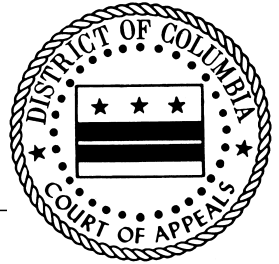


No. 23-CV-0720



**DISTRICT OF COLUMBIA
COURT OF APPEALS**

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CASA RUBY, INC.

Appellant,

v.

HASSAN NAVEED, *et al.*,

Appellees.

On Appeal From An Order of Partial Final Judgment of the D.C. Superior Court,
The Hon. Danya A. Dayson

RESPONSE BRIEF OF APPELLEE MEREDITH ZOLTICK

Dionna Maria Lewis, Esq.*
Laura Brett Harshbarger, Esq.
DISTRICT LEGAL GROUP, PLLC
700 Pennsylvania Ave. SE, Suite 2098
Washington, D.C. 20003
(202) 486-3478
Dionna@DistrictLegalGroup.com
Counsel@DistrictLegalGroup.com

Attorneys for Appellee Meredith Zoltick

April 8, 2024

LIST OF PARTIES

Casa Ruby Inc.

Appellant

Theodore A. Howard, Esq.

Tyler Bridegan, Esq.

Chloe Hawker, Esq.

Stephen Conley, Esq.

Attorneys for Appellant Casa Ruby, Inc.

Nick Harrison, Esq.

Attorney for Wanda Alston Foundation as Court-Appointed Receiver for Casa Ruby, Inc.

Shane Rosenbloom, Esq.

Laverne Tucker, Esq.

Attorneys for Casa Ruby, Inc. (Breach of Contract Claims)

Sarah James, Esq.

Attorney for Casa Ruby, Inc. (Unpaid Wage Claims)

District of Columbia

Plaintiff

Cara Spencer, Esq.

Adam Gitlin, Esq.

Attorneys for Plaintiff District of Columbia

Ruby Corado

Defendant

Matthew Ainsley, Esq.

Charles Peoples, Esq.

Attorneys for Ruby Corado

Hassan Naveed

Appellee

Alison Rogers, Esq.
Attorney for Hassan Naveed

Jack Quintana-Harrison
Appellee

David Ross, Esq.
Attorney for Jack Quintana-Harrison

Miguel Rivera
Appellee

Marlon Griffith, Esq.
Amber Vargas, Esq.
Attorneys for Miguel Rivera

Meredith Zoltick
Appellee

Dionna Maria Lewis, Esq.
Laura Brett Harshbarger, Esq.
Attorneys for Meredith Zoltick

CORPORATE DISCLOSURE STATEMENT

Appellee Meredith Zoltick is a private party, and there is no publicly held corporation or partnership connected to Ms. Zoltick to disclose pursuant to Local Rule 26.1.

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JURISDICTIONAL STATEMENT

Pursuant to Local Rule 28(a), Appellee Meredith Zoltick (“Appellant” or “Ms. Zoltick”) makes the following statement concerning jurisdiction. This case was brought on appeal by Appellant Casa Ruby, Inc. upon entry of Partial Final Judgment on July 28, 2023 by the Hon. Danya A. Dayson, Associate Judge of the District of Columbia Superior Court.

I. ISSUES PRESENTED

- I. Whether the Superior Court erred in granting Appellees' Motions to Dismiss for failure to state a claim upon which relief can be granted regarding the claims of breach of fiduciary duty asserted against them, by finding that Section 29-406.31(d)(2) of the D.C. Nonprofit Corporation Act requires a showing of an "intentional" infliction of harm, rather than a "knowing" infliction of harm.
- II. Whether Appellee Ms. Zoltick is entitled to recovery of attorney's fees in addition to reasonable costs and expenses against Appellant due to Appellant's frivolous litigation.

II. RELEVANT STATUTORY PROVISIONS

The D.C. Nonprofit Corporation Act (“NCA”): Code of the District of Columbia § 29-406.31. Standards of liability for directors.

(a) A director shall not be liable to the nonprofit corporation or its members for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

(A) Subsection (d) of this section or a provision in the articles of incorporation authorized by § 29-402.02(c);

(B) Satisfaction of the requirements in § 29-406.70 for validating a conflicting interest transaction; or

(C) Satisfaction of the requirements in § 29-406.80 for disclaiming a business opportunity; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith;

(B) A decision:

(i) Which the director did not reasonably believe to be in the best interests of the corporation; or

(ii) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or

(C) A lack of objectivity due to the director’s familial, financial, or business relationship with, or a lack of independence due to the director’s domination or control by, another person having a material interest in the challenged conduct:

(i) Which relationship or which domination or control could reasonably be expected to have affected the director’s judgment respecting the challenged conduct in a manner adverse to the corporation; and

(ii) After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(D) A sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its members that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, also has the burden of establishing that:

(A) Harm to the nonprofit corporation or its members has been suffered; and

(B) The harm suffered was proximately caused by the director's challenged conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, also has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, also has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section:

(1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the nonprofit corporation under § 29-406.70(a)(3), alters the burden of proving the fact or lack of fairness otherwise applicable;

(2) Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under § 29-406.33, a conflicting interest transaction under § 29-406.70, or taking advantage of a business opportunity under § 29-406.80; or

(3) Affects any rights to which the corporation or a director or member may be entitled under another statute of the District or the United States.

(d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(1) The amount of a financial benefit received by the director to which the director is not entitled;

(2) An intentional infliction of harm;

(3) A violation of § 29-406.33; or

(4) An intentional violation of criminal law.

The D.C. Business Corporation Act (“BCA”): Code of the District of Columbia § 29–306.31. Standards of liability for directors.

(a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

(1) None of the following, if interposed as a bar to the proceeding by the director, precludes liability:

(A) Any provision in the articles of incorporation authorized by § 29-302.02(b)(4);

(B) The protection afforded by § 29-306.71 for action taken in compliance with § 29-306.72 or § 29-306.73; or

(C) The protection afforded by § 29-306.80; and

(2) The challenged conduct consisted or was the result of:

(A) Action not in good faith;

(B) A decision:

(i) Which the director did not reasonably believe to be in the best interests of the corporation; or

(ii) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(C) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(i) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(ii) After a reasonable expectation to such effect has been established, the director has not established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or

(D) A sustained failure of the director to devote attention to ongoing oversight of the activities and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore [therefor]; or

(E) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages, shall also have the burden of establishing that:

- (A) Harm to the corporation or its shareholders has been suffered; and
 - (B) The harm suffered was proximately caused by the director's challenged conduct;
- (2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or
 - (3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
- (c) This section shall not:
- (1) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under § 29-306.71(b)(3), alter the burden of proving the fact or lack of fairness otherwise applicable;
 - (2) Alters the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under § 29-306.32 or a transactional interest under § 29-306.71; or
 - (3) Affects any rights to which the corporation or a shareholder may be entitled under another law of the District or the United States.

III. STATEMENT OF THE CASE

This case was first initiated on July 29, 2022, by the District of Columbia's Office of the Attorney General (the "District") against Casa Ruby, Inc., a District nonprofit corporation ("Casa Ruby") and Ruby Corado, Casa Ruby's former Executive Director. On November 28, 2022, the District's Complaint was amended to include Casa Ruby LLC d/b/a Moxie Health, a District limited liability company ("Casa Ruby LLC"), Pneuma Behavioral Health LLC, a District limited liability company ("Pneuma Behavioral Health"), and Tigloballogistics LLC d/b/a/ Casa Ruby Pharmacy, a District limited liability company ("Tigloballogistics") (collectively, "Defendants"), and alleged that Defendants violated the District's Nonprofit Corporation Act ("NCA"), D.C. Official Code §§ 29-401.01, *et seq.*, Wage Payment and Collection Law ("WPCL"), D.C. Official Code §§ 32-1301 *et seq.*, the Minimum Wage Revision Act ("MWRA"), D.C. Official Code § 32-1001, *et seq.*, and the common law. App. 079.

In its Amended Complaint, the District sought injunctive and other relief to protect Casa Ruby's assets and alleged several examples of Defendants' violative conduct, including that Defendants permitted Ruby Corado ("Ms. Corado"), the former Executive Director, to have exclusive access to Casa Ruby's bank and PayPal accounts held in the name of, or created to benefit, Casa Ruby, and permitted Ms.

Corado to expend hundreds of thousands of dollars of Casa Ruby's funds without Board oversight for both improper and unknown reasons. App. 006-011.

On December 23, 2022, Casa Ruby, as Cross-Complainant and Third-Party Plaintiff, acting by and through its Court-Appointed Receiver, the Wanda Alston Foundation, Inc. ("Receiver"), filed a Cross-Complaint and Third-Party Complaint, incorporating the allegations set forth in the District's Amended Complaint as well as the Receiver's previously-filed Third Interim Report to the Court, alleging that Ms. Corado, as former Executive Director of the Cross-Defendants, engaged in various activities constituting misappropriation and wrongful conversion of Casa Ruby's assets, rendering it insolvent. App. 037-043. The Third-Party Complaint also alleged that the individual former members of Casa Ruby's Board of Directors (hereinafter, "Board") breached their fiduciary duties by failing to exercise any oversight or control over Casa Ruby, thereby allowing Ms. Corado's unlawful conversion of Casa Ruby's funds to proceed unchecked. App. 041-43.

Thereafter, Ms. Zoltick (joined by Appellees Harrison and Consuela Lopez) and Appellee Naveed each filed a motion to dismiss the Cross-Complaint, arguing that the NCA shielded them from monetary liability, and that the Cross-Complaint did not allege facts indicating that the individual former Board members "at any time acted in such a way that D.C. Official Code § 29-406.31(d) would overcome the statutory bar of individual liability." App. 045-065. In response, Appellant and the

Receiver argued that the Superior Court should adopt and read into Section 29-406.31(d) the standard of “willful blindness” to find that Appellant and the Receiver had demonstrated the requisite intent to invoke individual liability of the former Board members. App. 073-76. In its Order granting Appellees’ motions to dismiss,¹ the Superior Court held that Casa Ruby did not sufficiently plead facts to state a claim for monetary relief under D.C. Code § 29-406.31(d), and rejected Appellant and Receiver’s argument in favor of applying a “willful blindness” standard to the question of intentional infliction of harm. App. 083–89. By motion filed pursuant to D.C. Superior Court Local Rule 54(b) on June 7, 2023, Casa Ruby—on its behalf and on behalf of the Receiver—requested that the Superior Court enter an order making its ruling granting the Appellees’ motions to dismiss final and appealable. App. 96-101. The Superior Court, finding that the requirements of Rule 54(b) were met, entered its Order of Partial Final Judgment on July 28, 2023. App. 105. Casa Ruby filed this appeal on August 28, 2023, arguing that the Superior Court erred in granting Appellees’ motions to dismiss. App. 106-08.

¹ The Superior Court denied Consuela Lopez’s motion to dismiss based on specific facts unique to her case among the former Casa Ruby directors. App. 087-88.

IV. STATEMENT OF FACTS

Casa Ruby, Inc. (hereinafter “Casa Ruby”) is a nonprofit organization that was incorporated in the District of Columbia, providing transitional housing and related support to LGBTQ+ youth. App. 002. Executive Director Ruby Corado was a “recognized leader in the District’s trans community, having built safe spaces for some of the District’s residents who needed them most. She secured millions in grants, gifts, and loans from federal and District sources, as well as from private donors.” App. 006–07. In 2013, Appellee Ms. Zoltick was asked to join the Board of Casa Ruby, Inc. after having met Ms. Corado in 2011 while working on a transgender needs assessment for the District of Columbia as a college student. App. 046. As the District pleaded in its Amended Complaint, Ms. Corado took actions to unlawfully enrich herself from the organization without the approval or authorization of the Board of Directors. *See* App. 005–12. As a result of Ms. Corado’s actions, Casa Ruby failed to pay employees, vendors, and rent at its properties. App. 003; App. 017.

Upon learning from intended interim director Alexis Blackmon that transfer of control and accounts had not been handed over to her by Ms. Corado despite Ms. Corado’s representations that she had stepped down, Ms. Zoltick attempted to communicate with Ms. Corado to learn what was happening with the organization, but she had no legal authority to remove Ms. Corado or transfer control over the organization herself. *See* App. 046. In February 2022, Ms. Zoltick formally resigned

from the organization as she had been unable to obtain access to necessary operational information held by Ms. Corado, and had no ability to personally exercise control as there was not a Board quorum. *See* App. 014, App. 046. Since resigning, Ms. Zoltick has voluntarily assisted the District in its case against Casa Ruby, Ms. Corado, and the additional corporate entities identified in the District's Amended Complaint, including providing documentation of Board activities and communications to the District prior to being named by Casa Ruby as a Third-Party Defendant, and testifying during an *ex parte* hearing on damages against the Defendant LLC entities even after she was dismissed as a Third-Party Defendant by the Superior Court.

V. SUMMARY OF ARGUMENT

Contrary to Appellant's assertions, Casa Ruby failed to allege facts sufficient to raise a reasonable inference that Ms. Zoltick can be held liable for monetary damages under the D.C. Nonprofit Corporation Act (hereinafter "NCA"), as no facts exist to demonstrate that Ms. Zoltick personally was enriched by Ms. Corado's actions, that Ms. Zoltick ever acted in a manner intended to inflict harm to Casa Ruby, that Ms. Zoltick violated D.C. Code § 29-406.33, or that she violated any criminal law. *See* D.C. Code § 29-406.31(d). In absence of the requisite factual support to invoke D.C. law, Appellant instead now attempts to reshape D.C. law to suit its facts. The NCA is clear that only under specific circumstances such as a clear

showing of *intentional* infliction of harm can individual board members of a nonprofit be held liable for monetary damages. Section 29-406.31(d)(2). The Superior Court appropriately interpreted D.C. law based on a plain reading of the text, reference to legislative history and intent, and analysis of relevant case law. App. 079–95. Despite the unambiguous language of the NCA and the lack of any on point case law in support of its inapplicable legal theory of willful blindness, Appellant has continued to pursue frivolous legal action against Ms. Zoltick, causing reputational and financial harm which should be remedied.

VI. STANDARD OF REVIEW

Ms. Zoltick concurs with the assessment of the applicable standard of review provided by Appellant in its brief. *See* Pet. Br. at 13–14.

VII. ARGUMENT

What Appellant asks this Court to do is not only beyond the scope of an appeal of the Superior Court’s ruling, it is inappropriate for the judiciary to undertake on its face. Appellant seeks to make a material change in the law of the District of Columbia where the legislature has indicated no intention to do so, and in fact has clearly and specifically articulated the parameters of the applicable statute. The provisions of the D.C. Nonprofit Corporation Act (hereinafter “NCA”) were not only agreed upon and implemented by the legislature of the District of Columbia, but are also an implementation of language found in the Model Nonprofit Corporation Act,

which was prepared by the Nonprofit Organizations Committee of the Business Law Section of the American Bar Association upon thorough analysis and due consideration and offered as a model for states to implement in whole or in part. *See* Willard L. Boyd III, “The New Model Nonprofit Corporation Act”, ABA.COM (Oct. 16, 2023), available at https://www.americanbar.org/groups/business_law/resources/business-law-today/2023-october/the-new-model-nonprofit-corporation-act/. There is no ambiguity in the provisions of the NCA as applied to this matter, save the ambiguity Appellant hopes to introduce by its proffer of an inapplicable and unwarranted new liability standard of “willful blindness.” Appellant asks this Court to agree with its bald assertion that a change in D.C. law is necessary to avoid setting an “alarming precedent,” [Pet. Br. at 21–22] yet what Appellant ignores is the fact that no precedent for its argument exists in D.C. case law precisely because the NCA is so carefully constructed and articulated.

A. Appellant Misinterprets the Liability Standard and Intent of the D.C. Nonprofit Corporation Act (“NCA”).

Appellant exhorts this Court to ensure that the former members of the Casa Ruby Board of Directors be “held responsible” [Pet. Br. at 21], yet the NCA explicitly states that individual members of the board of directors of a nonprofit are not to be liable for monetary damages except under specific conditions. *See* 29-406.31(d). Appellant evidently seeks to apply a standard of liability that appears more applicable to business corporations than to nonprofits, ignoring the substantive

distinctions between the two types of corporations and the nature of fiduciary duties held by nonprofit directors. As noted above, the Model Nonprofit Corporation Act (hereinafter “MNCA”) was drafted by the Nonprofit Organizations Committee of the Business Law Section of the American Bar Association, which also drafted the Model Business Corporation Act (hereinafter “MBCA”), upon which the MNCA “is based in large measure . . . but diverges from the MBCA where appropriate given the unique aspects of nonprofit corporation law.” *See supra* Boyd, “The New Model Nonprofit Corporation Act.” As this article published by the ABA about its MNCA drafting indicates, the MNCA intentionally provides statutory liability protection to directors of nonprofit corporations:

“Although the Fourth Edition [of the MNCA]—like the 2016 revision of the MBCA—allows for the articles to include a director liability-shield provision (as well as an indemnification provision that follows the shield language), a liability-shield provision in the articles is not necessary for a charitable corporation because the directors of those corporations receive statutory liability protection under the MNCA, with certain limited exceptions.”

Id. In preparing these two similar yet obviously and deliberately distinct model acts, the ABA set clearly different standards for establishing liability for money damages against members of the boards of directors, which have been adopted by the District of Columbia. Section 29-306.31 of the D.C. Business Corporation Act (hereinafter “BCA”)—though not applicable to this matter—would appear more receptive to

Appellant’s novel legal standard of “willful blindness,” as it reflects the same basic language regarding general liability in subsections (a)–(c) as the DC Nonprofit Corporation Act’s Section 29-406.31(a)–(c), yet this otherwise mirrored provision of the BCA notably stops at subsection (c). In contrast, the NCA adds the most critical and obviously intentional subsection (d), which states:

d) Notwithstanding any other provision of this section, a director of a charitable corporation shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

1. The amount of a financial benefit received by the director to which the director is not entitled;
2. An intentional infliction of harm;
3. A violation of § 29-406.33; or
4. An intentional violation of criminal law.

D.C. Code § 29-406.31(d). The legislature certainly could have decided not to include subsection (d) at all and instead have the NCA apply the same standard of liability for monetary damages to nonprofit directors as to business directors under the BCA; however, unfortunately for Appellant it specifically chose to add this provision as recommended by the MNCA, making explicit the fact that only under extreme and particular circumstances should a nonprofit board member be held liable, contemplating in particular cases of *intentional* infliction of harm and *intentional* criminal acts. The use of the word “intentional” is, itself, quite clearly intentional in this drafting. As the Superior Court held,

In this case, the Court finds that the plain language of the statute does not support the interpretation of the intent element of D.C. Code § 29-406.31(d)(2) as encompassing the disregard of foreseeable harm, or “willful blindness,” as urged by Casa Ruby. The language of the statute refers to an “intentional” infliction of harm, rather than a “knowing” infliction of harm. As the District Court noted in *Bronner*, citing with approval the Model Act, “[t]he use of the word “intentional,” rather than a less precise term such as “knowing,” is meant to refer to the specific intent to perform, or fail to perform, the acts with *actual* knowledge that the director's action, or failure to act, will cause harm, rather than a general intent to perform the acts which cause the harm.” *Bronner v. Duggan*, 317 F. Supp. 3d 284, 292 (D.D.C. 2018)(emphasis added) (citing the Model Act §2.02(c) cmt. 2-12-13). The comment to the Model Act requires “actual knowledge” rather than “willful blindness” or some other form of imputed knowledge.

App. 090–91. The Superior Court’s ruling on Ms. Zoltick’s Motion to Dismiss reflected a clear understanding not only of the plain language of the NCA, but also of the legislative intent demonstrated through the drafting and legislative history of the MNCA and NCA.

B. The Superior Court Properly Held that Appellant’s Suggested “Willful Blindness” Standard is Inapplicable to the NCA.

As stated above, the Superior Court’s decision to grant Ms. Zoltick’s Motion to Dismiss reflected a clear understanding of the applicable provisions and limitations of the NCA. Appellant acknowledged in its prior submissions before the Superior Court that “there is no controlling legal precedent on [the liability standard of the NCA].” App. 071–72. However, it points to a 2018 case before the U.S.

District Court for the District of Columbia which notes that the language of the NCA is based upon the MNCA, in which the Court held that “a director's conduct rises to the level of intentional infliction of harm if the director (1) intends the conduct; (2) with the knowledge that the conduct will cause harm.” *Bronner v. Duggan*, 317 F. Supp. 3d 284, 292 (D. D.C. 2018). App. 072; *see also* App. 088. In its Order granting Ms. Zoltick’s Motion to Dismiss, the Superior Court determined that “[t]he allegations in the Complaint are certainly sufficient to allow a reasonable inference that the failure to exercise oversight in the ways described were intentional. The open question is whether the allegations support a conclusion that such conduct was done with the knowledge that such inaction would cause harm. The Court concludes that they do not.” App. 089. It correctly held both that there were no facts to support a conclusion that individual board members such as Ms. Zoltick acted with *actual knowledge* that their inaction would cause harm to the organization [*id.*], and also that there was no support for Appellant’s attempts to satisfy the intent requirement of the NCA with allegations of willful blindness. App. 090.

It is well established that “knowing” and “intentional” *mens rea* requirements are not interchangeable, and contrary to Appellant’s assertion that the Superior Court relied “almost exclusively on its interpretation of the ‘plain language’ of the statute” [Pet. Br. at 15], the Court in fact properly considered the plain language of the NCA, the legislative history of the NCA and the drafting history of the MNCA, and case

law of other jurisdictions regarding liability standards and *mens rea* requirements. *See* App. 088–093. Despite this, Appellant now cites to case law outside of this jurisdiction which also clearly contradict the language of the NCA, such as the Supreme Court of Pennsylvania’s 2022 case *Marion v. Bryn Mawr Tr. Co.*, 288 A.3d 76 (Pa. 2023), which aside from not being controlling authority in this jurisdiction, states that “while the standards are not coextensive, . . . evidence of intentional ignorance or willful blindness may support an inference of actual knowledge in *particular cases*.” *Marion* at 91 (emphasis added). *See* Pet. Br. at 16–17. This in fact points directly to the heart of the matter; that in *Marion* Pennsylvania’s Supreme Court considered a business fraud case—which as discussed above, would fall under an entirely different statute under D.C. law—and still indicated that willful blindness only *might* support an inference of actual knowledge in *particular cases*. *Marion* at 91 (emphasis added). Every single legal authority offered by Appellant is not only distinguishable generally from the facts of this matter, but also falls under legal provisions that are not analogous to the NCA. *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S.Ct. 941 (2022) concerned the validity of copyright registrations, and *Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 140 S.Ct. 768 (2020) concerned the breach of the Employee Retirement Income Security Act of 1974 (ERISA). Appellant is obviously grasping at straws to find any instance in which any Court has ever applied its pet willful blindness standard to a specific intent *mens rea*

requirement, and even so is unable to identify any compelling legal authority to justify overriding the clear language of the NCA.

C. Appellant Failed to Provide Sufficient Facts to Establish Ms. Zoltick's Liability for Monetary Damages Under the NCA.

Appellant argues that the Board of Casa Ruby failed to provide sufficient oversight over the organization's operations, including Ms. Corado's alleged unlawful actions. *See* Pet. Br. at 15. However, and most significantly, Appellant alleges no facts specific to Ms. Zoltick save that she served on the Board of Casa Ruby and that she subsequently resigned from the Board once Ms. Corado's misconduct became public knowledge. *Id.* at 10, 12. The facts alleged by Appellant pertain to actions taken by Ms. Corado herself, and actions not taken by the Board generally. *Id.* at 10–12, 15. It is not necessary for Ms. Zoltick to individually refute each allegation, as nowhere in Appellant's pleadings before the Superior Court or its brief to this Honorable Court does Appellant actually allege any facts specific to Ms. Zoltick herself that would give rise to an inference of intent to inflict harm upon Casa Ruby under Section 29-406.31(d)(2). Ms. Zoltick was a volunteer Board Member of Casa Ruby's Board of Directors, and did not profit financially from her membership. She joined the Board upon Ms. Corado's request because Ms. Corado was a trusted member of the community that Ms. Zoltick wished to support. App. 006–07, 046.

It is unfathomable that specific intent to inflict harm could be found as to Ms. Zoltick, where no allegations were even raised as to Ms. Zoltick specifically. In fact, in the District's Amended Complaint, it explicitly stated, "Ruby Corado has used Casa Ruby's funds without the knowledge or participation of other managers at Casa Ruby and without oversight from the Board. Even employees with significant responsibilities over Casa Ruby's affairs could not spend any of Casa Ruby's funds without Corado's express permission." App. 008 ¶ 32. Appellant's own prior pleadings do not support a finding of intentional misconduct on the part of Ms. Zoltick, as in the Receiver's Third Interim Report which it incorporated by reference in its Third Party Complaint, it is apparent that the factual evidence indicates to the contrary a *lack* of awareness by the Board of Ms. Corado's actions. *See generally* App. 024–036 (repeatedly using the phrase "when no one on the Board of Directors noticed or objected" [App. 028, 030, 031], acknowledging that Ms. Corado's opening of credit lines and salary increases to herself were "without any official authorization or approval" [*Id.* at 030], stating that "the Receiver has found no evidence that any of these salary increases were voted upon by the Board of Directors" [App. 031, 032–33], and speculating, "if the Board of Directors had performed the barest level of due diligence, the situation at Casa Ruby, Inc. *might* have been discovered." [App. 034] (emphasis added)).

Whether individual board members such as Ms. Zoltick *might* have discovered Ms. Corado’s misconduct earlier is irrelevant to the question of their liability under section 29-406.31(d), as based upon the pleadings it is evident that they did not discover it and did not undertake any actions intended to inflict harm upon the organization. In an attempt to cure this fatal deficiency in its pleadings, Appellant then proffered a new *mens rea* standard of “willful blindness” in an effort to impute knowledge to Ms. Zoltick and her fellow board members. App. 072–73. To bolster its argument, Appellant used incendiary language to describe Ms. Zoltick and her fellow board members as being “comfortable aiding and abetting Ms. Corado in her efforts to make Casa Ruby, Inc. appear like it was a legitimate charitable nonprofit corporation” while providing no foundation for such unwarranted claims. App. 076. As Ms. Zoltick asserted in her Reply to Appellant’s Supplemental Response to her Motion to Dismiss, Appellant has turned to personal attacks in an effort to create sufficient facts to salvage its Third Party Complaint:

Not only is such an inference unreasonable, but references to aiding and abetting—essentially accusing Ms. Zoltick of criminal misconduct—are beyond the pale and constitute wild and unfounded attacks on Ms. Zoltick’s character. Not content with this inflammatory language, Casa Ruby then claims that “the manner of Ms. Zoltick’s departure *suggests complicity* with Ms. Corado’s misconduct.” *Id.* at 12 (emphasis added). Plaintiff clearly asserted in its First Amended Complaint that Ms. Zoltick resigned after making an attempt to obtain financial and organizational records from Ms. Corado and determining that she was unable to exercise control over the

organization due to Ms. Corado's actions. Amended Compl. ¶¶ 70–71. Nothing in this “suggests complicity” or that Ms. Zoltick ever had prior knowledge of or assent to Ms. Corado's alleged misconduct. In absence of any necessary facts to establish individual liability against Ms. Zoltick, Casa Ruby has evidently resorted to inventing its own in an attempt to tarnish Ms. Zoltick's professionalism and credibility and to shift liability away from itself.

Zoltick Reply to Receiver's Supplemental Response in Opposition to Third-Party Defendants' Motion to Dismiss at 9.

Appellant boldly claims that “the NCA expressly contemplates the opposite” when referring to the reality that a director of a nonprofits may not simply be held monetarily liable for any and all damages, but in doing so cites to such a truncated and excerpted provision of the NCA that it removes all clarity of meaning. Appellant writes, “Under the NCA, a nonprofit board of directors is responsible for ‘all corporate powers, . . . activities and affairs . . . , and . . . oversight’ of that nonprofit. D.C. Code § 29-406.01(b) (emphasis added).” Pet. Br. at 22. In actuality, the words “responsible for” do not appear anywhere in the original text of this provision, nor is there any reference in the provision to the responsibility or liability of an individual board member: the Act states that “all corporate powers shall be *exercised by or under the authority of* the board of directors of the nonprofit corporation, and the activities and affairs of the corporation shall be *managed by or under the direction, and subject to the oversight,* of its board of directors”. D.C. Code § 29-406.01(b) (emphasis added). That a board of directors, as a collective, shall have

management over corporate powers or that the exercise of those powers may be subject to the board's oversight does not require that an individual board member should therefore be personally and financially liable for any harm caused in the exercise of corporate powers undertaken by an individual without the express knowledge and approval of the board. Any unlawful actions allegedly taken by Ms. Corado, while legally subject to the oversight of the board, that were taken without the knowledge of the board members cannot be imputed to the individual members. The NCA is explicit in its wording that only under very limited and clearly articulated circumstances can a board member be liable for money damages, and as the Superior Court ruled, Appellant has failed to articulate any facts giving rise to the application of such provisions. Additionally, as the Superior Court noted, *even if* it were to adopt Appellant's willful blindness standard, the facts pleaded would still fail to attach liability to Ms. Zoltick. App. 093. The Court cited to *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 770 (2011), the case relied upon by Appellant in support of its position, in holding that at best, "the facts alleged with regard to the board members make out a basis for negligence, or even recklessness rather than willful blindness." *Id.* Even if hypothetically Appellant could effect a change in D.C. law to permit a finding of willful blindness to attach liability for monetary damages under the NCA, Casa Ruby's complaint against Ms. Zoltick still

would fail to plead a prima facie case, and the Superior Court properly granted Ms. Zoltick's Motion to Dismiss.

D. Ms. Zoltick Should Be Entitled to Recovery of Attorney's Fees in Addition to Reasonable Costs and Expenses Due to Appellant's Frivolous Litigation.

Appellant's counsel might one day try their luck at reading a new intent standard into the D.C. Business Corporation Act under better facts, but such an argument will not avail Appellant in this matter falling under the D.C. Nonprofit Corporation Act. Ms. Zoltick did not at any time act in such a manner as to trigger the conditions of Section 29-406.31(d) nor can Appellant begin to offer any factual assertions to the contrary without first materially changing the applicable law, and as such this Court should uphold the Superior Court's decision to dismiss the claims against her. Despite this fact, Appellant has gone out of its way not only to pursue an action against Ms. Zoltick even after a clear ruling from the Superior Court, but has also made efforts to draw public attention to its unsubstantiated claims against her, with its counsel publishing multiple posts to its public website about its crusade against the former board members and linking to third party news articles which name the board members, including Ms. Zoltick.² Such publications have caused

² See, e.g., "Receiver Sues Board Over Lax Oversight" (Jan. 2023), <https://harrison-stein.com/2023/01/casa-ruby-receiver-sues-board-over-lax-oversight/>; "Eight Directors Named In Lawsuit" (Jan. 2023), <https://harrison-stein.com/2023/01/eight-directors-named-in-lawsuit/>; "Board Members Deny

reputational harm to Ms. Zoltick, in addition to the substantial and continuing expenses she has been forced to incur as a result of Appellant’s ongoing attempts to pin liability upon her rather than the corporate entity itself.

In her Motion to Dismiss, Appellee Ms. Zoltick—and by extension, the other third-party defendant Board members who joined her Motion—requested that the Superior Court not only dismiss Appellant’s third-party complaint, but also award attorney’s fees, and the Court granted that Motion in full as to Ms. Zoltick, though it did not extend the dismissal to Third-Party Defendant Consuela Lopez, who also joined the Motion. App. 051; App. 094. As the claims against Ms. Zoltick are demonstrably frivolous and clearly unsupported by D.C. law, Ms. Zoltick asks that this Court order that the Superior Court’s grant of her motion be upheld and that attorney’s fees be awarded in addition to reasonable costs incurred in this matter.

VIII. CONCLUSION

For the reasons stated above, Appellee Meredith Zoltick respectfully asks that this Honorable Court affirm the Superior Court’s decision to grant Ms. Zoltick’s Motion to Dismiss, and further order that reasonable attorney’s fees be granted.

Responsibility” (March 2023), <https://harrison-stein.com/2023/03/board-members-deny-responsibility/> (copies appended).

Respectfully submitted this 8th day of April 2024,

/s/ Dionna Maria Lewis, Esq.
Dionna Maria Lewis, Esq.
DC219016
District Legal Group, PLLC
700 Pennsylvania Ave. SE, Suite 2098
Washington, D.C. 20003
Tel: 202-486-3478
Dionna@DistrictLegalGroup.com

/s/ Laura Brett Harshbarger, Esq.
Laura Brett Harshbarger, Esq.
DC1672682
District Legal Group, PLLC
700 Pennsylvania Ave. SE, Suite 2098
Washington, D.C. 20003
Tel: 202-455-8513
Counsel@DistrictLegalGroup.com

Counsel for Appellee Meredith Zoltick

CERTIFICATE OF SERVICE

I hereby certify that on this 8th8th day of April 2024, true and correct copies of the foregoing Brief of Appellee Meredith Zoltick were served upon all counsel of record via electronic mail and electronic filing via the Court's CM/ECF system.

/s/ Dionna Maria Lewis, Esq. _____
Dionna Maria Lewis, Esq.

District of Columbia Court of Appeals

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Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

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- (4) the year of the individual’s birth;
- (5) the minor’s initials; and
- (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
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4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

Dionna Maria Lewis, Esq.

Name

Dionna@DistrictLegalGroup.com

Email Address

23-CV-0720

Case Number(s)

April 8, 2024

Date

ADDENDUM

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Receiver Sues Board Over Lax Oversight

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The Casa Ruby board of directors failed to provide oversight for the embattled LGBTQ nonprofit, a complaint filed in D.C. Superior Court alleges. The board never met and did not keep records, the complaint says, a failure that allowed Casa Ruby founder Ruby Corado to embezzle more than \$800,000, increase her own salary and open an office in El Salvador — all without board approval.

The complete story in the Washington Post can be found here:

<https://www.washingtonpost.com/dc-md-va/2023/01/06/casa-ruby-board-lawsuit/>

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The Washington Post

Democracy Dies in Darkness

SOCIAL ISSUES

Casa Ruby receiver sues board over lax oversight

The court-appointed receiver for the troubled LGBTQ nonprofit alleges in the lawsuit that poor oversight allowed the founder to embezzle hundreds of thousands of dollars



By [Casey Parks](#)

January 6, 2023 at 4:53 p.m. EST

The Casa Ruby board of directors failed to provide oversight for the embattled LGBTQ nonprofit, a complaint filed in D.C. Superior Court alleges. The board never met and did not keep records, the complaint says, a failure that allowed Casa Ruby founder Ruby Corado to embezzle more than \$800,000, increase her own salary and open an office in El Salvador — all without board approval.

The complaint, filed on behalf of Casa Ruby in late December by the Wanda Alston Foundation, the court-appointed receiver of the nonprofit, is the latest turn in a case that began last summer when the D.C. Attorney General's office [asked the court to freeze Casa Ruby's bank accounts](#) and prevent Corado from making further withdrawals.

As part of the attorney general's request, the court appointed the Wanda Alston Foundation to act as receiver for Casa Ruby.

In November, the attorney general's office filed an [amended complaint](#) that alleged Corado diverted hundreds of thousands dollars meant for the group's indigent clients to her personal bank accounts. The amended complaint also alleges that Casa Ruby violated District laws by paying workers less than the minimum wage and by not paying workers all of the wages they earned.

The new complaint says Corado used the organization's debit and credit cards for her personal living expenses, and she issued another credit card to board member Consuella Lopez so that she could do the same.

None of the eight board members named in the complaint could be immediately reached for comment.

Between 2016 and 2022, Casa Ruby received \$9.6 million in grants from city agencies to serve the needs of the District's Latino and LGBTQ youth communities. The nonprofit reported more than \$4.1 million in grants and other revenue on its most recent federal tax filings, which showed that Corado earned \$260,000. But employees told The Washington Post last year they had gone without pay, and multiple landlords alleged the same.

Corado, the receiver and the attorney general's office met virtually Friday for a status hearing in the case, and Corado said the accusations were unfounded. District employees monitored her grants, payroll and other expenses, she said.

"We were under strict supervision and contracts that were reimbursable, which meant that we paid out the money to the providers," Corado said. "And when it was time to receive the money back from the government, they checked, so I'm trying to understand the comment that we did not pay minimum wage when it was supervised 100% by the grantors."

The sides will meet in court again mid-March.



Eight Directors Named In Lawsuit

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Eight people who were listed as directors, between 2014 and 2020, of Casa Ruby, the LGBTQ+ organization that is under investigation for embezzlement, were indicted for negligence and damages in the Civil Division of the Superior Court of Washington DC.

The complete story in El Tiempo Latino can be found here:



<https://eltiempolatino.com/2023/01/11/local/ocho-directivos-de-casa-ruby-fueron-acusados-formalmente-de-negligencia-y-danos/>

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Ocho directivos de Casa Ruby fueron acusados formalmente de negligencia y daños

Por Carmen Rodríguez
enero 11, 2023



DAÑOS. Según la acusación la omisión de los directores causó daños a los usuarios y al trabajo de Casa Ruby. /Cortesía Casa Ruby

Ocho personas que figuraron como directores, entre 2014 y 2020, de Casa Ruby, la organización LGBTQ+ que está bajo investigación por malversación de fondos, fueron acusados formalmente por negligencia y daños en la División Civil de la Corte Superior de Washington DC.

La querrella fue presentada por abogados de Wanda Alston Foundation, junto a una moción de denuncia cruzada y acusación a terceros, con el objetivo de que exista en el caso restitución por las pérdidas, compensación por daños, consecuencias punitivas, pagos de multas y todo lo que la Corte considere necesario.

De acuerdo con la acusación, los señalados “fallaron a la hora de intervenir para detener y prevenir” pérdidas en Casa Ruby y esta conducta “de incumplimiento de sus deberes” como miembros de la Junta Directiva causó agravios al trabajo de la entidad.

El documento también apunta que los acusados fueron negligentes a la hora de vigilar, controlar y proteger los intereses de la institución, de acuerdo con la ley que rige el funcionamiento de las corporaciones y organizaciones sin fines de lucro.

La acusación, además, detalla que si los miembros de la Junta Directiva en cuestión hubieran cumplido su rol y no hubieran omitido denuncias de irregularidades, las pérdidas financieras y el mal manejo de los fondos de Casa Ruby se hubieran evitado.

Los directores señalados son Ever Alfaro, Carlos González, Consuella López, quien según la declaración de impuestos de Casa Ruby de 2020 recibió una compensación/sueldo de \$38 mil 208. Así mismo, Jackie Martínez, Hassan Naveed, Jack Quintana Harrison, Miguel Rivera y Meredith Zotlick.

Más de \$250 mil de Casa Ruby se usaron en salones de belleza y restaurantes en Washington DC

El último informe de la auditoría que realiza la organización Wanda Alston Foundation, síndico en el proceso que se sigue en contra de Casa Ruby y su directora, a las finanzas y documentos de la entidad, reveló que Ruby Corado, fundadora de la misma, utilizó más un cuarto de millón de dólares para gastos personales.

De acuerdo con el reporte presentado en la Corte Superior de Washington DC poco antes de las celebraciones de fin de año de 2022, entre 2019 y 2021, Corado gastó \$254 mil 852.30 en vistas a salones de belleza, manicura, pestañas postizas, quiroprácticos, productos de santería, viajes y gastos a El Salvador y comidas en restaurantes alrededor de Washington DC.

Te puede interesar: Directivos de Casa Ruby niegan haber autorizado aumentos de sueldos y gastos a Corado

“No existió separación entre los gastos personales de Corado y los gastos de los costos del funcionamiento de Casa Ruby. La contabilidad muestra que se hicieron cargos de otros gastos personales en la tarjeta de debito de la organización desde 2017”, se lee en el informe.

El tercer reporte de Wanda Alston Foundation también apunta que Corado solicitó una tarjeta de crédito para Consuella López, miembro -según la declaración de impuestos de la organización- de la junta directiva.

Pero, además, el documento detalla que Corado abrió y utilizó, sin la autorización de los directores, una línea de crédito a nombre de la organización que llegó a tener un límite de \$600 mil. Miles de dólares de ese préstamo fueron movidos de la cuenta bancaria de Casa Ruby hacia cuentas personales de la directora, apunta el documento.

“El patrón de despilfarro, fraude y abuso parece haberse intensificado cuando Corado descubrió que no hubo supervisión significativa por parte de la junta directiva. Los registros financieros de Casa Ruby muestran depósitos de múltiples fuentes de ingresos por un total de \$5 millones 169 mil 098.03”, apunta el informe.

“Parecía que Corado recibía un trato especial de parte de muchos servidores públicos electos en Washington DC y que ella disfrutaba de ese nivel de poder y privilegios que otros puedan reclamar”, se lee en el documento.

Acusación cruzada

También en diciembre, Wanda Alston solicitó a la jueza del caso, Danya Dyson, ser parte de la acusación y el señalamiento formal de las ocho personas que figuraron como directores de Casa Ruby en los documentos de los impuestos desde 2014 hasta 2019.

Durante la última audiencia, realizada el 6 de enero pasado, Ruby Corado, dijo a la jueza que algunas de estas personas acusadas, le expresaron preocupación y sostuvo que todo el proceso es parte de una persecución en su contra.

La demanda cruzada a terceros contiene alegaciones que aumentan significativamente el alcance de la responsabilidad, por omisión de los directivos señalados. Estas personas podrían ser condenados a pagar por los daños totales o parciales que se consideren sean en perjuicio de Casa Ruby.

Última audiencia

Durante la última audiencia, la jueza Dyson apuntó que Casa Ruby debe contar, en las próximas semanas, con un representante legal que se adjunte al caso como parte defensora de los intereses de la organización.

Sin embargo, un experto en el tema legal, que estuvo en la diligencia, afirmó que “el caso tiene mala connotación” y debido a esto, varios abogados consultados no quieren ser incluidos en el proceso.

Por su parte, Corado aseguró que por la forma en la que se ha manejado toda la información relacionada a Casa Ruby, desde el momento que se supo de la investigación, afuera de la Corte, no solo existe preocupación entre los directores señalados, sino negatividad a la hora de encontrar abogados.

Después de varias interrupciones de parte de la jueza a Corado, por desviar la discusión sobre su representación legal hacia temas personales, uno de los representantes de Wanda Alston Foundation dijo que la directora de Casa Ruby “debe entender que tiene una responsabilidad” de nombrar un abogado en el caso.

“Ha habido un esfuerzo para demonizarme y destruir mi legado. Como activista he vivido con eso toda mi vida. Mi preocupación no es que si Casa Ruby puede evolucionar, sino que el sistema ha puesto muchos candados y esfuerzos para castigar a la gente, no soy la única involucrada en Casa Ruby”, afirmó la directora en una de sus intervenciones.

Hasta el momento, Corado no ha respondido a la demanda en su contra y según la jueza Dyson, tampoco ha mostrado pruebas que desestimen lo señalado en los tres informes financieros que ha redactado la organización síndico.

La Corte le dio hasta el 13 de enero para que presente su respuesta formal al proceso y, además, un plazo de 60 días, pese a que la Fiscalía señaló que han pasado cinco meses desde que presentó la acusación, para que nombre a un representante legal.

La audiencia se realizó vía online. Según fuentes cercanas al proceso Corado se encuentra en El Salvador. En noviembre pasado circuló un video en el que la directora de Casa Ruby fue captada en el concierto del reguetonero Bad Bunny en territorio salvadoreño.





Board Members Deny Responsibility

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At least five of the eight board members named in the lawsuit filed by the Court-Appointed Receiver for Casa Ruby, Inc. have denied responsibility for the organization's collapse. *The Washington Blade* reports that Miguel Rivera, an attorney who is one of the former board members named in the complaint, asserts that the complaint should be dismissed on a wide range of grounds — noting that he “has not engaged in (a) willful misconduct; (b) crimes; (c) transactions that resulted in improper personal benefits of money, property, or service; and (d) acts or omissions that are not in good faith and are beyond the scope of authority of the corporation.”

The lawsuit was filed on December 23. It identifies each of the board members and “respectfully requests restitution, compensatory damages, punitive damages, receivership fees and expenses, court costs, attorneys fees and expenses, and any other relief the court deems necessary and proper.” Details of the board members’ responses are expected to emerge at the DC Superior Court hearing scheduled for March 17.

The complete article from *The Washington Blade* can be found here:

<https://www.washingtonblade.com/2023/03/16/casa-ruby-board-desny-responsibility>

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DISTRICT OF COLUMBIA

Casa Ruby board members deny responsibility for org's collapse

Civil complaints filed against officials to be discussed at March 17 hearing

Published 12 months ago on March 16, 2023

By **Lou Chibbaro Jr.**



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Ruby Corado has denied engaging in any improper financial actions. (Washington Blade photo by Ernesto Valle)



At least five of the eight former members of the Casa Ruby board of directors who are named in a civil complaint charging them with failing to adequately oversee the organization's finances and practices by its former director Ruby Corado have filed court papers disputing the allegations against them.

Details of their response to a third-party civil complaint filed against them by the Wanda Alston Foundation in its role as the court-appointed receiver of the now-defunct Casa Ruby

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LGBTQ community services center were expected to surface at a March 17 D.C. Superior Court virtual hearing on the Casa Ruby case.

The Alston Foundation's complaint was filed on Dec. 23, several months after the Office of the D.C. Attorney General filed its own civil complaint against Casa Ruby and Ruby Corado. The Attorney General's complaint, among other things, alleges that Corado and the organization violated the city's Nonprofit Corporations Act in connection with its financial dealings. An amended version of the original complaint charges that Corado withdrew more than \$400,000 of Casa Ruby's funds for unauthorized use in El Salvador, where Corado currently lives.



The Alston Foundation complaint, which also names Corado as a defendant, identifies each of the eight former board members as defendants and “respectfully requests restitution, compensatory damages, punitive damages, receivership fees and expenses, court costs, attorneys fees and expenses, and any other relief the court deems necessary and proper.”

According to the complaint, each of the board members failed to exercise their legally required oversight of Casa Ruby's operations and of practices by Corado that allegedly resulted in the financial collapse of Casa Ruby, forcing it to close its operations.

Miguel Rivera, one of the former board members who is an attorney, states in his response to the complaint that it “fails and/or may be barred, in whole or in part, because a bona fide fiduciary relationship did not exist between Third-Party Plaintiff [Alston Foundation on behalf of Casa Ruby] and Third-Party Defendant Miguel Rivera.”

Rivera's response adds that the complaint should be dismissed on a wide range of grounds, including his assertion that he as a board member “has not engaged in (a) willful misconduct; (b) crimes; (c) transactions that resulted in improper personal benefits of money, property, or service; and (d) acts or omissions that are not in good faith and are beyond the scope of authority of the corporation.”

The responses filed by the former board members are not included in the current online D.C. Superior Court case docket for the Casa Ruby case. At the request of the Washington Blade, Douglas Buchanan, the court's public information officer, provided the Blade with the responses by Rivera and former board members Meredith Zoltick and Carlos Gonzales.

Similar to Rivera's response, the response filed by Zoltick and Gonzales also disputes the validity of the complaint and asks the judge to dismiss the case against them.

Nick Harrison, the attorney representing the Alston Foundation in its role as Casa Ruby Receiver, said he has learned that another two former Casa Ruby board members have filed some form of a response to the complaint against them.



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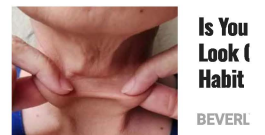
The Washington Blade, the oldest LGBTQ newspaper, is an officially designated seat in the White House James S. Brady Press Room, marking the first time a publication has been afforded this honor.

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In a separate motion filed in court on Jan. 21, Harrison states on behalf of the Alston Foundation that it has taken the legally required steps needed to properly serve each of the eight former board members with court papers informing them they have been named as defendants in the complaint. He said he expects Superior Court Judge Danya Dayson, who is presiding over the Casa Ruby case, to rule that the legally required efforts to serve each of the defendants have been met.

Court records show that Corado, who has appeared in previous virtual court hearings through a phone hookup, has yet to retain an attorney to represent her.

Corado has denied engaging in any improper financial actions and has insisted the Casa Ruby board approved her actions, including her decision to open a Casa Ruby operation in El Salvador. In a December interview with the Blade's El Salvador correspondent, Corado said the allegations that D.C. officials have made against her amount to "persecution."

At a Jan. 6 court hearing held virtually, Corado reiterated her earlier claims that the D.C. government was responsible for Casa Ruby's closing in July 2022 by withholding hundreds of thousands of dollars that Corado says the city owed Casa Ruby for services it provided under city grants.

City officials have disputed those claims, saying the funds were withheld or discontinued because Casa Ruby did not provide the required documentation or reports showing that it performed the work associated with the city grants.

The March 17 court hearing is scheduled to begin at 12 p.m. and will be broadcast through the court's Webex system.

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The New Model Nonprofit Corporation Act

Willard L. Boyd III

Oct 16, 2023 ⌚ 8 min read



Model Nonprofit Corporation Act

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Summary

- The fourth edition of the Model Nonprofit Corporation Act ("MNCA"), adopted by the Committee on Nonprofit Organizations of the Business Law Section, is based in large measure on the Model Business Corporation Act ("MBCA") adopted by the Corporate Laws Committee.
- The Fourth Edition includes the new and revised provisions of the 2016 revision of the MBCA and the changes to the MBCA since the 2016 revision, with some modifications based on the unique nature of nonprofit corporations.
- Since its genesis, the MNCA has tracked the MBCA but diverged where appropriate, e.g., in the realm of shareholders. The Fourth Edition, too, generally tracks the MBCA, including in numbering system and sequence of provisions and a simplified Official Comment.
- Many states' nonprofit acts are based on earlier editions of the Model Nonprofit Corporation Act. The Fourth Edition provides an up-to-date model statute that accounts for the various types of nonprofit corporations in existence today.



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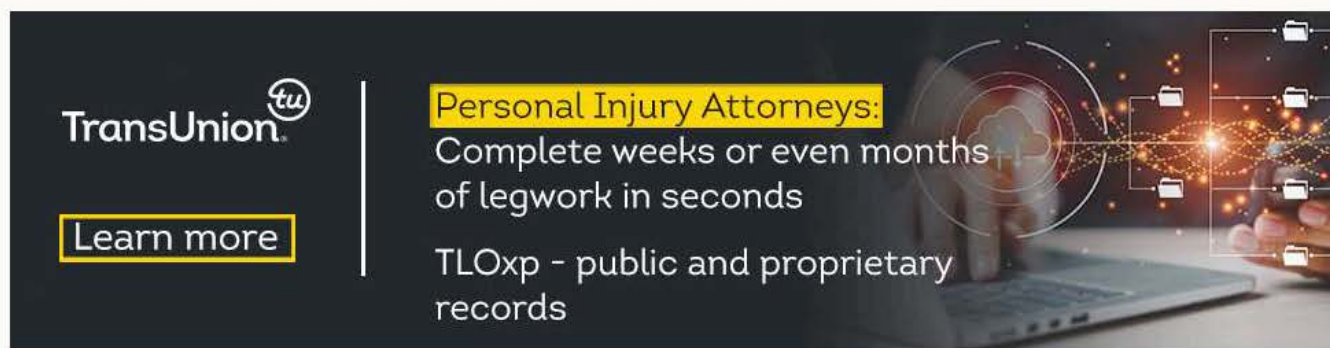
The [fourth edition of the Model Nonprofit Corporation Act](#) ("MNCA"), adopted by the Committee on Nonprofit Organizations of the Business Law Section, is based in large measure on the Model Business Corporation Act ("MBCA") adopted by the Corporate Laws Committee of the Section. ¹ The Fourth Edition includes the new and revised provisions of the 2016 revision of the MBCA and some changes to the MBCA since the 2016 revision. ² As a result, states adopting the Fourth Edition will have a statute that



includes important, up-to-date provisions relating to nonprofit corporations that are consistent with the provisions of the MBCA, as well as revised and updated Official Comment.

Brief History of Prior Editions of the MNCA and the MNCA's Close Relationship to the MBCA

The MNCA has a long relationship with the MBCA. The original MNCA was drafted in 1952 by the Corporate Laws Committee as a model act, along the lines of the MBCA, providing uniform provisions in contrast to the welter of conflicting statutes that existed at that time in various states.³ Subsequently, a growing interest in nonprofit corporation law led to the creation of the Committee on Nonprofit Corporations (now known as the Committee on Nonprofit Organizations) of the Business Law Section, which issued an update in 1957 for the primary purpose of bringing the text of the MNCA into closer alignment with the MBCA.⁴ This policy of parallelism proved of paramount importance; consequently, the MNCA was submitted to the Corporate Laws Committee, which prepared a 1964 version.⁵ Since that time, drafting committees of the Nonprofit Organizations Committee have prepared subsequent versions of the MNCA, which were finalized in 1987 and 2008.


A dark-themed advertisement for TransUnion. On the left, the TransUnion logo is displayed above a yellow-bordered button that says "Learn more". To the right of the button, the text "Personal Injury Attorneys:" is highlighted in yellow. Below this, the text reads "Complete weeks or even months of legwork in seconds" and "TLOxp - public and proprietary records". The background features a hand interacting with a laptop, overlaid with a glowing digital interface showing a cloud, a target, and a network of nodes.

There are various benefits to having the MNCA track the MBCA. Among other things, nonprofit corporations have developed to be more like business corporations than charitable trusts, and as a result, many of the MBCA provisions work equally well for nonprofit corporations. Also, as case law interpreting nonprofit corporation statutes is generally limited, having provisions in the MNCA that are the same as or similar to the MBCA should be useful to practitioners in advising nonprofit corporations because they can consider case law interpreting similar MBCA provisions. In addition, having the MNCA track the MBCA makes it easier for states that have adopted the MBCA to adopt the MNCA because they will not have to review or work with an unfamiliar structure.⁶

While an objective of each of the drafting committees has been to generally track the MBCA, the MNCA diverges from the MBCA where appropriate given the unique aspects of nonprofit corporation law. For instance, the MNCA does not have provisions on shareholders because nonprofit corporations do not have equity owners. Instead, the MNCA provides for nonequity members, delegates, and designated bodies, each of which can have governance rights similar to shareholders. Notably, the MNCA prohibits the payment of dividends or distributions to members or members of a designated body except in very limited circumstances. It also provides that a person who is a member of or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with the dissolution of the corporation unless the person is a charitable corporation, a charitable trust, or an unincorporated entity that has a charitable purpose.

The MNCA provides flexibility for the various types of nonprofit corporations and their different structures. It allows a nonprofit corporation to have members or no members; it requires the membership corporation to have a board of directors that is elected either by the members or as otherwise provided in the articles or bylaws, or, in the case of a nonmembership corporation, it requires a board elected as provided in the articles or bylaws. It also allows for a designated body to assume some of the functions of a board of directors.

Highlights of the 1987 and 2008 Editions of the MNCA

The 1987 MNCA (referred to as the "Revised Model Nonprofit Corporation Act") included important updates that brought it closer in form and content to the provisions of the 1984 revision of the MBCA. Provisions not previously contained in the MNCA were added, including provisions addressing the duties, liabilities, and indemnification rights of directors and officers, with some unique features given the nature of nonprofit corporations.⁷ In addition, following developments in New York and California, the 1987 MNCA adopted a scheme of classifying nonprofit corporations into three categories: (1) public benefit, (2) mutual benefit, and (3) religious. 

—with the mutual benefit category being the default classification for any nonprofit corporation that was not a public benefit or religious corporation. Although many of the provisions of the 1987 MNCA applied to all types of nonprofit corporations, there were different rules depending on the classification as they related to different topics, including member rights, board duties, and fundamental changes of the nonprofit corporation.⁸ The 1987 MNCA also added more detailed provisions addressing the role of the state attorney general, particularly with regard to public benefit corporations and religious corporations. These provisions were included in recognition of the fact that in some states the state attorney general has a role in the oversight of charitable organizations. In addition, the 1987 MNCA included provisions on derivative proceedings and provisions on records and financial reporting, all of which were based in large part on the MBCA.⁹

The 2008 MNCA (referred to as the “Model Nonprofit Corporation Act, Third Edition”) was a product of a drafting task force of the Nonprofit Organizations Committee chaired by Lizabeth A. Moody. The 2008 MNCA continued to follow the provisions of the MBCA to the extent possible. As states were not widely adopting the classification scheme adopted in the 1987 MNCA, the 2008 MNCA eliminated the classification system while still recognizing that there are some situations where a charitable or religious nonprofit corporation should be treated differently.¹⁰

The 2008 MNCA added new provisions unique to nonprofit corporations, including those addressing in more detail the concept of a “designated body,” which is a person or group other than a committee of the board of directors that has been vested by the articles or bylaws with powers that would otherwise be exercised by the board or the members. The concept of a designated body was included in recognition that some nonprofits use that governance model.¹¹ In addition, the 2008 MNCA eliminated the detailed provisions addressing the authority of the state attorney general and replaced them with provisions acknowledging the authority of the state attorney general (some of which are optional) but recognizing that more detailed provisions regarding the power of the state attorney general would be more appropriately addressed in a different statute.¹² The 2008 MNCA also eliminated cumulative voting by members in the election of directors based on a determination that the voting power of members should not be tied to their economic contributions and based on the fact that directors of a nonprofit corporation are often chosen on a basis other than furthering the financial interests of the corporation.¹³

Fourth Edition of the MNCA

After the publication of the 2008 MNCA, a subcommittee of the Nonprofit Organizations Committee worked on updates to the 2008 MNCA. It followed a process that is similar to the process followed by the Corporate Laws Committee for the MBCA. Changes to the 2008 MNCA were published in *The Business Lawyer* and then adopted on a third reading.¹⁴ With the Corporate Laws Committee’s adoption of the 2016 revision of the MBCA, it was an easy decision for the subcommittee to move forward with a new edition of the MNCA. Lawrence J. Beaser chaired the MNCA task force, and William H. Clark Jr., who also served as the reporter for the 2008 MNCA, served as the reporter for the Fourth Edition.¹⁵

Except in circumstances where substantive issues require a different rule for nonprofit corporations, the Fourth Edition continues to closely track the MBCA. In addition, it generally follows the numbering system and sequence of the MBCA provisions, with the most important substantive provisions retaining section numbers similar to those of the MBCA provisions. These include chapter 2 (Incorporation), chapter 6 (Memberships and Financial Provisions), chapter 7 (Member Meetings), chapter 8 (Directors and Officers), and chapter 9 (Amendment of Articles of Incorporation and Bylaws). The provisions of the Fourth Edition have been renumbered in certain places to eliminate gaps in the numbering sequence.

Following the approach taken by the Corporate Laws Committee in the 2016 revision of the MBCA, the Fourth Edition includes an Official Comment that has been simplified, with elimination of portions that merely restated or paraphrased an MNCA provision. As with the MBCA, the Official Comment for the Fourth Edition should be helpful to practitioners and judges in interpreting provisions of state statutes based on the MNCA. The Fourth Edition also includes source notes that set forth citations to the provisions of the MBCA that were the source for specific provisions of the Fourth Edition.

Many of the new provisions in the 2016 revision of the MBCA are included in the Fourth Edition with some modifications based on the unique nature of nonprofit corporations. These include (1) provisions authorizing articles of incorporation to limit or eliminate the liability of directors relating to corporate opportunities;¹⁶ (2) provisions similar to the MBCA on ratification of defective corporate actions, which should be very useful to nonprofits that may have previously taken actions that did not comply with the applicable state statute;¹⁷ (3) provisions permitting forum-selection provisions to be included in the bylaws;¹⁸ and (4) provisions for virtual member meetings that are based on the MBCA virtual shareholder meeting provisions.¹⁹



Unique provisions of the 2008 MNCA continue in the Fourth Edition, including, for example, provisions on members (and the option of having no members), delegates, and designated bodies. In terms of incorporating documents, the Fourth Edition contemplates that the articles may include provisions complying with applicable Internal Revenue Code requirements for tax-exempt organizations. Like the 2008 MNCA, the Fourth Edition includes a provision allowing for advisory committees made up of nondirectors.²⁰ Although the Fourth Edition—like the 2016 revision of the MBCA—allows for the articles to include a director liability-shield provision (as well as an indemnification provision that follows the shield language), a liability-shield provision in the articles is not necessary for a charitable corporation because the directors of those corporations receive statutory liability protection under the MNCA, with certain limited exceptions.²¹ The Fourth Edition retains provisions to protect the charitable assets of a nonprofit corporation in the event of a sale of assets or dissolution, as well as in the event of any entity transaction, such as a merger, interest exchange, domestication, or conversion.²²

It is expected that, like the 2016 revision of the MBCA, there will be a “spoke” version of the Fourth Edition that can be adopted as a “spoke” by states using the Uniform Law Commission’s Uniform Business Organization Code (“UBOC”) hub-and-spoke structure.²³

Conclusion

A substantial number of states’ nonprofit acts are based on the first and second editions of the Model Nonprofit Corporation Act, which were published in the 1960s and 1980s. As noted above, significant changes have been made to the Model Nonprofit Corporation Act since that time. The Fourth Edition should prove to be very helpful to states by having an up-to-date model statute that provides the structure and flexibility necessary for the various types of nonprofit corporations that exist today.

An earlier version of this article appeared in the September 2021 issue of the *Model Business Corporation Act Newsletter*, the newsletter of the ABA Business Law Section’s Corporate Laws Committee. Read the [full issue](#) and previous issues on the [Corporate Laws Committee web page](#). The views expressed in this article are solely those of the author and not his law firm or clients. No legal advice is being given in this article.

Endnotes

Author



Willard L. Boyd III
Nyemaster Goode PC

Willard L. Boyd III is a shareholder with the Des Moines law firm of Nyemaster Goode, P.C., where he practices in the firm’s business, corporate, and banking department. Bill’s practice involves the representation of...

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