

Ellington v Kings County Democratic County Comm.
2021 NY Slip Op 30095(U)
January 11, 2021
Supreme Court, Kings County
Docket Number: 518630/20
Judge: Edgar G. Walker
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At the Special Election Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of January, 2021.

P R E S E N T:

HON. EDGAR G. WALKER,
Justice.

-----X
PHYLLIS ELLINGTON, JANICE HENDERSON,
JORGE MUNIZ-REYES, ERNESTINA
MONTEIRO, DAVID STEIN, AARON
OUYANG, NAOMI RABEEYA, DAVID
GOLDBERG, ERIC KUN, ELANA EHRENBERG,
ERNESTINA MONTEIRO, WILLIAM VEGA,

Plaintiffs,

- against -

Index No. 518630/20

KINGS COUNTY DEMOCRATIC COUNTY
COMMITTEE,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Docket No.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

44-59 _____

Opposing Affidavits (Affirmations) _____

60-63 _____

Reply Affidavits (Affirmations) _____

On October 1, 2020, plaintiffs commenced the instant action by filing a petition and proposed order to show cause seeking injunctive relief as well as a judgement declaring that certain amendments to the Rules of Government of the KCDCC (the party rules) were null and void and that defendant was required to hold an organizational meeting of the County

Committee pursuant to Election Law § 2-112.¹ On October 2, 2020, the court signed the order to show cause. In its order dated October 27, 2020, the court granted the plaintiffs' motion/petition to the extent that the court declared that the amendment to Article III of the party rules, § 7 was annulled to the extent that it conflicted with Election Law § 2-112 and defendant was required to conduct an organizational meeting by any of the means authorized by Executive Order 202.47 within 45 days of service of a copy of the order with notice of entry.

Prior to the holding of the organizational meeting, the Executive Committee of the KCDCC filled certain County Committee vacancies and the related action of *Stein v Kings County Democratic County Committee* (Kings County Index No. 524201/20) was commenced. In an order dated December 10, 2020, the *Stein* plaintiffs' motion was granted to the extent that the court declared that any appointments made by the Executive Committee prior to the required organizational meeting were null and void.

On December 16, 2016 and December 23, 2020, the organizational meeting of the KCDCC was held. On December 30, 2020, plaintiffs in this action filed a new order to show cause seeking an order holding defendant in contempt pursuant to Judiciary Law § 753 for failing to comply with the court's October 27, 2020 order in this case as well as the court's December 10, 2020 order in *Stein*. The order to show cause seeks additional relief based

¹In its order dated October 27, 2020, the court converted the instant matter from a special proceeding to an action and deemed the order to show cause to be a summons and the petition to be a complaint.

upon alleged improprieties and misconduct that occurred during the organizational meeting and during the time between the two meeting dates.

On January 8, 2021, defendant filed opposition papers to plaintiffs' order to show cause seeking to hold it in contempt. On the same day, the parties appeared before the court remotely. After hearing oral arguments on the matter, the court reserved decision.

In support of its motion to hold defendant in contempt, plaintiffs note that the October 27, 2020 order required that defendant hold its organizational meeting within 45 days of service of a copy of the order with notice of entry. Here, it is undisputed that the meeting was not held until 47 days of service of a copy of the order with notice of entry. In further support of its motion, plaintiffs contend that the meeting that occurred on December 16 and 23, 2020 did not allow for meaningful participation of the County Committee members and was fraught with such misconduct, mismanagement, malfeasance and improprieties that what occurred did not constitute a bona fide organizational meeting as required by the court's October 27, 2020 order. Finally, plaintiffs maintain the defendant violated the December 10, 2020 order in *Stein* inasmuch the leadership of the KCDCC prevented floor motions to put forth nominations to fill County Committee vacancies, thereby denying meaningful participation in the filling of County Committee vacancies.

“To sustain a finding of either civil or criminal contempt based on an alleged violation of a court order it is necessary to establish that a lawful order of the court clearly expressing an unequivocal mandate was in effect” (*Matter of Department of Env'tl. Protection of City*

of *N.Y. v Department of Env'tl. Conservation of State of N.Y.*, 70 NY2d 233, 240 [1987]; *Matter of McCormick v Axelrod*, 59 NY2d 574, 583 [1983]; *Gerelli Ins. Agency, Inc. v Gerelli*, 23 AD3d 341, 341 [2d Dept 2005]). Further, when seeking civil contempt, a movant must demonstrate that his/her rights were prejudiced by the violation of the court's mandate (*Wolfe v Wolfe*, 71 AD3d 878 [2d Dept 2010]). The party seeking to hold another in civil contempt bears the burden of proving the contempt by clear and convincing evidence (*see Penavic v Penavic*, 109 AD3d 648, 649-650 [2d Dept 2013]; *Rienzi v Rienzi*, 23 AD3d 447, 448-449 [2d Dept 2005]).

The court turns first to plaintiffs' argument that defendant should be held in contempt inasmuch as the organizational meeting was not convened until 47 days after service of a copy of the order with notice of entry. Although this was two days after the 45-day deadline set by the court's order, it is clear that this delay was the result of an honest mistake by defendant's counsel in calculating the number of days rather than willful noncompliance with the court's directive. Furthermore, plaintiffs have failed to demonstrate by clear and convincing evidence that they were injured by the two day delay in commencing the organizational meeting (*Matter of Thorsen v Nassau County Civ. Serv. Commn.*, 32 AD3d 1037, 1038 [2d Dept 2006]). Consequently, plaintiffs are not entitled to an order holding defendant in civil contempt based upon this delay.

To the extent that plaintiffs seek to hold defendant in contempt for failing to hold an organizational meeting as required by the court's October 27, 2020 order, the motion must

also be denied. In particular, the order directed that defendant conduct an organizational meeting and an organizational meeting was in fact held on December 16 and 23, 2020. While it is clear that plaintiffs have numerous issues and objections with the manner in which the meeting was conducted, these objections may not serve as a basis for holding defendant in civil contempt as plaintiffs have failed to demonstrate by clear and convincing evidence that the alleged actions and conduct by the KCDCC's leadership during the meeting violated an unequivocal mandate set forth in the order (*Wolfe*, 71 AD3d at 878-879).

Plaintiffs have also failed to demonstrate by clear and convincing evidence that defendant violated a clear and unequivocal mandate in the December 10, 2020 order in *Stein* when it allegedly prevented floor motions to put forth nominations to fill County Committee vacancies during the organizational meeting. As previously noted, the *Stein* order merely declared that any appointments made by the Executive Committee prior to the required organizational meeting were null and void and nothing in the *Stein* order mandated that floor motions be permitted during the meeting to put forth nominations to fill vacancies.

As a final matter, the court notes that all of the non-contempt relief sought in plaintiff's instant order to show cause pertains to alleged conduct and actions that occurred during and between the December 16 and 23, 2020 organizational meeting dates. However, none of this conduct was the subject of the complaint in this case, which was commenced before the meeting took place. Therefore, the requested non-contempt

relief is not properly raised in the context of this action. Instead, these matters must be adjudicated in the context of *Skaller et al v KCDCC* (Index No. 526141/20).

Accordingly, plaintiffs' motion for an order holding defendant in civil contempt is denied.

This constitutes the decision and order of the court.

ENTER,

J. S. C.