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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

ALAN ROSENBERG et al., Plaintiffs and Appellants, v. THE SCREEN ACTORS GUILD, Defendant and Respondent.	B214056 (Los Angeles County Super. Ct. No. BC406900)

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

Browne Woods George LLP, Eric M. George and Sonia Y. Lee for Plaintiffs and Appellants.

Bing McCutchen LLP, Daniel Alberstone, Roland Tellis and Sara Jasper Epstein, for Defendant and Respondent.

The trial court denied appellants' ex parte application for a temporary restraining order barring respondent Screen Actors Guild (SAG) from acting on a so-called "written assent" SAG's Board of Directors approved in January 2009. We dismiss the appeal from the denial as moot.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

In 1933, SAG was created as a nonprofit corporation to provide representation for performing artists in the motion picture industry. During the pertinent events, SAG was governed by a Board of Directors (Board) with 71 elected members, including appellants Alan Rosenberg, Anne-Marie Johnson, Kent McCord, and Diane Ladd. Rosenberg and Johnson served, respectively, as SAG's President and First Vice President.

Article IV of SAG's Constitution and Bylaws (Constitution) establishes procedural rules for the Board, which must hold four plenary meetings per year. In addition, section 1(J)(4) of Article V (section 1(J)(4)) provides: "Except as provided otherwise in this Constitution, any acts may be valid for all purposes with or without a meeting if approved by the written assent of a majority of the votes of the [Board], or such higher percentage of the Board votes as may be required by this Constitution."

Beginning in April 2008, SAG began negotiations with the Alliance of Motion Picture and Television Producers (AMPTP) regarding SAG's collective bargaining agreement. Douglas Allen, then SAG's National Executive Director (NED), was also its chief negotiator. Allen acted in conjunction with a TV/Theatrical Committee that had been formed for the purpose of negotiating

contracts for SAG's members. A key issue in the negotiations concerned residual payments from "new media" electronic formats, such as DVDs and the Internet.

On January 12 and 13, 2009, the Board held a plenary meeting in Los Angeles. At the meeting, a motion was proposed to replace Allen and the TV/Theatrical Committee with a new interim chief negotiator and a TV/Theatrical Contract Work Group. After a lengthy debate, the meeting ended without a vote on the motion.

On or about January 26, 2009, a 52.52 percent majority of the Board signed a "written assent" that had been circulated by e-mail and fax. The written assent, inter alia, terminated Allen as NED and chief negotiator; appointed David White and John T. McGuire, respectively, as interim NED and interim chief negotiator; and disbanded the TV/Theatrical Committee, replacing it with a "taskforce" of designated members.

Appellants initiated the underlying action on February 3, 2009. Their first amended complaint, filed February 5, 2009, asserted claims for declaratory relief and unfair business practices (Bus. & Prof. Code, § 17200 et seq.). Appellants also filed an ex parte application for a temporary restraining order (TRO) and order to show cause regarding a preliminary injunction. The application sought a TRO that would void any action taken pursuant to the written assent, and prohibit all such future action, "until and if [sic] the terms of [the] written assent [were] lawfully presented to and approved by a binding vote of the full SAG Board at a properly noticed and lawful Board meeting."

The application contended that section 1(J)(4) of SAG's Constitution contravened Corporations Code section 7211, subdivision (b), which provides: "[A]n action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in

writing to that action."[1] The application also contended that the written assent violated certain provisions of SAG's Constitution, and that the authors of the written assent had not circulated it to their opponents on the Board. In opposing the application, SAG argued that section 7150 of the Corporations Code authorized SAG to enact section 1(J)(4), as that section permitted nonprofit corporations to adopt bylaws, except as provided in an enumerated list of sections, which did not include section 7211.[2]

Following a hearing on February 5, 2009, the trial court denied the requested TRO and order to show cause.[3] In finding that appellants were unlikely

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[1] Section 7211, subdivision (b), of the Corporations Code provides in pertinent part: "An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors."

[2] Section 7150, subdivision (a), of the Corporations Code provides: "Except as provided in subdivision (c) and Sections 7151,7220, 7224, 7512, 7613, and 7615, bylaws may be adopted, amended or repealed by the board unless the action would: [¶] (1) Materially and adversely affect the rights of members as to voting, dissolution, redemption, or transfer; [¶] (2) Increase or decrease the number of members authorized in total or for any class; [¶] (3) Effect an exchange, reclassification or cancellation of all or part of the memberships; or [¶] (4) Authorize a new class of membership."

[3] The trial court is required to evaluate two interrelated factors in determining whether to issue a temporary restraining order or preliminary injunction. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70; *Church of Christ in Hollywood v. Superior Court* (2002) 99 Cal.App.4th 1244, 1251.) "The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary

(Fn. continued on next page.)

to prevail on the merits, the trial court stated: "[Section] 7150 of the Corporations Code is pretty darn clear that you can do whatever you want in your bylaws except for certain circumstances, and those [exceptional] provisions are expressly listed, and the Corporations Code [section] that [appellants] rely on is not one of them." The trial court further concluded that "the bylaws permit[ted] the Board to do exactly what [it] did."[4]

On February 6, 2009, appellants noticed an appeal from the denial of the ex parte application. Two days later, on February 8, 2009, the Board held a meeting convened at the request of the interim NED, David White (the February meeting). Every director attended the meeting or was represented by a designated alternate. A motion was made to "affirm[] [the Board's] authority to interpret its own Constitution and [to] uphold[] the validity of the written assent action of the Board in its entirety, [as] delivered to SAG counsel on January 26, 2009[.]" [5] Following an hour-long debate, the Board voted by a 59.02 percent majority that the written assent motion "is hereby reaffirmed and re-adopted in its entirety, and all of the actions which it authorizes shall continue to be in force." Four months later, on June 9, 2009, 78 percent of the members of SAG voted to approve a new TV/Theatrical contract with AMPTP.

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injunction were issued." (*IT Corp. v. County of Imperial*, *supra*, 35 Cal.3d at pp. 69-70; accord, *Church of Christ in Hollywood v. Superior Court*, *supra*, 99 Cal.App.4th at p. 1251.)

[4] On February 11, 2009, appellants filed a petition for writ of mandamus, which sought relief from the denial of the application. This court denied the petition on February 13, 2009.

[5] The minutes set forth the entire text of the provisions adopted by written assent on January 26.

DISCUSSION

Appellants contend the trial court erred in denying their request for a TRO and an order to show cause. For the reasons explained below, we conclude this appeal is moot, and thus must be dismissed.

A. *Mootness*

"It is well settled that an appellate court will decide only actual controversies. Consistent therewith, it has been said that an action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events. . . . [T]he appellate court cannot render opinions '" . . . upon moot questions or abstract propositions, or . . . declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal."' [Citations.]" (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10.) These principles apply to appeals from the denial of injunctive relief. (*Ibid*.)

Appellants correctly note that an earlier motion by SAG to dismiss the appeal was denied. On May 20, 2009, after appellants filed their opening brief, SAG moved to dismiss the appeal, arguing that the Board had ratified the written assent at the February meeting, thereby rendering the application for injunctive relief moot. The motion was denied June 9, 2009, before SAG filed its respondent's brief, which reasserted the contention presented in its motion. As the motion was summarily denied by a single justice of this court, the ruling does not

constitute a binding determination. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 900-901.) We may therefore revisit the issue of mootness and determine whether the appeal must be dismissed. (*Department of Industrial Relations v. Nielsen* (1996) 51 Cal.App.4th 1016, 1023 & fn. 6.)[6]

B. *Ratification*

We conclude that the appeal has been rendered moot by the decision of the majority of the Board on February 9 to ratify and re-adopt the provisions of the written assent, and by the subsequent decision of SAG's members to accept the contract negotiated pursuant to the Board's February 9 vote. The principles of ratification pertinent here are derived from the law of agency, and adapted to the

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6 Appellants also assert that the determination of mootness requires us to resolve the merits of the appeal. We disagree. Generally, a motion to dismiss on the grounds of mootness is properly denied when its resolution necessitates a review of the appellate record (*Gogerty v. Coachella Valley Junior College Dist.* (1962) 57 Cal.2d 727, 729), with an eye to the merits of the issues presented in the appeal (*Johnson v. Sun Realty Co.* (1932) 215 Cal. 382, 383).

Here, our inquiry requires us to address no issue presented on appeal, with one minor exception. Appellants' brief on appeal contends that the Board, in employing the procedure described in section 1(J)(4), lacked the authority under SAG's Constitution to approve certain provisions of the written assent through a simple majority vote. This issue arises independently in connection with the February meeting, at which the Board affirmed the written assent by a simple majority vote (see pt. C.2.b., *post*). As the resolution of this issue requires only an examination of SAG's Constitution and rules -- which were provided to us in connection with the motion to dismiss and the appeal -- we conclude that its existence does not foreclose a dismissal on the grounds of mootness. (See *Zimmerman v. Drexel Burnham Lambert Inc.* (1988) 205 Cal.App.3d 153, 162 [in appropriate circumstances, appellate court may dismiss appeal even though motion to dismiss requires some review of record].)

context of corporate governance. (2A Fletcher Cyclopedia Corporations (rev. 2009 perm. ed.) § 752, p. 424). Generally, "[r]atification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. [Citations.]" (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73.) Ratification is retroactive in effect (*Meyers v. El Tejon Oil & Refining Co.* (1946) 29 Cal.2d 184, 187), absent prejudice to third parties (Civ. Code, § 2313).

In the case of corporations, an act may be expressly ratified by the board or the shareholders, provided that they had the authority to approve the act "in the first instance." (2A Fletcher Cyclopedia Corporations, *supra*, § 752, p. 420.) Under this principle, an action within the authority of the board may be ratified "through a resolution of its board of directors when duly assembled." (*John Paul Lumber Co. v. Agnew* (1954) 125 Cal.App.2d 613, 622; see *Porter v. Lassen County Etc. Co.* (1899) 127 Cal. 261, 270 [resolutions endorsing use of mortgage funds adopted at full board meetings ratified mortgage originally approved at procedurally defective board meeting]; *Doerr v. Fandango Lumber Co.* (1916) 31 Cal.App. 318, 323-324 [resolution acknowledging existence of mortgage at full board meeting ratified mortgage allegedly negotiated by corporation's president without board's authorization]; *Bass v. American Insurance Company* (9th Cir. 1974) 493 F.2d 590, 593 [allegedly unauthorized purchases ratified by approval of full board and unanimous vote of shareholders].)

Similarly, an act within the authority of the shareholders may be ratified by their approval. Thus, in *Horner v. Marine Engineers' etc. Assn.* (1959) 175 Cal.App.2d 837, 839-840, a member of an incorporated union initiated an action against his union, alleging that it had paid salaries to corporate officers exceeding

the limits imposed by the union's bylaws. After the union member filed his action, a majority of the union members approved amendments to the bylaws that ratified and retroactively endorsed the salaries that had been paid. (*Id*. at pp. 841-842.) The appellate court concluded that "formal ratification of these salaries by an overwhelming vote at a regular meeting of the informed membership [was] a complete defense to [the] action." (*Id*. at p. 843.)

Ratification may also occur when a corporation knows of the act and "does not repudiate it within a reasonable time, but without objection acquiesces in that act." (2A Fletcher Cyclopedia Corporations, *supra*, § 752, p. 425.) Corporate conduct manifesting ratification can take many forms, including acceptance of the act's benefits. (E.g., *Berry v. Maywood Mut. W. Co. No. One* (1939) 13 Cal.2d 185, 190 [corporation ratified contract for legal services not approved by board by accepting benefits of lawyer's performance and making payments to lawyer].) An instructive application of this principle is found in *Meyers v. El Tejon Oil & Refining Co.*, *supra*, 29 Cal.2d 184. There, a dividend was declared at a special board meeting attended by only four of a corporation's seven directors. (*Id*. at p. 186.) In contravention of statutory requirements, no notice of the meeting had been given to the directors, and the absent directors did not sign a written consent to the meeting. (*Ibid*.) Nonetheless, following the declaration of the dividend, all the directors accepted funds derived from the dividend. (*Id*. at p. 187.) Our Supreme Court held that this conduct constituted ratification of the dividend. (*Ibid*.) The court rejected a contention that the dividend could be ratified solely by a formal resolution of the board at a duly held meeting, reasoning that "'[a]nything from which it may be clearly found . . . that the board as a board has agreed that the [] act should be binding will suffice.'" (*Id*. at pp. 186-187, quoting *Milligan v. C.D. Milligan Grocer Co.* (1921) 207 Mo.App. 472 [233 S.W. 506, 510].)

Here, appellants sought a TRO and preliminary injunction barring action on the written assent until its provisions were "approved by a binding vote of the full SAG Board at a properly noticed and lawful Board meeting." That is precisely what occurred. At the February meeting, the full Board, with all members (or their designated alternates) present, approved -- and re-adopted the provisions of -- the written assent "in its entirety." As explained below (see pts. C.1. & C.2., *post*), we discern no procedural deficiencies in the February meeting. Moreover, SAG's members have voted overwhelmingly to accept the contract negotiated pursuant to the terms adopted at the February meeting. As the Board and SAG's members have ratified and re-adopted the terms of the written assent, appellants have effectively received the relief they sought through their application.

C. *Appellants' Contentions*

Appellants contend their appeal should not be dismissed as moot. For the reasons explained below, we conclude that none of their arguments has merit.

1. *No Failure of Ratification*

Appellants contend that the Board's action at the February meeting did not operate as a ratification because it contravened certain principles governing ratification. Their main challenge to the motion approved at the February meeting is that it was nothing more than an attempt to make "an illegal action legal." They maintain that section 7211, subdivision (b), of the Corporations Code permits action only by unanimous written assent, and argue that the motion was intended solely to affirm the Board's authority to use the purportedly unlawful procedure set forth in section 1(J)(4) of SAG's Constitution.

Generally, void acts "cannot be ratified, and this includes acts done in violation of law or in contravention of public policy." (2A Fletcher Cyclopedia Corporations, *supra*, § 752, pp. 431-432.) Nonetheless, as noted above (see pt. B., *ante*), this principle does not bar the board of a corporation from ratifying acts which, though within the board's authority, were originally undertaken in a manner that contravened procedures prescribed by statute. (*Meyers v. El Tejon Oil & Refining Co.*, *supra*, 29 Cal.2d at pp. 186-187; see also *Moore v. Moffat* (1922) 188 Cal. 1, 6-7 [corporation ratified agreement for sale of stock initially executed prior to issuance of statutorily-required permit for sale]; *El Rio Oils v. Pacific Coast Asphalt Co.* (1949) 95 Cal.App.2d 186, 192-193 [agreement for benefit of corporation executed prior to corporation's formation was ratified by corporation after its formation].)

The crux of appellants' contention is that the motion approved at the February meeting was narrowly focused on the written assent procedure set forth in section 1(J)(4). They do not contend that the Board lacked the authority to approve the provisions of the written assent; on the contrary, their application for injunctive relief sought consideration of the provisions by "the full SAG Board at a properly noticed and lawful Board meeting." Rather, they argue that the motion purported only to affirm the Board's authority "to act by a less than unanimous 'written assent,'" and did not encompass the substantive provisions of the written assent.

This contention fails, however, as the motion expressly incorporated the provisions of the written assent themselves, and upheld the validity of the written assent "in its entirety." The Board, in approving the motion, endorsed the terms of the written assent, as well as the procedure by which it was initially approved. Under these circumstances, the Board must be regarded as having ratified the

provisions of the written assent, *regardless* of whether the procedure by which the written assent was originally approved was itself lawful. (*Meyers v. El Tejon Oil & Refining Co.*, *supra,* 29 Cal.2d at pp. 186-187.)

Appellants' reliance on *Columbia Engineering Co. v. Joiner* (1965) 231 Cal.App.2d 837 (*Columbia Engineering*) and *Belle Isle Corporation v. Corcoran* (1946) 29 Del.Ch. 554 [49 A.2d 1] (*Belle Isle*) is misplaced. In each case, the parties purporting to ratify or approve an action lacked the authority to do so. In *Columbia Engineering*, a shareholder in a close corporation received some shares in violation of the statutorily mandated permit governing their issuance. (*Columbia Engineering*, *supra*, 231 Cal.App.2d at pp. 851-854.) As the issuance of the shares was void as a matter of law, the appellate court concluded that the remaining shareholders were not estopped from challenging the validity of the shares, despite having acquiesced in their issuance. (*Id*. at pp. 855-858.) Similarly, in *Belle Isle*, the parties to a voting trust agreement regarding shares in a corporation purported to extend the effective period of the agreement beyond the period permitted by statute. (*Belle Isle*, *supra*, 49 A.2d at pp. 4-5.) The appellate court held that the parties' approval of the extension did not bar some of them from challenging actions taken under the voting trust agreement following the unlawful extension. (*Ibid*.) In contrast to the situations presented in *Columbia Engineering* and *Belle Isle*, here, as appellants themselves concede, the Board *had* the authority to approve, "by a binding vote of the full SAG Board at a properly noticed and lawful Board meeting," the actions set forth in the original written assent.

Appellants contend, however, that David White, the interim NED, lacked authority to call the February meeting, despite the principle that ratification ordinarily operates retroactively to cloak the initial action with authority.

"Generally, the effect of a ratification is that the authority which is given to the purported agent relates back to the time when he performed the act. [Citations.]" (*Rakestraw v. Rodrigues*, *supra*, 8 Cal.3d at p. 73.) Under this principle, the Board, in approving the motion at the February meeting, authorized White's conduct as interim NED from the time of the written assent, including his calling of the February meeting. Appellants nonetheless contend that this principle does not govern here, arguing that its application would prejudice them.

Civil Code section 2313 provides that "[n]o unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent." This statute codifies a common law limitation on ratification, namely, that it "cannot date back to destroy intervening rights of third persons or otherwise to achieve an inequitable result" (*Allied Mutual Ins. Co. v. Webb* (2001) 91 Cal.App.4th 1190, 1196). As our Supreme Court explained long ago: "[A]lthough the general rule is [] that the ratification relates back to the time of the inception of the transaction, and has a complete retroactive efficacy . . . , this doctrine is not universally applicable. Thus, if third persons acquire rights, after the act is done and before it has received the sanction of the principal, the ratification cannot operate retrospectively, so as to overreach and defeat those rights." (*Taylor v. Robinson* (1859) 14 Cal. 396, 400-401.)

Assuming -- without deciding -- that appellants may be regarded as third parties to the initial approval of the written assent, they have not shown that retroactive ratification would "prejudice" them, within the meaning of Civil Code section 2313. The sole prejudice they have identified is the loss of their right to appeal through a dismissal on the grounds of mootness. They argue that we may not regard the motion approved at the February meeting as a retroactive ratification of the written assent, as our doing so would "prevent[] them from

having their appeal determined . . . on the merits." For the reasons explained below, we conclude that dismissal of their appeal does not constitute "prejudice" for purposes of Civil Code section 2313.

Under the law of agency, a principal's ratification of an agent's unauthorized act may properly nullify third party claims arising directly from the unauthorized nature of the act itself. Section 92 of the Restatement Second of Agency states that "[a]n affirmance by the principal of a transaction with a third person is not prevented from resulting in ratification by the fact: [¶] . . . [¶] . . . that the other party had a cause of action against the agent because of a breach of warranty or a misrepresentation by the agent as to his authority to conduct the original transaction." The comment to this provision explains that "[i]n both of these cases, the conduct of the agent leads to no damage if the principal affirms, since the defect in the authorization is thereby cured . . . ." (Rest.2d Agency, § 92, com. c, 239; see also Rest.3d Agency, § 4.02, com. e, 319.)

The same rationale applicable to the unauthorized transaction of an agent controls the allegedly unauthorized act by the Board. The gravamen of appellants' application for injunctive relief was that the written assent was initially approved by the Board in a procedurally defective manner. As the motion approved by a majority vote of the Board at the February meeting cured this defect, appellants have identified no cognizable prejudice they have suffered from the Board's act. Accordingly, the Board's February vote (followed by the June vote of the SAG membership) effectively moots this appeal. (See *Horner v. Marine Engineers' etc. Assn.*, *supra*, 175 Cal.App.2d at pp. 841-843.)

Pointing to *Dominguez v. Superior Court* (1983) 139 Cal.App.3d 692 (*Dominguez*), appellants maintain that dismissal of their appeal constitutes a form

of prejudice to them.[7] There, the state superintendent of banks took possession of an insolvent bank and ordered it liquidated. (*Id*. at pp. 693-694.) Under the applicable statutes, the bank had 10 days within which to challenge the takeover. (*Id*. at p. 694.) A single bank director, acting in a manner not authorized by the bank's bylaws, filed a challenge within this period; after the period expired, the bank's board approved the filing. (*Ibid*.) The appellate court held that the board's approval did not retroactively ratify the filing, as doing so would have nullified the state superintendent's right to dismiss the challenge as untimely, and undermined the pertinent statutory scheme. (*Id*. at p. 695.)

The purported ratification in *Dominguez* thus threatened to impair third party rights beyond those directly tied to the existence of the unauthorized act itself. The bank board's authorization, if regarded as retroactive, not only would have eliminated the state's defense in the underlying action to seize the bank, but would have impaired the state's statutory right to liquidate insolvent banks. In contrast, appellants' request for injunctive relief arises solely from the allegedly defective manner by which the written assent was initially approved. Under these circumstances, retroactive ratification merely cures the defect in question. Accordingly, Civil Code section 2313 does not preclude retroactive ratification of the written assent.

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[7] Appellants also purport to find support for their contention in *Archdale v. American Internat. Specialty Lines Ins. Co.* (2007) 154 Cal.App.4th 449, 480. However, as the appellate court in *Archdale* concluded that the retroactive authorization of an act was not prejudicial for purposes of Civil Code 2313, *Archdale* does not assist appellants. (*Ibid*.)

2. *No Procedural Irregularities*

Appellants contend that the motion approved at the February meeting cannot operate as a ratification due to procedural irregularities at the meeting. As explained above (see pt. B., *ante*), even informal conduct by the Board will constitute a ratification as long as "'it may be clearly found . . . that the [B]oard as a [B]oard has agreed that the [] act should be binding.'" (*Meyers v. El Tejon Oil & Refining Co.*, *supra*, 29 Cal.2d at pp. 186-187, quoting *Milligan v. C.D. Milligan Grocer Co.*, *supra*, 233 S.W. at p. 510.) Under this standard, the Board's approval of the motion at the February meeting constitutes a ratification unless the motion is void, that is, there is a procedural irregularity fatal to the motion itself (*Boswell v. Mount Jupiter Etc. Co.* (1950) 97 Cal.App.2d 437, 440). We discern no such irregularity.

a. *February Meeting*

The record before us discloses that notices of the meeting were sent on February 3, 2009, by SAG's standard notification process, and the agenda for the meeting was distributed in advance of the meeting. Appellant Alan Rosenberg presided over the meeting. Every director attended or was represented by an alternate.

The Board began the meeting by unanimously approving the agenda, which contained the following item: "Adoption & Reaffirmation of Written Assent of January 26, 2009." After the agenda was approved, appellant Anne-Marie Johnson objected to the item on the ground that a motion to reaffirm a position already taken is impermissible under Robert's Rules of Order (Robert's Rules), which govern Board meetings. On this matter, Robert's Rules provide: "Motions to 'reaffirm' a position previously taken by adopting a motion or

resolution are not in order. Such a motion serves no useful purpose because the original motion is still in effect . . . ." (Robert's Rules of Order Newly Revised (10th ed.) p. 100.)

Duncan Crabtree-Ireland, SAG's Deputy National Executive Director and General Counsel, responded that the item was proper, as Robert's Rules merely bar motions to reaffirm measures "already in effect," and there was a dispute within the Board regarding whether the written assent was "in effect." Rosenberg ruled that the agenda item was out of order.

The motion that was ultimately approved was proposed and seconded as a substitute motion. After Rosenberg ruled that the substitute motion was also out of order, there was a call for an appeal from the ruling. Following a debate, a majority of the Board overruled Rosenberg's ruling (by a vote of 56.66 percent to 43.34 percent) and approved the substitute (now main) motion (by a vote of 59.02 percent to 40.98 percent).

Following the approval of the motion, a motion was made to reconsider it. A point of order was raised against the motion to reconsider on the ground that under Robert's Rules, such motions are intended to prevent action by "a temporary majority from taking advantage of an unrepresentative attendance at a meeting." (Robert's Rules of Order Newly Revised, *supra*, p. 322.) In addition, the motion to reconsider was challenged under Robert's Rules as an improper attempt to delay implementation of the written assent.[8]

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[8] Robert's Rules provide: "In the average organization this motion should generally be reserved for extreme cases, and should be regarded as in order only when final decision on the question could, if necessary, wait until the next regular meeting, or when an adjourned or special meeting to take it up is a practical possibility." (Robert's Rule of Order Newly Revised, *supra*, p. 324.)

Rosenberg ruled that the motion to reconsider was in order. There was a call for an appeal from Rosenberg's ruling, and a majority of the Board voted not to sustain the ruling (by a vote of 56.45 percent to 43.55 percent). The Board then moved on to other business.

b. *Analysis of Contentions*

Appellants maintain that several procedural irregularities undermined the motion affirming and re-adopting the provisions of the written assent. Their principal contention is that the Board, in overruling Rosenberg's rulings, contravened Robert's Rules, which SAG's bylaws impose on Board meetings. For the reasons explained below, we disagree.

Subject to the limits imposed by statute, a nonprofit corporation may adopt a constitution and bylaws that are reasonable in their practical application. (*Braude v. Havenner* (1974) 38 Cal.App.3d 526, 533.) Although the interpretation a nonprofit corporation places on its own constitution and bylaws is not binding on us, we will ordinarily defer to "'[t]he practical and reasonable construction of the constitution and bylaws . . . by its governing board.'" (*Williams v. Inglewood Board of Realtors* (1963) 219 Cal.App.2d 479, 486-488, quoting *DeMille v. American Fed. Of Radio Artists* (1947) 31 Cal.2d 139, 147.) Absent a showing that the board has placed an "unreasonable construction of a plain and unambiguous provision" or engaged in """an abuse of discretion, and a clear, unreasonable and arbitrary invasion of [] private rights,""" the courts will not intervene in the board's decision making. (*California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 354.)

In our view, the Board did not act unreasonably in connection with Rosenberg's rulings. Robert's Rules provide that when the chair renders a ruling,

any person may appeal from the ruling; provided that the request for an appeal is seconded, "the question is taken from the chair and vested in the assembly for final decision." (Robert's Rules of Order Newly Revised, *supra*, p. 247.) As the appeals from Rosenberg's rulings were properly moved and seconded, the Board fully complied with Robert's Rules in rejecting the rulings. Moreover, the Board's decisions themselves amounted to reasonable measures to resolve the uncertainties surrounding the written assent.

Appellants also contend that SAG's Constitution barred the Board from approving two provisions of the written assent by a simple majority vote, namely, a provision disbanding the TV/Theatrical Negotiating Committee and replacing it with a TV/Theatrical Taskforce, and a provision suspending a guideline limiting the use of taskforces. In support of this contention, they point to Article VI, section 7(A), of SAG's Constitution, which states: "The [] Board may remove any committee member, alternate, or co-chair by a two-thirds (2/3) vote of the Board."

However, SAG's Constitution does not unambiguously proscribe the Board from abolishing committees by a simple majority vote. On this matter, the Constitution provides that committees established by the Board "serve at its pleasure," and that their powers are "revocable . . . at any time" (Art. V, §§ 1(I)(3), 1(I)(4)). Moreover, the SAG guidelines in question state that they "are subject to change at any time by [] Board action." In view of these provisions, the Board, in affirming the written assent by a simple majority, cannot be regarded as placing an "unreasonable construction" on SAG's Constitution. (*California Dental Assn. v. American Dental Assn.*, *supra*, 23 Cal.3d 346, 354.)[9]

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9 On a related matter, appellants contend that the Board impermissibly limited the authority of certain board members and officers – including Rosenberg as
(Fn. continued on next page.)

Finally, appellants contend that Rosenberg and Connie Stevens, SAG's Secretary Treasurer, were denied an opportunity to give their reports as elected officers during the February meeting, despite their request to do so.[10] As the Board *unanimously* approved the agenda, which did not provide for such reports, we see no procedural impropriety.

3. *No Grounds for Addressing Appeal Despite Mootness*

Appellants urge us to address their appeal, even if it is technically moot.[11] They argue that the issues surrounding the written assent procedure set forth in section 1(J)(4) of SAG's Constitution are of broad public interest, and that the dispute within SAG regarding the use of the procedure is likely to recur. Nothing

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President and Anne-Marie Johnson as Vice-President -- to speak on behalf of SAG. They argue that a simple majority of the Board could not approve a provision of the written assent that permitted only the interim NED (and other designated persons) to represent SAG to other organizations, the public, and the press. However, as appellants have identified no provision of SAG's Constitution this restriction expressly contravenes, the contention fails.

[10] Appellants do not dispute that because Rosenberg presided over the February meeting, he was not permitted to participate in the debate on the motion to affirm. (Robert's Rules of Order Newly Revised, *supra*, p. 382.)

[11] Generally, "[a]n appeal should be dismissed as moot when the occurrence of events renders it impossible for the appellate court to grant appellant any effective relief. [Citation.] . . . [¶] Notwithstanding, there are three discretionary exceptions to the rules regarding mootness: (1) when the case presents an issue of broad public interest that is likely to recur [citation]; (2) when there may be a recurrence of the controversy between the parties [citation]; and (3) when a material question remains for the court's determination [citation]." (*Cucamongans United For Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479-480.)

before us supports these contentions. The record does not suggest that other nonprofit corporations employ similar procedures, and discloses that SAG has used the written assent procedure for many years without controversy. As the issues stem from an exceptional dispute now mooted by the Board's action (and the members' vote), we discern no broad public interest to be served by resolving them.

DISPOSITION

The appeal is dismissed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.