

**Byars v Transport Workers Union of Am.**

2022 NY Slip Op 31158(U)

April 5, 2022

Supreme Court, Kings County

Docket Number: Index No. 524721/2021

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

-----X  
 EVANGELINE BYARS, on behalf of all similarly  
 situated,

Plaintiff, Decision and order

- against -

Index No. 524721/2021

TRANSPORT WORKERS UNION OF AMERICA, a  
 Labor Organization, TRANSPORT WORKERS UNION,  
 LOCAL 100, a Labor Organization, JOHN SAMUELSEN,  
 ANTHONY UTANO, AQUILLINO CASTRO,  
 ANGELLA FONTE, RON GREGORY, ARTHUR  
 SCHWARTZ and BARBARA DEINHARDT,

Defendants,

April 5, 2022

-----X  
 PRESENT: HON. LEON RUCHELSMAN

The defendants the Transit Workers Union of America and its president John Samuelson move pursuant to CPLR §3211 seeking to dismiss the first cause of action. Further, the defendant Barbara Deinhardt has moved pursuant to CPLR §3211 seeking to dismiss the complaint. The plaintiff has opposed the motions. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in prior orders, in 2021 the plaintiff sought to run in a union election seeking an internal union position. The election takes place every three years. In September 2021 it was determined the plaintiff was ineligible to run since she was a member in bad standing. Specifically, the determination denying her request to run in the election noted the plaintiff was out sick from January 26, 2021 through February 24, 2021 and except

for one sick day received no compensation during that time and thus no dues were paid to the union during that time. She paid her dues on April 21, 2021 and resumed her good standing status. However, she was deemed a member in bad standing because she did not have twelve months of continuous good standing as required by the Constitution. Indeed, there is no dispute that to run as an officer of the Local 100 the person must be a member in good standing for twelve consecutive months. The plaintiff, essentially, sought a stay of that decision on the grounds that determination was unreasonable. The court rejected the plaintiff's arguments finding the interpretation of the relevant provisions resulting in her inability to run in the election were in fact reasonable. The above noted defendants have now moved seeking to dismiss the relevant portions of the complaint applicable to them.

#### Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Strujan v. Kaufman & Kahn, LLP, 168 AD3d 1114, 93 NYS3d 334 [2d Dept., 2019]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (Weiss v. Lowenberg, 95 AD3d 405,

944 NYS2d 27 [1<sup>st</sup> Dept., 2012])). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Moskowitz v. Masliansky, 198 AD3d 637, 155 NYS3d 414 [2021])).

First, the denial of a preliminary injunction on the grounds the plaintiff could not establish a likelihood of success on the merits does not foreclose further review of the issues pursuant to a motion to dismiss. Therefore, consideration of these motions is appropriate. Indeed, the plaintiff's entire opposition to these motions rests on the arguments that the standards necessary to obtain a preliminary injunction and a motion to dismiss are different and the denial of the preliminary injunction has no bearing upon whether the plaintiff adequately alleges any causes of action. The plaintiff insists the prior decision did not preclude arguments presented here that the interpretation of the defendants is unreasonable and valid claims for breach of contract remain. Thus, the plaintiff argues that "this case as to the interpretation of the Union's constitution is not over. It is just over for purposes of determining whether Plaintiff may run. It is not over in terms of what the Department of Labor may do in looking into Plaintiff's disqualification or for potential disqualifications for possible DOL re-run elections

or future elections" (see, Affirmation in Opposition, ¶18). The court need not reiterate the basis for denying the preliminary injunction. However, it is difficult to understand the nuanced distinction the plaintiff is advocating. Thus, the court, in its prior decision, exhaustively concluded the interpretation of the contract was not unreasonable and while that decision involved a preliminary injunction, the basis for such a conclusion is likewise applicable regarding these motions to dismiss. The mere posture of a case when a decision is rendered does not limit its applicability if the reasoning upon which the earlier decision was based governs the present motion as well. Indeed, in the prior motion to reargue the plaintiff asserted that "the issue squarely before the Court is whether Defendant's are in breach of their contract with Plaintiff based on whether the Union's interpretation through its officers, not Defendant Deinhardt's interpretation, is patently unreasonable" (Memorandum of Law in Support of Motion to Reargue, page 4). The court concluded the defendants were not in breach of the contract. That holding compels the dismissal of any causes of action against the moving defendants in this motion as well.

The plaintiff further argues that the prior decision was rendered before any discovery was conducted and thus the plaintiff should be entitled to discover why the union and Mr. Samuelson changed its interpretation of the constitution after

the election of Mr. Samuelson as president. This is necessary, argues the plaintiff, since it could support allegations the defendants rendered the determination against Ms. Byars in bad faith. Thus, on May 28, 2009 the neutral monitor at the time, Daniel Silverman, rejected an appeal filed by an individual, Jimmy Colon, upon a conclusion he was not a member in good standing because he did not have twelve consecutive months of uninterrupted dues payments. John Samuelson, the defendant and present president of the union, advocated on his behalf, asserting that he was never notified he was not a member in good standing citing the same constitutional provision as the one in this case (Article 13 Section 3 of the Constitution of the Transit Workers of America). The neutral monitor, as noted, rejected that argument and concluded that the purpose of the provision "is to notify members who might not otherwise be aware that their dues had not been paid. Here, Mr. Colon was responsible for paying his own dues and thus should have known whether his dues had been timely paid. The Union did not have a responsibility or a practice of sending invoices to members to remind them of their dues obligation" (see, Decision, eligibility appeal Colon, May 28, 2009). First, that decision demonstrates that contrary to the plaintiff's arguments the union has maintained a consistent position in this regard dating back to 2009. Concerning Mr. Samuelson, the fact that he advocated a

position that was rejected by the union and now as the union president advocates that very same position does not raise any question of bad faith. On the contrary, Mr. Samuelson's adherence to union rules despite, perhaps, his personal opinion otherwise, demonstrates his commitment to the position as the union president and his allegiance to executing the union's rules. That cannot possibly raise any question of bad faith. To be sure, bad faith could exist if, where the facts are virtually identical, a finding of ineligibility is applied to some employees and not others. Such an arbitrary and unfair application of the constitution would surely be evidence of wrongdoing. However, no such allegation exists. In fact, the plaintiff argues the court must deny the motion to dismiss so that the alleged unreasonable interpretation can be rejected and help others in the future thereby. In any event, there has been no presentation of any bad faith sufficient to seek discovery to raise questions of fact necessitating a denial of the motion to dismiss.

The plaintiff further argues that discovery is necessary to examine how the union intended the provision in question to be interpreted prior to Mr. Samuelson's presidency. However, those documents, if they even exist, are not relevant. It is of no moment how a committee or individuals thought the provision should be applied. The only relevant inquiry is whether the

interpretation of the union president is reasonable. For the reasons cited in the prior opinions the court has held that such interpretation is reasonable. Consequently, the first cause of action against the union and Samuelson is dismissed. To the extent the remaining causes of action implicate, even impliedly these defendants, such allegations are likewise dismissed. The defendant union and Samuelson's motion to dismiss is thus granted.


Turning to the motion of Barbara Deinhardt seeking to dismiss any allegations filed against her, she was the neutral arbiter that issued the decision confirming the union's denial of Ms. Byars' right to run in the union election. The election concluded and consequently Deinhardt argues there is no basis for any allegations against her. The complaint alleges that Ms. Deinhardt did not resolve the dispute whether Ms. Byars could run in an election in a fair manner and rather adopted a patently unreasonable interpretation (see, Verified Complaint, ¶21). Of course, that issue has been resolved, as noted, and consequently there can be no claims against Ms. Deinhardt in this regard. To the extent the verified complaint seeks to vindicate the rights of others similarly situated or who might face similar issues in the future, the complaint is really a request for an advisory opinion as to the propriety of the union's interpretation. Thus, while the verified complaint alleges a breach of contract cause

of action, the thrust of the verified complaint is a finding the interpretation adopted by the union is unreasonable. This is especially true since no real relief can be granted to Byars since the election already took place. To the extent the issue may present itself to Byars at another election cycle or for others similarly excluded the verified complaint in this case is an improper vehicle to seek to challenge the union's determination. In any event, the court has already confirmed the union's interpretation, essentially resolving this lawsuit. Other avenues are available to the parties seeking to further challenge the court's determination the union's interpretation was correct, however, continuing the lawsuit against the defendants is not one of them. Further, the court has already explained that there is no discovery possible that would demand the court reverse its prior decision and conclude the union's interpretation unreasonable. Therefore, based on the foregoing, the motion of Ms. Deinhardt seeking to dismiss all the claims against her is granted.

So ordered.

ENTER:

DATED: April 5, 2022  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC