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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANAYO AKAMETALU et al., Plaintiffs and Appellants, v. AUSTIN ONWUALU et al., Defendants and Respondents.	B272289 (Los Angeles County Super. Ct. No. BS156226)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Law Offices of George E. Omoko and George E. Omoko for Plaintiffs and Appellants.

Law Offices of Akudinobi & Iknote, Emmanuel C. Akudinobi and Chijioke O. Iknote for Defendants and Respondents.

* * * * * *

The local branch of an international social club voted to suspend several of its members and to recommend their expulsion from the international organization. The members sought a writ of mandate to overturn their suspension. The trial court denied the writ, in part because the members did not exhaust the club's internal appeal procedures prior to filing the lawsuit. The members appeal. We conclude the trial court got it right, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *The Club and Its Conflict Resolution Procedures*

1. *The International Club and its Los Angeles Branch*

The Peoples Club of Nigeria or Peoples Club of Nigeria International (International Club) is a social, recreational, and charitable club that also provides its members benefits when they are sick or in "distress." (Internat. Club, Const., § 2.) It is headquartered in Onitsha, Nigeria (*id.*, § 3), but operates internationally and has branches all over the world (*id.*, § 23). The Los Angeles branch club (L.A. Branch or Branch) opened in 2006. The L.A. Branch shares the same purposes as the International Club, along with enabling its local members to "network with members of the Club all over the world." (L.A. Branch, Bylaws, art. III.)

2. *Rules Governing Intra-Club Disputes*

The International Club has a Constitution that sets forth its rules and regulations, which trump the "rules and regulation[s] and bye-laws [*sic*]" of any Branch (Interat. Club, Const., § 24). The L.A. Branch has Bylaws, which likewise acknowledge that they are subject to the "limits established by the Constitution of the [International] Club." (L.A. Branch, Bylaws, art. I.) Both the International Club's Constitution and

the L.A. Branch's Bylaws set forth the procedures to be followed when there are disputes between members of the Branch and the International Club (collectively, the Club).

The L.A. Branch's Bylaws specify that a member may bring a lawsuit involving "a dispute between a member and another member . . . relating to any matter of the Branch" only if the member first (1) "bring[s] the matter" to the L.A. Branch's Conflict Resolution Committee (which is responsible for resolving all conflicts within the Branch), (2) appeals its ruling to the L.A. Branch's Executive Committee (which governs the Branch), and (3) appeals that ruling to the International Club's "CEC" (that is, the "Central Executive Committee") and obtains a "decision" from that Committee. (L.A. Branch, Bylaws, art. VII, § 4; *id.*, art. IX, § 2(j)(iv) [defining Conflict Resolution Committee], art. II [defining Branch's Executive Committee].)[1] The Central Executive Committee is also known as the National Executive Committee, and is the chief decisionmaking body of the International Club. (Internat. Club, Const., § 11.) The International Club's Constitution has a similar provision, providing that a member may file a lawsuit only after the

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1 In pertinent part, this section provides: "Lawsuits. In case of a dispute between a member and another member . . . relating to any matter of the Branch, the parties shall first bring the matter to the Conflict Resolution Committee. If the decision of the Committee is not satisfactory to either of the parties, the unsatisfied party may appeal to the Executive Committee. The Executive Committee must issue a decision within 30 days. If the decision of the Executive Committee is not satisfactory to either of the parties, the unsatisfied party may still appeal to the Central Executive Committee. The unsatisfied party must give the [Central Executive Committee] 90 days to issue its decision before a court proceeding may be commenced."

underlying dispute has been "submitted to an amicable settlement by the Club." (Internat. Club Const., §11(a)(v).)

The L.A. Branch's Bylaws also empower a branch to suspend a member from the Branch and to recommend the member's expulsion from the International Club to the Central Executive Committee if (1) the member's "character shall become problematic," or (2) the member "breach[ed] or disregard[ed] any of the articles of the . . . Constitution and Bylaws." (L.A. Branch, Bylaws, art. VII, § 1(a)-(c).) A member may be suspended from the Branch or recommended for expulsion only after he is advised in writing of the possible suspension at least 14 days in advance of a General Meeting of the Branch, and has the opportunity to address the allegation(s) at that General Meeting. (*Id.*, art. VII, § 1(d).) The member then has the right, under the International Club's Constitution, to appeal "the decision of the branch suspending him" to the Central Executive Committee/National Executive Committee. (Internat. Club Const., § 18.) The member has 60 days to file such an appeal.

B. *Accusations of Financial Mismanagement of L.A. Branch*

Plaintiffs Anayo Akametalu, Bright Egwuatu, George Ilouno, Sunday Agude, Christopher Anigbogu, Emmanuel Obiora, Chris Ogbuefi, Peter Ochoifeoma, Chijioke Ezeanioma, Theodore Okunna, Chris Unaka, Ibe Okoye, and Albert Ejiagwa (collectively, plaintiffs) are members of the L.A. Branch and International Club.

1. *Audit and Internal Complaints*

In late 2013, plaintiffs encouraged the L.A. Branch's leadership to undertake an audit of the Branch's finances for the last six years. The Branch hired an outside accountant. In June 2014, the results of the audit were presented to the Branch's members. Although the audit only went back three years

(instead of six), it revealed that the Branch had engaged in "poor recordkeeping"; that there had been large, unaccounted for withdrawals; and that those withdrawals had been made without the approval of the Branch's Executive Committee and without the proper signatures.

After receipt of the auditor's report, plaintiffs sent three letters to the International Club (with copies to the L.A. Branch's leadership) reporting that the audit revealed possible mismanagement of the Branch's finances and urging "immediate intervention." Plaintiff also sent a fourth letter, this time only to the Branch's leadership, asking to inspect some of the Branch's records. Neither the International Club nor the Branch responded to the letters. However, one Branch member twice told plaintiffs that they would be suspended and/or expelled from the Branch if they filed any lawsuit.

2. *Plaintiffs' First Writ Petition*

In March 2015, plaintiffs filed a petition for a writ of mandate against the L.A. Branch and its leadership, on their own behalf and on behalf of the Branch itself, alleging (1) breach of fiduciary duty, (2) deceit, (3) conversion, and (4) money had and received, and seeking (5) enforcement of inspection rights, and (6) declaratory relief. The petition's central allegation was that the Branch's leadership had "fail[ed] to keep, maintain and produce proper corporate records, fail[ed] to obtain authorization before disbursing [the Branch's] funds to some of them, [and] breaching their fiduciary duties to" the Branch itself. Along with their petition, plaintiffs filed an ex parte application to enjoin the Branch from suspending or expelling them. In the supporting paperwork, plaintiffs assailed the Central Executive Committee as being "mainly populated by these same defendants." The trial court denied the ex parte application as premature.

3. *Discipline by Branch and International Club*

On April 17, 2015, the leadership of the L.A. Branch sent each plaintiff a letter advising them that the Branch would, at the upcoming General Meeting on May 3, 2015, consider whether to suspend their membership in the Branch (to be effective May 8, 2015) and to recommend their expulsion from the International Club. The letters explained that plaintiffs had violated the Branch's Bylaws by filing a lawsuit without first following the pre-lawsuit procedures set forth in article VII, section 4 of the Bylaws.

Plaintiffs filed three ex parte applications with the trial court to stop the May 3 meeting, all of which were denied.

The Branch held its General Meeting on May 3, 2015. At the meeting, plaintiffs argued that they should not be suspended or expelled. By a secret ballot vote, the Branch's Executive Committee voted 13 to 3 and the General Meeting voted 22 to 13 to suspend plaintiffs from the Branch and to recommend their expulsion from the International Club to the Central Executive Committee.

Later that day, the Branch sent each plaintiff a letter, stating that each (1) was "suspended indefinitely" from the Branch for not following the pre-lawsuit procedures; and (2) would be recommended for "expulsion from the organization" to the Central Executive Committee. The letter also stated: "Pursuant to Section 18(d) of the Constitution of the [International Club], you have a right to appeal this decision to the Central Executive Committee within two months of this action."

II. Procedural Background

Without pursuing any further appeal to the L.A. Branch or the International Club, plaintiffs on July 1, 2015, filed a second petition for a writ of mandate challenging their suspension from

the Branch as well as their recommended expulsion from the International Club, and seeking reinstatement. After the Central Executive Committee voted to expel plaintiffs from the International Club on July 17, 2015, plaintiffs filed an amended petition adding the International Club as a defendant.[2] In the petitions, plaintiffs asserted that they were excused from following the Club's internal pre-lawsuit procedures, asserting that the L.A. Branch's Conflict Resolution Committee was "fraught with partiality" and that any further appeal was "illusory" because there was "no such entity" as the "Central Executive Committee."

Following full briefing and a hearing, the trial court ultimately issued a seven-page order denying relief.[3] The court cited two reasons. First, the court ruled that plaintiffs had "failed to exhaust their internal remedies by [not] appealing their suspensions and recommended expulsions" to the Central Executive Committee. The court rejected as "disingenuous" plaintiffs' claim that there was no such entity as the Central Executive Committee, finding instead that "[w]ithin the [International Club], the Central Executive Committee is the same body as the National Executive Committee, and [plaintiffs] were aware that [the International Club] and the [L.A. Branch] refer to the two bodies interchangeably." Second, the court found plaintiffs' claims to be moot because any order reinstating them as members of the L.A. Branch would be ineffectual in light of the International Club's subsequent act expelling them from the

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2 Plaintiffs also filed an ex parte application for reinstatement into the Club.

3 The trial court also ruled on evidentiary objections, none of which is at issue on appeal.

Club, particularly when the International Club was "not a party to this lawsuit."

Following the entry of judgment, plaintiffs filed a timely notice of appeal.[4]

DISCUSSION

Plaintiffs argue that the trial court was wrong to deny their amended writ on the ground that they failed to exhaust the Club's internal procedures. Evaluating this argument requires us to confront three questions: (1) What internal procedures were plaintiffs required to follow?; (2) Do these procedures satisfy due process?; and (3) Did plaintiffs follow the required internal procedures? We review the first question de novo to the extent we must construe the governing documents of the organization. (*Kim v. The True Church Members of Holy Hill Community Church* (2015) 236 Cal.App.4th 1435, 1445.) We review the second question de novo. (See *Hall v. Superior Court* (2016) 3 Cal.App.5th 792, 808 ["'procedural fairness'" of "'administrative hearing[s]'" subject to de novo review].) And we review the third question—and any facts underlying the first two questions—for substantial evidence where the facts are disputed and de novo where they are undisputed. (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 502.)

I. What Internal Procedures Are Required?

The amended writ petition now before us is a lawsuit challenging plaintiffs' suspension and expulsion from the L.A. Branch and the International Club. This petition therefore invokes two sets of internal procedures—those for filing lawsuits and those for suspensions or expulsions. Any member filing a

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4 After filing their notice of appeal, plaintiffs filed a motion for reconsideration. The trial court denied it as procedurally and jurisdictionally improper, and plaintiffs do not appeal that denial.

lawsuit regarding the Club's administration must satisfy three tiers of internal review before (1) the L.A. Branch's Conflict Resolution Committee, (2) the L.A. Branch's Executive Committee, and (3) the International Club's Central Executive Committee. (L.A. Branch, Bylaws, art. VII, § 4; Internat. Club, Const., § 11(a)(v).) And any member challenging his suspension and/or expulsion must satisfy two tiers of internal review before (1) the L.A. Branch's General Meeting, and (2) the International Club's Central Executive Committee. (L.A. Branch, Bylaws, art. VII, § 1(d); Internat. Club, Const., § 18.)

Plaintiffs present two reasons why, in their view, they were not required to present their grievances to the Central Executive Committee.

First, plaintiffs argue that (1) they are challenging their suspension and expulsion, and (2) the *Branch's Bylaws* do not require resort to the Central Executive Committee for suspensions and expulsions.[5] Both premises of this argument are invalid. Plaintiffs may be challenging their suspension and expulsion, but they are doing so by way of a lawsuit, so they must satisfy the internal procedures attendant to filing lawsuits and the Branch's Bylaws setting forth those procedures explicitly require presentation to the Central Executive Committee. Even if we focus solely on the internal procedures by which the Club suspends and expels its members, those procedures comprise a unified process that starts in the Branch and advances to the International Club. Each level has a specific role in this process,

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5 Plaintiffs seem to have abandoned their argument that the Central Executive Committee does not exist, and for good reason—namely, the trial court's finding that it does exist and that plaintiffs were so aware is supported by substantial evidence.

and its governing document spells out its role. Where, as here, the local entity's bylaws are subject to the parent entity's constitution (L.A. Branch, Bylaws, art. I; Internat. Club, § 23), we must read the two in tandem. (See *Guardian Angel Polish Nat. Catholic Church of L.A., Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, 931 [reading the Polish National Catholic Church's constitutions "in tandem" with parish's bylaws]; *Stephenson v. Stoneman* (1957) 148 Cal.App.2d 456, 464 [concluding that union member did not exhaust internal remedies set forth separately in the local union's bylaws and international union's constitution].) When we do, the fact that the International Club's part of the process is not set forth in the *Branch's* Bylaws is of no moment, particularly when the Branch expressly informed plaintiffs about the International Club's back half of the process in the letter informing them of the Branch's decision on the front half.

Second, plaintiffs contend that (1) they are challenging defendants' financial management of the Branch, and (2) "'the requirement of exhausting internal remedies is much less stringent'" "'[w]here mishandling of finances is involved.'" (*DeMonbrun v. Sheet Metal Workers Intl. Assn.* (1956) 140 Cal.App.2d 546, 558 (*DeMonbrun*).) We reject this contention. Although plaintiffs' *first writ petition* involves alleged financial mismanagement of the Branch, the writ petition underlying this appeal—which is the only one before us—challenges the Club's decision to suspend and expel them, and "matters of internal discipline" are the ones for which "exhaustion of [internal] remedies" is "primarily" designed. (*Ibid.*) What is more, the fact that the Club may have been wrong, under the plaintiffs cite, to insist that plaintiffs exhaust their remedies before filing their first writ petition does not excuse the requirement that they exhaust their remedies before

filing the writ petition underlying this appeal. That is because an organization's "violation of its own rules [that] inflicts the initial wrong"—that is, the wrong underlying the first petition—"furnishes no right for direct resort to the courts." (*Holderby v. Internat. Union etc. Engrs.* (1955) 45 Cal.2d 843, 847 (*Holderby*).)

II. Do the Internal Exhaustion Procedures Specified Above Satisfy Due Process?

Plaintiffs' prayer to be reinstated as members of the L.A. Branch and the International Club is an appropriate subject for a writ of mandate because writs may issue to "compel" a "corporation, board, or person" to "admi[t] . . . a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that . . . corporation, board, or person." (Code Civ. Proc., § 1085, subd. (a).) However, "a plaintiff who seeks judicial relief against [the] organization of which he is a member must first invoke and exhaust the remedies provided by that organization applicable to his grievance." (*Holderby*, *supra*, 45 Cal.2d at p. 846; *Mooney v. Bartenders Union Local No. 284* (1957) 48 Cal.2d 841, 843-844 (*Mooney*).) The requirement that a plaintiff-member exhaust his or her organization's internal procedures serves several purposes: (1) it "giv[es] the organization," which already has "expertise" with its own procedures, "the opportunity to quickly [and cheaply] determine [if] it has committed error" (*Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1129 (*Bollengier*); *Holderby*, at p. 846); (2) it "promote[s]" both "the settlement of grievances" and "more harmonious relationships" (*Holderby*, at p. 846); and (3) it implements the requirement that writ relief be available only "'when there is no plain, speedy, and adequate alternative remedy'" (*Pomona Police Officers' Assn. v. City of Pomona* (1997) 58 Cal.App.4th 578, 584).

Of course, exhaustion is generally required only if the internal procedures (1) are "'clearly defined'" (*Endler v. Schutzbank* (1968) 68 Cal.2d 162, 168 (*Endler*)), and (2) "afford the [member] fair procedure rights" (*Bollengier*, *supra*, 222 Cal.App.3d at p. 1128). Grounded as it is in due process, "fair procedure rights" means "adequate notice of the administrative action" and "a reasonable opportunity to be heard." (*Bollengier*, at p. 1129; see *Ezekial v. Winkley* (1977) 20 Cal.3d 267, 269-270, 278 [so requiring, when an organization expels a member].) What constitutes sufficient notice and opportunity to be heard is flexible and takes into account the "practical" reality that private organizations are necessarily less formal than courts. (*Ezekial*, at pp. 278-279; *Kurz v. Federation of Pétanque, U.S.A.* (2006) 146 Cal.App.4th 136, 150 (*Kurz*).)

Even where an organization's internal procedures are fair, because the exhaustion requirement is not an "inflexible dogma" (*Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834 (*Ogo*)), courts will at times allow an organization's members to sue without first pursuing internal remedies. (*Mooney*, *supra*, 48 Cal.2d at p. 844 [noting that judicial "interference . . . in the internal affairs [of an organization] . . . is justifiable under certain circumstances on the basis of public policy"].) Exhaustion will not be required when: (1) exhaustion is impossible because "the organization itself [has] arbitrarily refused to comply with and be governed by th[e] . . . internal rules of appeal" (*Holderby*, *supra*, 45 Cal.2d at pp. 848-849; *De Mott v. Amalgamated Meat Cutters* (1958) 157 Cal.App.2d 13, 21; accord, *Martino v. Concord Community Hospital Dist.* (1965) 233 Cal.App.2d 51, 56 [organization put member in "deferred" status and thereby precluded any internal appeals, which were reserved for rejections and denials; exhaustion excused]); (2) exhaustion cannot grant the member any relief (e.g., *Rosenfield v. Malcolm*

(1967) 65 Cal.2d 559, 568 [internal commission to which appeal is directed cannot "correct [the complained-of] abuse"; no exhaustion required]; *Endler*, *supra*, 68 Cal.2d at pp. 166-168 [commissioner's offer to hold an "informal hearing" that is "without prejudice to the rights" of the agency; no exhaustion required]); (3) the member is challenging the constitutionality of the agency itself or its procedures (*Bollengier*, *supra*, 222 Cal.App.3d at p. 1127); (4) exhaustion would be "futile" because the member "can positively state that the [organization] has declared what its ruling will be in a particular case" (*Mooney*, at p. 844; *DeMonbrun*, *supra*, 140 Cal.App.2d at p. 558; *Bollengier*, at p. 1126); or (5) the member is seeking to exercise "a right guaranteed by law independently of the [organization's] internal rules," such as the right to inspect the organization's records (*Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1152-1153 (*Sahlolbei*); *Mooney*, at pp. 843-844).

In this case, the Club's internal procedures are both clearly defined and procedurally fair.

They are clearly defined, as explained above. Plaintiffs urge that the procedures are not sufficiently detailed because they do not spell out the specific steps attendant to the internal review process (such as to whom documents should be sent, the manner by which the date for any hearings would be set, who may appear at the hearings). Because, as noted above, we must take into account the practical reality that we are dealing with private nonprofit organizations whose volunteer members promulgate rules in constitutions and bylaws (rather than courts whose rules are spelled out in a detailed Code of Civil Procedure and Rules of Court), we decline plaintiffs' invitation to apply the same exacting scrutiny to the Club's internal procedures as we would to judicial procedures.

The Club's internal procedures are also fair: Members have the right to seek three levels of internal review to resolve pre-lawsuit disputes and two levels of internal review to resolve any suspension or expulsion decisions. With respect to the filing of lawsuits, the L.A. Branch's Bylaws and the International Club's Constitution provide notice of the three tiers of review, require the Executive Committee and the Central Executive Committee to hear a member's appeal, and impose deadlines by which those bodies must act. (L.A. Branch, Bylaws, art. VII, § 4.) With respect to suspension or expulsion, the L.A. Branch's Bylaws and the International Club's Constitution entitle a member to advance written notice of potential discipline, the right to a hearing before the Branch's General Meeting, and the right to appeal to and present evidence before the Central Executive Committee. (L.A. Branch, Bylaws, art. VII, § 1(d); Internat. Club, Const., § 18.)

Further, none of the above enumerated exceptions to the exhaustion requirement applies here.

Neither the L.A. Branch nor the International Club has refused to comply with the applicable internal process; both entities can grant plaintiffs relief; and plaintiffs are not challenging the constitutionality of the Club.

Exhaustion would not be futile. The futility exception is "very narrow" (*Bollengier*, *supra*, 222 Cal.App.3d at p. 1126), and, as noted above, applies only where the member seeking to avail himself of the exception can "'positively state that the [organization] has declared what its ruling will be in a particular case'" (*Mooney*, *supra*, 48 Cal.2d at p. 844; *Sea & Sage Audubon Society, Inc. v. Planning Com.* (1983) 34 Cal.3d 412, 418). Plaintiffs have not carried this burden because the International Club has yet to declare—or, for that matter, to take any action at all regarding—how it would view plaintiffs' appeal of their

suspension and proposed expulsion. The only "action" the International Club has taken at all regarding plaintiffs is its failure to respond to plaintiffs' letters regarding financial mismanagement at the Branch. In our view, this inaction does not amount to a declaration of how the International Club would rule on the Branch's subsequent decision to suspend plaintiffs for not following the organization's internal rules regarding exhaustion. *Ogo*, *supra*, 37 Cal.App.3d 830 vividly illustrates the narrowness of the futility exception, as it held that the plaintiffs in that case did not have to seek a variance from a zoning ordinance for their proposed construction project when the ordinance was specifically enacted to prevent their very project from going forward. (*Id.* at p. 834.) The International Club's lack of response to plaintiffs' letters may reflect apathy toward plaintiffs but says little about what it would do when ruling on their subsequent suspension and expulsion for not following the internal rules of exhaustion; consequently, it falls short of the declaration of intent regarding a future ruling that was found in *Ogo* specifically or that is required by the futility exception generally.

Plaintiffs' writ petition also does not seek to exercise a right independently grounded in some other source of law because plaintiffs' right to remain members of the Club is grounded solely in the Club's rules. To be sure, plaintiffs at one point made a demand to inspect the L.A. Branch's records. Were we considering a writ challenging the Branch's denial of that demand, plaintiffs would be excused from the exhaustion requirement. (*Sahlolbei*, *supra*, 112 Cal.App.4th at pp. 1152-1153; *Mooney*, *supra*, 48 Cal.2d at pp. 843-844.) But we are not, as the writ before us challenges their suspension and expulsion from the Club. Further, we decline to expand this exception for rights elsewhere secured by law to writs seeking rights *not*

elsewhere secured by law merely because the latter, as a factual matter, may have grown out of the former. As our Supreme Court explained in *Mooney*, the purpose of this "public policy" driven exception is to excuse exhaustion when it would end up imposing *greater* burdens on an organization's members than it would on the general public (because the right sought by the member exists independently) and when the independently secured right "cannot harm any proper [organizational] activity" (because it is a "preliminary step"). (*Mooney*, at p. 844.) To excuse exhaustion of a claim not independently guaranteed and regarding a less preliminary matter such as the ultimate entitlement to membership—just because a member may have made an inspection demand at some point in the past—is to uncouple the exception from its rationale and to risk making the "exception . . . swallow the rule of exhaustion." (*Sacramento County Deputy Sheriffs' Assn. v. County of Sacramento* (1990) 220 Cal.App.3d 280, 287.)

Plaintiffs offer two offer two reasons why, in their view, the Club's internal procedures are unfair.

First, they assert that two layers of the Club's internal review process are invalid: (1) the L.A. Branch's Conflict Resolution Committee is biased because it is largely comprised of the same people plaintiffs accuse of financial mismanagement; and (2) the International Club's Central Executive Committee is too far away (7,715 miles away, by their calculation) to provide a meaningful venue for appeal. The trial court agreed with plaintiffs' first assertion, but concluded that it excused exhaustion *to that body*, but not to the International Club's Central Executive Committee. We agree. Plaintiffs' further argument also lacks merit. Due process does not define the opportunity to be heard only as the opportunity to be heard *in person* (e.g., *Kurz*, *supra*, 146 Cal.App.4th at p. 150 ["a mere

written response may be deemed fair"]), such that the Club's internal procedures—which effectively give plaintiffs the option of submitting written evidence to or appearing in person before the Central Executive Committee—satisfy due process. Plaintiffs cite *Dufton v. Daniels* (1923) 190 Cal. 577 for the proposition that a writ may issue if the alternative remedy must be pursued in a different county, but plaintiffs over read *Dufton*. *Dufton* held that a bounty hunter who was not paid his travel expenses for retrieving a fugitive outside the state could sue the state for payment under mandamus where the alternative remedy required a lawsuit in a different county, denied him the right to recover his other costs, *and* provided him "no means of enforcing the payment of such [a] judgment after obtaining it." (*Id.* at p. 582.) *Dufton* does not stand for the proposition that exhaustion is excused whenever an organization's internal review procedures occur in a different venue from the one in which its member files suit.

Second, plaintiffs argue that the Club's internal procedures for suspension and expulsion do not comply with Corporations Code section 7341, a provision of the nonprofit corporations law that prescribes the procedures such corporations must follow before suspending or expelling their members. (See Corp. Code, § 7341; see generally *id.*, § 7110 et seq.)[6]

We reject this argument for three reasons.

To begin, plaintiffs never invoked this statute before the trial court and have thus forfeited their right to rely on it. (*Gray1 CPB, LLC v. SCC Acquisitions, Inc.* (2015) 233 Cal.App.4th 882, 897.)

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6 All further statutory references are to the Corporations Code unless otherwise indicated.

Moreover, section 7341 governs the adequacy of procedures preceding suspensions or expulsions; it does not purport to regulate the internal procedures that must be exhausted prior to filing a lawsuit. As explained above, plaintiffs did not satisfy the pre-lawsuit procedures before filing *this* writ of mandate. Their failure to do so accordingly bars this writ irrespective of their compliance with section 7341.

And section 7341 does not aid plaintiffs in any event. In pertinent part, that statute generally provides that "[a]ny expulsion, suspension, or termination must be done in good faith and in a fair and reasonable manner." (§ 7341, subd. (b).) It also defines a safe harbor that deems an organization's procedures to be "fair and reasonable" if the procedures (1) "are set forth in the articles or bylaws"; (2) guarantee members "15 days' prior notice"; and (3) "provide[] [members] an opportunity . . . to be heard orally or in writing, not less than five days before the effective date of the expulsion[or] suspension." (*Id.*, subd. (c).) The question of whether the Club's internal procedures fall within the safe harbor is a close one: The two-tier internal review procedure is set forth in the L.A. Branch's Bylaws and the International Club's Constitution; the L.A. Branch guarantees 14 days prior notice before the General Meeting and the International Club grants 60 days to appeal an adverse ruling; and members facing suspension or expulsion have the right to appear before the Branch's General Meeting and the International Club's Central Executive Committee to contest the disciplinary action. But even if the Club's procedures fall outside the safe harbor, this does not mean they are invalid (e.g., *Wachovia Bank v. Lifetime Industries, Inc.* (2006) 145 Cal.App.4th 1039, 1058-1059); rather, it means that the Club must demonstrate that its procedures are fair under the general rule. Because, as explained above, the Club's procedures satisfy due process, we necessarily conclude

they are fair within the meaning of section 7341. Plaintiffs urge that their suspension and expulsion were not undertaken "in good faith," but the Club followed its procedures and its basis for the suspension and expulsion—namely, plaintiffs' failure to follow internal procedures before filing their first writ petition—is a valid ground for such discipline under the Club's governing documents.

III. Did Plaintiffs Follow the Internal Procedures?

It is undisputed that plaintiffs did not appeal their suspension or expulsion to the Central Executive Committee. Because they did not, they did not satisfy all of the internal procedures attendant to filing a lawsuit or challenging suspension or expulsions.

DISPOSITION

The judgment is affirmed. Defendants are entitled to their costs.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

I concur:

_____, Acting P. J.
CHAVEZ

Akametalu et al. v. Onwualu et al.

B272289

GOODMAN, J., DISSENTING:

Respectfully, I dissent.

For the reasons now discussed, this case comes within exceptions to the doctrine of exhaustion of administrative remedies and warrants resolution on the merits of the issues set forth in the writ petition.

The following facts are not in dispute. In late 2013, plaintiffs and other members of The Peoples Club of Nigeria Los Angeles Branch (PCNILA) requested an audit of PCNILA's finances for the six years since its inception, which PCNILA agreed to perform. The June 2014 audit report revealed the following for the three year period ending December 31, 2013:[1] (1) "no general ledger or any other form of secondary accounting record is maintained and no financial statements were made available [to the auditor for the time period for which he was to audit];" (2) payments received from members were not documented with receipts, making it "impossible to determine if amounts collected, which sometimes include cash," were deposited in PCNILA's bank account "for 53.42 percent of collections;" (3) withdrawals were made from PCNILA's bank account without supporting documentation; (4) some checks made

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1 The certified public accountant who performed the audit advised the members that there were insufficient records to perform an audit for the full six-year period as the members had requested.

payable to members were signed by one rather than the two signers required; and (5) most checks for social expenses were made payable to members; however, there were no supporting receipts.

Concerned that PCNILA's finances were being mismanaged, plaintiffs wrote letters, dated July 21, 2014, August 22, 2014, and November 7, 2014, to the International Club in Nigeria, with copies to officers of PCNILA, requesting "immediate intervention so that this problem does not spiral out of control."[2] The International Club did not respond to any of plaintiffs' requests.

On February 12, 2015, plaintiffs, in a letter by their lawyer, asked PCNILA to make its corporate records available for inspection pursuant to California law, specified the categories of records to be inspected, and stated that the plaintiffs wanted to determine whether there had been "fraud or any type of misrepresentation." In the same letter, they also suggested that financial mismanagement had been "swept under the carpet."

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[2] Twenty members of PCNILA signed the July 21, 2014 letter. In that letter they asked that the accounting irregularities be resolved swiftly. In their August 22, 2014 letter to the same addressees, they repeated their requests for resolution and noted that the chairman of PCNILA had dissolved the audit committee and instructed that there should be no discussion regarding audit matters until "we get a response from Head Quarter." By letter dated November 7, 2014, addressed to "Members of PCNI Los Angeles" and to the Chairman of the International Club, the members stated there had been gross financial mismanagement, alleging, inter alia, "a gross fudging of facts," and sought intervention by the International Club.

PCNILA provided no substantive response to the letters; instead, an Executive Officer of PCNILA told plaintiffs twice (on February 24, 2015 and March 3, 2015) that if plaintiffs filed a lawsuit against PCNILA, they would be expelled from membership.

In March 2015, plaintiffs filed suit against PCNILA and its leadership, alleging claims for breach of fiduciary duties, deceit, conversion, money had and received, enforcement of inspection rights, and declaratory relief (the Lawsuit). Because defendants had threatened to suspend plaintiffs' membership in PCNILA if they moved forward with the Lawsuit, plaintiffs sought, among other things, a judicial declaration of their right to continued membership in PCNILA, and an injunction preventing their suspension from membership in the organization.

In April and May 2015, plaintiffs filed three ex parte applications seeking to enjoin PCNILA from suspending or expelling them. All ex parte applications were denied as premature.

On April 17, 2015, the chairman and secretary of PCNILA sent an identical letter to each plaintiff advising him that PCNILA intended to suspend his membership, effective May 8, 2015, and recommend expulsion by the International Club for the filing of the Lawsuit without first following the prelawsuit procedures set forth in PCNILA's bylaws.

On May 3, 2015, plaintiffs attended the general meeting of PCNILA and presented their defense for why they should not be suspended and recommended for expulsion. Following plaintiffs' presentations, the executive committee of PCNILA voted 13 to 3 in favor of suspension/recommended expulsion; thereafter, the general membership voted 22 to13 in favor of

suspension/recommended expulsion. *The members accused of breaches of fiduciary duty in the Lawsuit voted at these meetings.*

That same day, PCNILA sent plaintiffs letters advising them they had been suspended from PCNILA and that each had been recommended to the International Club for expulsion from PCNILA. The letter also stated: "Pursuant to Section 18(d) of the Constitution of the [International Club], you have a right to appeal this decision to the Central Executive Committee within two months." Plaintiffs did not pursue any further appeal with PCNILA or to the International Club.

On July 17, 2015, acting at a meeting held in Nigeria, the International Club expelled plaintiffs from PCNILA. Plaintiffs challenged both PCNILA and the International Club's ruling by filing the instant writ petition, which the trial court denied. Notwithstanding its acknowledgment of the clear futility of plaintiffs exhausting internal procedures prior to seeking judicial remedies in the Lawsuit,[3] the trial court ruled that plaintiffs were not entitled to any relief on their writ petition because they had not appealed their suspension and threat of expulsion to the International Club. The trial court's decision was error.

"It is the general and well established jurisdictional rule that a plaintiff who seeks judicial relief against an organization of which he is a member must first invoke and exhaust the remedies provided by that organization applicable to his grievance." (*Holderby v. Intern. Union of Operating Engineers,*

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[3] In ruling plaintiffs were not required to exhaust their internal remedies before filing the Lawsuit, the trial court explained, "It is hard to see how accusations of fiduciary breach and embezzlement could have been resolved though the internal process."

Local Union No. 12 (1955) 45 Cal.2d 843, 846.) "Such internal remedies are designed not only to promote the settlement of grievances but also to promote more harmonious relationships, and the courts look with favor upon them." (*Id.* at p. 846.) "Yet, the doctrine of exhaustion of remedies has not hardened into inflexible dogma . . . but contains its own exceptions. . . ." (*Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834 (*Ogo*).) Among these exceptions is when requiring exhaustion would be "futile" because the member "can positively state that the [organization] has declared what its ruling will be in a particular case." (*Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115, 1126.) The doctrine is also not applied when to do so would be contrary to public policy. (*Mooney v. Bartenders Union Local No. 284* (1957) 48 Cal.2d 841, 844 (*Mooney*) [noting that judicial "interference . . . in the internal affairs . . . is justifiable under certain circumstances on the basis of public policy"].)

The ruling in *Ogo*, 37 Cal.App.3d 830, illustrates application of the exception that the doctrine of exhaustion is not applied when pursuing internal remedies would be fruitless. There, plaintiff, a limited partnership, sought a writ of mandate to compel the City of Torrance (City) to issue it a permit to build an apartment project for persons with low income. (*Id.* at p. 832.) For the previous eight years, plaintiff 's property had been classified as R3, a zoning classification that would have allowed construction of the apartments. (*Ibid.*) When plaintiff applied for a building permit to construct the low income housing, the City adopted an ordinance rezoning the area ML, a classification which limited land use to light manufacturing purposes only. (*Ibid.*) Plaintiff argued the City's ordinance was invalid because

it was motivated by racial and economic discrimination. (*Ibid.*) The trial court denied the writ, inter alia, on the grounds that plaintiff had not exhausted its administrative remedies by applying for a variance from the rezoning ordinance. (*Id.* at pp. 832-833.)

The Court of Appeal reversed, ruling that the plaintiff 's case came within an exception to the exhaustion requirement because it could "positively state what the administrative agency's decision in [this] particular case would be." (*Ogo*, *supra*, 37 Cal.App.3d at p. 834.) Although the City never explicitly stated it would deny a variance, the Court of Appeal held the evidence was "overwhelming" that the City would not have granted the variance because the City had rezoned the area specifically to prevent plaintiff 's project. (*Ibid.* [noting that it is "inconceivable the [City] would grant a variance for the very project whose prospective existence brought about the enactment of rezoning"].) According to the Court of Appeal, to require plaintiff to apply for a variance "would be to require them to pump oil from a dry hole." (*Ibid.*)

Here, an Executive Officer of PCNILA told plaintiffs not once, but twice, that if they filed a lawsuit they would be expelled from the organization. PCNILA also opposed all of plaintiffs' ex parte applications, making clear that it intended to enforce its bylaws, which plaintiffs had violated by not pursuing internal remedies, and notwithstanding that plaintiffs' several letters had resulted only in either silence or threats of suspension and expulsion. Further, the International Club turned a blind eye to plaintiffs' repeated written requests that it intervene and prevent further financial mismanagement of PCNILA's funds. Based on this evidence, as in *Ogo*, it is clear plaintiffs' appealing their

suspension and notice of recommended expulsion to the International Club would have been an exercise in futility—it would "require them to pump oil from a dry hole." (*Ogo*, *supra*, 37 Cal.App.3d at p. 834.) Based on the International Club's pattern of inaction, there was no expectation that that entity would have overruled their suspension had plaintiffs traveled to Nigeria to present the facts which they had presented multiple prior times in writing.

Applying the doctrine of exhaustion on these facts is also contrary to public policy. (*Mooney*, *supra*, 48 Cal.2d at p. 844.) Plaintiffs were suspended and expelled from the organization for the *sole reason* that they filed the Lawsuit, accusing PCNILA and certain of its officers of financial mismanagement, without first following the prelawsuit procedures contained in PCNILA's bylaws. As in *Mooney*, "To deny a member access to the records and require him to exhaust all internal remedies in the preliminary matter of inspection would unduly hamper the member's right and possibly defeat the purpose of the investigation. . . . [I]t is to the best interests of [the organization] that any misuse of its funds be immediately revealed, and it would serve no useful purpose to require that the examination of the books be delayed until the member has followed the procedure required by the union in ordinary matters."[4] (*Ibid.*)

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[4] PCNILA administers what it describes in its bylaws as a "social security plan," funded by members, which provides substantial monetary benefits (including a burial allowance of over $20,000) in the event of the death of a member. In this respect it provides a welfare benefit not unlike the benefits provided to union members in *Mooney*. And, thus there is far

Given the nature of plaintiffs' claims against the organization, it is apparent PCNILA sought to silence—and then to remove—plaintiffs as members in retaliation for filing the Lawsuit, which had accused the leadership of PCNILA of mismanagement of its financial affairs and of possible illegal activity.

Just as the trial court ruled that it would have been futile for plaintiffs to have been required to exhaust PCNILA's internal procedures before they filed their Lawsuit, it was error for the trial court not also to have determined that it was equally futile for plaintiffs to have participated in the internal appeal procedure to the International Club. Based on the International Club's failure to respond to any of the plaintiffs' written requests that they investigate the allegations that PCNILA and certain of its officers were engaged in financial improprieties, on the facts of this case, there was every reason not to apply the doctrine of exhaustion to the "appeal" to the International Club.[5]

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more at stake here than "mere" membership in a fraternal organization.

[5] The majority agrees with the trial court's conclusion that PCNILA's Conflict Resolution Committee was biased as it was largely compromised of the same people plaintiffs accused of financial mismanagement, yet finds no issue with the fact that PCNILA's Executive Committee, which was also largely compromised of the same people accused of financial mismanagement, initiated the vote to suspend plaintiffs from the organization and recommend them for expulsion by the International Club, which had never responded to plaintiffs' requests that it investigate the evidence of financial mismanagement uncovered and reported by the auditor.

For these reasons, I would reverse the trial court's order denying plaintiffs' petition for writ of mandate and remand the case for further proceedings.

GOODMAN, J.*

The self-interest of the accused members—who participated in the process leading to the expulsion of plaintiffs from the organization plaintiffs were seeking to protect and the lack of action by the International Club in response to plaintiffs' several requests to investigate based on the auditor's findings of financial mismanagement by the officers and leaders of PCNILA—is compelling evidence of why plaintiffs should not have been required to exhaust their internal—but, on these facts, illusory—remedies.

* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.