeed, the obligation to conduct the election under the terms of the Articles. KCSA intends to implement for this election “the historical and current election practices and procedures” that it believes are “proper and comport with the requirements of both Virginia law and [the] Articles.” This includes, among other things, allowing the KCSA members to vote for a candidate of their choosing to fill one of the open seats on the Board that the Kingsmill developer would otherwise be entitled to appoint, based on a long-standing agreement between the developer and KCSA. It also includes prohibiting each member from cumulative voting, i.e., casting multiple votes for a single candidate, and prohibiting members who are co-owners of a Kingsmill lot or housing unit from casting votes individually for different candidates.

Kingsmill lot or housing unit are entitled to cast votes individually for different candidates. Further, the appellees have “accused members of the Board . . . and [KCSA member] volunteers of malfeasance” and “have made clear that they intend to take a series of legal actions if the [Board election] occurs as planned.” Some of the appellees have specifically “threatened” to pursue both “civil claims” and “criminal charges” against KCSA, Board members and non-Board volunteers if the election goes forward “under the current format at the next [a]nnual meeting.”

KCSA has sought to “address these concerns” with the appellees, but those efforts “have been to no avail.” KCSA has thus “delayed its annual membership meeting and Board election to allow time for a judicial resolution” of this matter.

Based on these allegations, KCSA requests in its prayer for relief a declaration of what it believes to be the proper interpretation of the Articles regarding the number of Board directors to be elected by KCSA’s members and the manner in which the members may cast their votes in the Board election.

In sum, as alleged, KCSA is asserting rights under the Articles that appellee KU and the individual appellees, as part of a dissident faction of KCSA’s membership, are antagonistically denying. The allegations present a current controversy rather than a future or speculative one. Indeed, KCSA has delayed the Board election because of the uncertainty this controversy has created regarding the efficacy of KCSA’s election practices and procedures. To resolve the controversy, KCSA seeks the aid of the trial court for an interpretation of the Articles. As such, KCSA’s complaint presents “a classic case where declaratory judgment is appropriate to ‘guide parties in their future conduct in relation to each other, thereby relieving them from the risk of taking undirected action incident to their rights.’” Reisen v. Aetna Life & Casualty Co., 225 Va. 327, 335, 302 S.E.2d 529, 533 (1983) (quoting Liberty Mutual Ins. Co. v. Bishop, 211 Va. 414, 421, 177 S.E.2d 519, 524 (1970)); see Williams, 203 Va. at 662, 125 S.E.2d at 807 (explaining that “[p]reventive relief is the moving purpose” of declaratory judgments (quoting American Nat’l Bank & Trust Co. v. Kushner, 162 Va. 378, 386, 174 S.E. 777, 780 (1934))). The trial

court thus erred in denying its declaratory judgment jurisdiction over this action and sustaining the demurrers.<sup>4</sup>

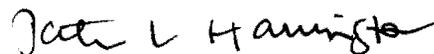
The appellees' reliance on Code § 13.1-861 in support of the trial court's ruling is misplaced. The statute certainly provides an aggrieved member or director of a nonstock corporation like KCSA a post-election remedy to challenge an election of the corporation's board of directors. There is no indication in the statute, however, that the legislature intended for it to supersede the relief provided under the declaratory judgment statutes in relation to a controversy over such an election before it occurs, where such controversy may be resolved, as here, by the trial court's "interpretation of [the] instrument[] of writing" governing the election. Code § 8.01-184. In this way, the declaratory judgment statutes supplement Code § 13.1-861 consistent with their intended purpose, as made clear in both Code § 8.01-191 (declaring the declaratory judgment statutes "to be remedial") and our case law. See Green, 268 Va. at 106-07, 597 S.E.2d at 80; Williams, 203 Va. at 661-62, 125 S.E.2d at 806-07; American Nat'l Bank & Trust Co., 162 Va. at 386, 174 S.E. at 780.

For these reasons, we reverse the judgment of the Circuit Court of the City of Williamsburg and James City County and remand for further proceedings consistent with this order.

This order shall be certified to the said circuit court.

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Teste:



Clerk

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<sup>4</sup> We note the important distinction between a case in which a circuit court fails to invoke its declaratory judgment jurisdiction under the mistaken belief that such jurisdiction is not available on the facts alleged, as occurred here, and a case in which the court's "discretionary" authority of whether or not to "enter declaratory relief" is at issue. Green, 268 Va. at 110, 597 S.E.2d at 82; see Reisen, 225 Va. at 334, 302 S.E.2d at 532; USAA Casualty Ins. Co. v. Randolph, 255 Va. 342, 346, 497 S.E.2d 744, 746 (1998); Liberty Mutual Ins. Co. v. Bishop, 211 Va. 414, 419, 177 S.E.2d 519, 522 (1970); Williams, 203 Va. at 662, 125 S.E.2d at 807; American Nat'l Bank & Trust Co., 162 Va. at 386, 174 S.E. at 780.