

and instructions for the Inspector.² Yak-Tat used the same Rules in past elections. The Rules defined quorum as: “All voting shareholders who have registered at the Annual Meeting and the proxies held by Proxy holders shall be counted for purposes of determining the presence of a quorum.”³ As discussed below, this definition is in conflict with Yak-Tat’s bylaws defining quorum.

The shareholder meeting and voting for nine open seats on the Board of Directors went forward on September 23, 2023. Based upon the Inspector’s report, there were 33,766 shares entitled to vote at the meeting—including several unsettled estates of deceased shareholders. The existing Board of Directors did not run for re-election at the meeting.

Shareholders Shari Jensen and Verna Henninger were present at the meeting, but did not register with the Inspector, nor did they vote their shares at the meeting. Ms. Jensen is the President/CEO of Yak-Tat Kwaan and holds 164 shares. Ms. Henninger is the Chair of the current Board of Directors and holds 132 shares. The Inspector’s report identified 16,874 shares represented in person or by proxy at the meeting. Following registration and voting, the Inspector counted the votes twice, concluding that quorum was not met with only 49.97% of shareholders voting. Therefore, the Inspector declined to confirm the newly-elected Board.

On October 12, 2023, Plaintiffs filed an expedited motion requesting that the Court confirm the Board before Yak-Tat receives dividends from Sealaska in early November. The Corporation did not oppose expedited consideration, but opposed the underlying

² Defendants Status Report Ex. B.

³ *Id.* at 7.

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Motion. The Court granted expedited consideration. Having considered the Motion, the Opposition, the Status Report, the Reply, and the Sur Reply the Court GRANTS Plaintiffs' motion and ORDERS Yak-Tat to confirm the newly-elected Board of Directors.

II. Discussion

The issue presented turns on the definition of quorum and whether quorum was met at the September 23, 2023, shareholder meeting.

Plaintiff advances two arguments: (1) that Ms. Jensen and Ms. Henninger should have been counted for purposes of quorum; and (2) that the total number of available shares for purposes of establishing quorum should not have included shares held by deceased shareholders with unsettled estates.

Yak-Tat disagrees and argues that it followed the Rules it distributed in advance of the meeting. Specifically, Yak-Tat argues that Ms. Jensen and Ms. Henninger were solely present in their professional capacities and not as registered shareholders, and that it was therefore proper for the Inspector to not count them for purposes of quorum. Yak-Tat further argues that it followed the meeting Rules when it included shares from unsettled estates in the number of total possible shares available for calculating quorum.

a. Quorum, defined

Quorum is defined in Alaska law as follows:

(a) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person, by remote communication, or by proxy, constitutes a quorum at a meeting of shareholders, but in no event may a quorum consist of less

than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of shares represented at the meeting and entitled to vote on the subject matter is the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter, the articles of incorporation, or the bylaws.

(b) Shareholders present at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of shares required to constitute a quorum.

Alaska Statute 10.06.415. [Emphasis added]

Likewise, Yak-Tat's bylaws also define quorum as a majority of outstanding shares entitled to vote at the annual meeting, represented in person or by proxy shall constitute a quorum.⁴ There is no Alaska case that interprets AS 10.06.416 or how to apply quorum requirements. That said, this Court finds the statute and Yak-Tat's bylaws are consistent: to establish quorum for voting at a shareholder meeting, a majority of shareholders or their proxies must be present in person or remotely.

The Rule defining quorum as shareholders "registered" at the meeting conflicts with Alaska law and the bylaws, only requiring that a shareholder be represented in person or by proxy. In resolving this conflict, the Court must apply the Articles of Incorporation, the bylaws, and Alaska law, not the Rules.⁵ The Court finds that to determine whether quorum is reached, the Inspector must count all

⁴ Partial Opposition to Motion for Shareholder Meeting, Attachment B, P. 2.

⁵ See Rules ¶1, Ex. B, page 16 of 34 stating that: "The Provisions of Articles of Incorporation, Bylaws and Alaska law are the final authority as to the conduct of the Annual Meeting of Shareholders. These rules are to supplement the Articles and Bylaws and do not excuse the failure to do an act or follow a procedure specifically required by the Statutes, Articles or Bylaws."

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shareholders represented in person, by proxy, or remotely. Registration is not required to be counted for purposes of reaching quorum.

i. Jensen and Henninger were “present” for establishing quorum.

Because there is not an Alaska case directly on point on this issue, both sides have cited Delaware cases on the issue of whether the presence of a shareholder who does not vote at the meeting counts toward establishing quorum.

Yak-Tat cites to an old Delaware case holding that an individual present at a shareholder meeting for the sole purpose of protesting the meeting is not counted toward quorum.⁶ In that case, however, the individual was so persistent in objecting to the legality of the meeting that he was ejected before any votes were received.⁷ Under these circumstances, the protestor’s shares were not counted as present and represented for purposes of quorum.⁸

In contrast, Plaintiffs cite to a more recent Delaware case concluding that an attorney shareholder present at a meeting was properly counted for purposes of quorum where he reported he was only present in his capacity as an attorney, not a shareholder.⁹ Under Delaware law, a stockholder has no obligation to attend a meeting.¹⁰ However, it is also firmly established that stockholders who are present at a meeting are properly counted in the determination of a quorum even though the shares are not voted.¹¹

⁶ *Leamy v. Sinaloa Expl. & Dev. Co.*, 15 Del. Ch. 28, 130 A. 282 (1925).

⁷ *Id.*

⁸ *Id.* at 283.

⁹ *Berlin v. Emerald Partners*, 552 A.2d 482, 493 (Del. 1989).

¹⁰ *In re Pioneer Drilling Co.*, Del. Ch., 130 A.2d 559 (1957).

¹¹ *Berlin*, 552 A.2d at 493.

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The Court finds that attending the Noticed meeting as an eligible shareholder was sufficient to be counted toward quorum, and that there was no obligation for a shareholder to vote their shares to be counted for purposes of quorum. They were present for the purposes of the meeting. The Court relies on the persuasive, but not controlling guidance of the holding in *Berlin v. Emerald Partners* in reaching this conclusion.

The Court finds that if either Shari Jensen or Verna Henninger registered at the meeting, quorum would have been easily met. Combined, Ms. Jensen and Ms. Henninger represented 296 shares and they should have been counted toward quorum because neither the Bylaws, the Articles of Incorporation, or Alaska law require a shareholder be registered to be counted for purposes of achieving quorum, so long as the shareholder is present in person, remotely, or by proxy. By creating an additional requirement to be counted toward quorum, a situation was created where a quorum of shareholders was indeed present, but the Board was prevented from doing business nonetheless.

ii. Unsettled estates

Plaintiffs also argue that quorum would have been met if the Inspector reduced the total number of shares available for calculation of quorum by 20 shares from unsettled estates.¹² Plaintiffs urge the Court to conclude that the Inspector should not have counted shares of deceased shareholders with unsettled estates in the total number of available shares for quorum purposes. Contrary to their Bylaws, Yak-Tat contends that the Inspector

¹² Plaintiff notes that there are more than 20 shares from unsettled estates, but argues that reducing the number of shares by 20 would have resulted in the meeting reaching quorum regardless of whether Jensen or Henninger's shares were included for purposes of quorum. [Reply at 9]
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was correct to include all shares, including those of deceased shareholders with unsettled estates, in the total number of available shares for quorum purposes.

1. **Under ANCSA and Yak-Tat's Articles of Incorporation and Bylaws unsettled shares should not have been counted in the total available number of shares for calculating quorum.**

The Alaska Native Claims Settlement Act provides as follows:

Settlement Common Stock of a Regional Corporation—

- (i) transferred by will or pursuant to applicable laws of intestate succession after February 3, 1988, or
- (ii) transferred by any means prior to February 3, 1988, to a person not a Native or a descendant of a Native shall not carry voting rights. If, after a later date, such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

43. U.S.C. 1606(h)(2)(C).

Yak-Tat's Articles of Incorporation provide that upon the death of a shareholder, ownership is transferred by will or intestate succession, but that "Such shares shall carry voting rights only if the holder thereof through inheritance is a Native."¹³ The Corporation's proxy statement also states that only Natives or Descendants of natives are entitled to vote.¹⁴ Yak-Tat's Bylaws likewise state:

Shares held in the name of a deceased shareholder and not yet transferred to the heirs, except as those registered in person or by proxy by an administrator, executor, guardian, or conservator furnishing documental proof of official capacity, shall not be considered outstanding shares entitled to vote for purposes of achieving quorum.

¹³ Appendix B, Articles of Incorporation.

¹⁴ Status report, Ex. B, P 13 of 34, fn 1.

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The Court finds that Yak-Tat's bylaws are consistent with their Articles of Incorporation and ANCSA. The Rules established by Yak-Tat and carried out by the Inspector at the September 23, 2023 meeting are contrary to Yak-Tat's Bylaws and ANCSA. The Inspector followed the Rules rather than the Bylaws when he included unsettled shares in the total number of shares required for quorum purposes.

In their Opposition, Defendants argue that the Bylaw provision related to unsettled shares "disenfranchises certain shares."¹⁵ But, shares that are not transferred to a Native shareholder or their Descendant do not carry with them voting rights.¹⁶ Ms. Jensen argues that this Bylaw is void because a former attorney advised her of such.¹⁷ This interpretation of the Bylaws is not binding on the superior court.¹⁸ The Court agrees with Plaintiffs that a former attorney's advice is of no consequence where the Bylaws were not amended consistent with that advice.

The Court finds that if the total number of shares for purposes of calculating quorum was reduced by 20, quorum would have been reached regardless of whether Jensen and Henninger were "present" that day. It was error for the Inspector to include unsettled shares in the total number of shares.

b. Equitable relief

Finally, Yak-Tat, in their Opposition argues that this Court should apply to

¹⁵ Opposition at 6.

¹⁶ 43. U.S.C. 1606(h)(2)(C).

¹⁷ Jensen Aff. ¶¶ 21-22.

¹⁸ *Afognak Native Corp. v. Olsen*, 648 P.2d 991, 992 (Alaska 1982); see also *Matanuska Elec. Ass'n, Inc. v. Waterman*, 87 P.3d 820, 824 (Alaska 2004).

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equitable doctrine of laches because Plaintiffs waited until the meeting to raise their disagreement with the Rules despite the fact that the Corporation had previously used them in shareholder meetings and that shareholders were provided the shareholder list in advance of the meeting. Laches is appropriate where (1) a party delays seeking relief; and (2) they delay results in prejudice.¹⁹

The Court cannot find that the Plaintiffs delayed seeking relief—they filed a lawsuit in an effort to resolve these issues when it became clear that the issues could not be resolved internally. For the reasons identified in Plaintiff’s Reply, equity does not favor the Defendants.

III. Conclusion

For the foregoing reasons, the Plaintiffs Motion is GRANTED.

A quorum was present and established at the meeting on September 23, 2023.

The shareholders elected nine directors at the meeting. The Court finds it was appropriate for shareholders to conduct business at the court-ordered meeting because it was properly noticed and a quorum was present. The shareholders read Alaska Statute 10.06.415 which provides that shareholders may continue to conduct business “notwithstanding the withdrawal of enough shareholders to leave less than a quorum.” Thus, the fact that Ms. Jensen may have decided to leave the meeting does not prevent shareholders from continuing to conduct lawful business.

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¹⁹ *Burke v. Maka*, 296 P.3d 976, 979-80 (Alaska 2013).
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The nine new directors of Yak-Tat Kwaan Incorporated are as follows:

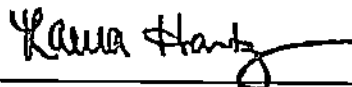
Amanda Bremner	John Buller
Meda DeWitt	Rose Gildersleeve
Keith Howard	Marry Knutsen
Jennethan Kaufman	Violet Sensmeier
Jay Stevens	

A tenth candidate, Cameron James, withdrew his candidacy to expedite the process of replacing the holdover directors with the nine individuals listed above.

The Court therefore confirms the shareholders elected these nine individuals at the September 23, 2023, shareholder meeting. This finding is without prejudice to any shareholder who files a lawful challenge to this election.

IT IS SO ORDERED.

DONE this 27th day of October 2023, at Anchorage, Alaska.



Laura Hartz
Superior Court Judge

I certify that on October 27, 2023
a copy of the above was emailed to:

B. Duffy
M. Baylous
G. Cruickshank

Ellen Bozzini
Judicial Assistant

